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WHEN: Tuesday, February 24, 2009
9:00 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 157

[Docket No. RM81–19–000]

Natural Gas Pipelines; Project Cost and Annual Limits

February 3, 2009.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: Pursuant to the authority delegated by 18 CFR 375.308(x)(1), the Director of the Office of Energy Projects (OEP) computes and publishes the project cost and annual limits for natural gas pipelines blanket construction certificates for each calendar year.

DATES: This final rule is effective February 10, 2009 and establishes cost limits applicable from January 1, 2009 through December 31, 2009.

FOR FURTHER INFORMATION CONTACT: Michael J. McGehee, Chief, Certificates Branch 1, Division of Pipeline Certificates, (202) 502–8962.

SUPPLEMENTARY INFORMATION:

United States of America

Federal Energy Regulatory Commission

Docket No. RM81–19–000
Publication of Project Cost Limits Under Blanket Certificates; Order of the Director, OEP
February 3, 2009

Section 157.208(d) of the Commission's Regulations provides for project cost limits applicable to construction, acquisition, operation and miscellaneous rearrangement of facilities (Table I) authorized under the blanket certificate procedure (Order No. 234, 19 FERC ¶ 61,216). Section 157.215(a) specifies the calendar year dollar limit which may be expended on underground storage testing and development (Table II) authorized under the blanket certificate. Section 157.208(d) requires that the ''limits specified in Tables I and II shall be adjusted each calendar year to reflect the 'GDP implicit price deflator' published by the Department of Commerce for the previous calendar year.''

Pursuant to § 375.308(x)(1) of the Commission's Regulations, the authority for the publication of such cost limits, as adjusted for inflation, is delegated to the Director of the Office of Energy Projects. The cost limits for calendar year 2009, as published in Table I of § 157.208(d) and Table II of § 157.215(a), are hereby issued.

Effective Date

This final rule is effective February 10, 2009.

The provisions of 5 U.S.C. 801 regarding Congressional review of Final Rules does not apply to the Final Rule because the rule concerns agency procedure and practice and will not substantially affect the rights or obligations of non-agency parties. The Final Rule merely updates amounts published in the Code of Federal Regulations to reflect the Department of Commerce's latest annual determination of the Gross Domestic Product (GDP) implicit price deflator, a mathematical updating required by the Commission's existing regulations.

List of Subjects in 18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

J. Mark Robinson,
Director, Office of Energy Projects.

■ Accordingly, 18 CFR Part 157 is amended as follows:

PART 157—[AMENDED]

■ 1. The authority citation for Part 157 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

■ 2. Table I in § 157.208(d) is revised to read as follows:

§ 157.208 Construction, acquisition, operation, replacement, and miscellaneous rearrangement of facilities.

* * * * *

(d) * * *

TABLE I

Year	Limit	
	Auto. proj. cost limit (Col. 1)	Prior notice proj. cost limit (Col. 2)
1982	$4,200,000	$12,000,000
1983	4,500,000	12,800,000
1984	4,700,000	13,300,000
1985	4,900,000	13,800,000
1986	5,100,000	14,300,000
1987	5,200,000	14,700,000
1988	5,400,000	15,100,000
1989	5,600,000	15,600,000
1990	5,800,000	16,000,000
1991	6,000,000	16,700,000
1992	6,200,000	17,300,000
1993	6,400,000	17,700,000
1994	6,600,000	18,100,000
1995	6,700,000	18,400,000
1996	6,900,000	18,800,000
1997	7,000,000	19,200,000
1998	7,100,000	19,600,000
1999	7,200,000	19,800,000
2000	7,300,000	20,200,000
2001	7,400,000	20,600,000
2002	7,500,000	21,000,000
2003	7,600,000	21,200,000
2004	7,800,000	21,600,000
2005	8,000,000	22,000,000
2006	9,600,000	27,400,000
2007	9,900,000	28,200,000
2008	10,200,000	29,000,000
2009	10,400,000	29,600,000

* * * * *

■ 3. Table II in § 157.215(a)(5) is revised to read as follows:

§ 157.215 Underground storage testing and development.

(a) * * *
(5) * * *

TABLE II

Year	Limit
1982	$2,700,000
1983	2,900,000
1984	3,000,000
1985	3,100,000
1986	3,200,000
1987	3,300,000
1988	3,400,000
1989	3,500,000
1990	3,600,000
1991	3,800,000
1992	3,900,000
1993	4,000,000
1994	4,100,000
1995	4,200,000
1996	4,300,000
1997	4,400,000

TABLE II—Continued

Year	Limit
1998	4,500,000
1999	4,550,000
2000	4,650,000
2001	4,750,000
2002	4,850,000
2003	4,900,000
2004	5,000,000
2005	5,100,000
2006	5,250,000
2007	5,400,000
2008	5,550,000
2009	5,600,000

* * * * *

[FR Doc. E9–2711 Filed 2–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 375

[Docket No. RM08–18–000; Order No. 721]

Chief Accountant Delegations

Issued February 4, 2009.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule.

SUMMARY: The Commission is revising its regulations governing delegations of authority to reflect the transfer of its Chief Accountant to the Office of Enforcement.

DATES: *Effective Date:* This rule is effective February 10, 2009.

FOR FURTHER INFORMATION CONTACT: Wilbur Miller,Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8953, *wilbur.miller@ferc.gov.*

SUPPLEMENTARY INFORMATION:

United States of America

Federal Energy Regulatory Commission

Before Commissioners: Jon Wellinghoff, Acting Chairman; Suedeen G. Kelly, Marc Spitzer, and Philip D. Moeller.

I. Discussion

1. The Commission is revising its delegations of authority to reflect the transfer of the Chief Accountant function to the Office of Enforcement. Currently, the regulations delegate certain matters directly to the Chief Accountant.[1] Because the Chief Accountant is now located within the Office of Enforcement, it would be more appropriate if actions taken by that official were done through the Director of that office, to whom the Chief Accountant now reports and who is ultimately responsible for the activities of the Chief Accountant.[2] In addition, responsibilities with regard to forms administration, data collection, and reports are no longer under the direction of the Chief Accountant. Accordingly, authority to act on these items should no longer rest with the Chief Accountant. The Director can, under the regulations, subdelegate functions as appropriate.[3] The delegated authority being transferred is not being altered in any way.

II. Information Collection Statement

2. The Office of Management and Budget's (OMB) regulations require that OMB approve certain information collection requirements imposed by agency rule.[4] This Final Rule does not contain information reporting requirements and is not subject to OMB approval.

III. Environmental Analysis

3. 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 quality of the human environment.[5] Issuance of this Final Rule does not represent a major federal action having a significant adverse effect on the quality of the human environment under the Commission's regulations implementing the National Environmental Policy Act. Part 380 of the Commission's regulations lists exemptions to the requirement to draft an Environmental Analysis or Environmental Impact Statement. Included is an exemption for procedural, ministerial, or internal administrative actions.[6] This rulemaking is exempt under that provision.

IV. Regulatory Flexibility Act

4. The Regulatory Flexibility Act of 1980 (RFA)[7] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. This Final Rule concerns matters of internal agency procedure. The Commission therefore certifies that it will not have such an impact. An analysis under the RFA is not required.

V. Document Availability

5. 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 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington DC 20426.

6. 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.

7. 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 e-mail at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov*.

VI. Effective Date and Congressional Notification

8. These regulations are effective immediately upon publication in the **Federal Register**. In accordance with 5 U.S.C. 553(d)(3), the Commission finds that good cause exists to make this Final Rule effective immediately. It makes minor revisions to matters of internal operations and is unlikely to affect the rights of persons appearing before the Commission. There is therefore no reason to make this rule effective at a later time.

9. The provisions of 5 U.S.C. 801 regarding Congressional review of final rules do not apply to this Final Rule, because this Final Rule concerns agency procedure and practice and will not substantially affect the rights of non-agency parties.

10. The Commission is issuing this as a Final Rule without a period for public comment. Under 5 U.S.C. 553(b), notice and comment procedures are unnecessary where a rulemaking concerns only agency procedure and practice, or where the agency finds that notice and comment is unnecessary. This rule concerns only matters of internal agency procedure and will not

[1] 18 CFR 375.303 (2008).

[2] This revision requires the renumbering of the delegations to the Director of the Office of Electric Reliability from section 375.314 to section 375.303.

[3] 18 CFR 375.301(b) (2008).

[4] 5 CFR Part 1320.

[5] *Regulations Implementing the National Environmental Policy Act,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

[6] 18 CFR 380.4(1) and (5).

[7] 5 U.S.C. 601–612.

significantly affect regulated entities or the general public.

List of Subjects in 18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

By the Commission. Commissioner Kelliher is not participating.

Kimberly D. Bose,

Secretary.

■ In consideration of the foregoing, the Commission amends part 375, chapter I, title 18, Code of Federal Regulations, as follows.

PART 375—THE COMMISSION

■ 1. The authority citation for part 375 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 42 U.S.C. 7101–7352.

■ 2. Part 375 is amended by removing § 375.303 and redesignating § 375.314 as § 375.303.

■ 3. Section 375.311 is amended by adding paragraphs (m) through (t) as follows:

§ 375.311 Delegations to the Director of the Office of Enforcement.

* * * * *

(m) Sign all correspondence with respect to financial accounting and reporting matters on behalf of the Commission.

(n) Pass upon actual legitimate original cost and depreciation thereon and the net investment in jurisdictional companies and revisions thereof.

(o) Issue interpretations of the Uniform Systems of Accounts for public utilities and licensees, centralized service companies, natural gas companies and oil pipeline companies.

(p) Pass upon any proposed accounting matters submitted by or on behalf of jurisdictional companies that require Commission approval under the Uniform Systems of Accounts, except that if the proposed accounting matters involve unusually large transactions or unique or controversial features, the Director of the Office of Enforcement must present the matters to the Commission for consideration.

(q) Pass upon applications to increase the size or combine property units of jurisdictional companies.

(r) Deny or grant, in whole or in part, motions for extension of time to file, or requests for waiver of the requirements of the following forms, data collections, and reports: Annual Reports (Form Nos. 1, 1–F, 2, 2–A, and 6); Quarterly Reports (Form Nos. 3–Q and 6–Q); Annual Report of Centralized Service Companies (Form No. 60); Narrative Description of Service Company Functions (FERC–61); Report of Transmission Investment Activity (FERC–730); and Electric Quarterly Reports, as well as, where required, the electronic filing of such information (§ 385.2011 of this chapter, Procedures for filing on electronic media, paragraphs (a)(6), (c), and (e)).

(s) Provide notification if a submitted Annual Report (Form Nos. 1, 1–F, 2, 2–A, and 6), Quarterly Report (Form Nos. 3–Q and 6–Q), Annual Report of Centralized Service Companies (Form No. 60), Narrative Description of Service Company Functions (FERC–61), Report of Transmission Investment Activity (FERC–730), or Electric Quarterly Report fails to comply with applicable statutory requirements, and with all applicable Commission rules, regulations, and orders for which a waiver has not been granted, or, when appropriate, notify a party that a submission is acceptable.

(t) Deny or grant, in whole or in part, requests for waiver of the requirements of parts 352, 356, 367 and 368 of this chapter, except that, if the matters involve unusually large transactions or unique or controversial features, the Director of the Office of Enforcement must present the matters to the Commission for consideration.

[FR Doc. E9–2686 Filed 2–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 314

[Docket No. FDA–2008–N–0341]

Applications for Food and Drug Administration Approval to Market a New Drug; Postmarketing Reports; Reporting Information About Authorized Generic Drugs; Withdrawal

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) published in the **Federal Register** of September 29, 2008 (73 FR 56487), a direct final rule amending its regulations to require that the holder of a new drug application (NDA) submit certain information regarding authorized generic drugs in an annual report to a central office in the agency. The comment period closed December 15, 2008. FDA is withdrawing the direct final rule because the agency received significant adverse comment.

DATES: The direct final rule published at 73 FR 56487 on September 29, 2008, is withdrawn as of February 10, 2009.

FOR FURTHER INFORMATION CONTACT: Michelle D.D. Bernstein, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6362, Silver Spring, MD 20993–0002, 301–796–3601.

SUPPLEMENTARY INFORMATION: FDA published a direct final rule on September 29, 2008 (73 FR 56487), that was intended to amend its regulations to require that the holder of an NDA submit certain information regarding authorized generic drugs in an annual report to a central office in the agency. In response to the direct final rule, the agency received significant adverse comments about the proposed revisions to the rule.

Under FDA's direct final rules procedures, the receipt of any significant adverse comment will result in the withdrawal of the direct final rule. Thus, this direct final rule is being withdrawn, effective immediately. Comments received by the agency regarding the withdrawn rule will be considered in developing a final rule using the usual Administrative Procedure Act notice-and-comment procedures.

Authority: Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, the direct final rule published on September 29, 2008 (73 FR 56487), is withdrawn.

Dated: February 5, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–2746 Filed 2–9–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

[Docket No. FDA–2008–N–0039]

Oral Dosage Form New Animal Drugs; Ivermectin Paste

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect

approval of a supplemental abbreviated new animal drug application (ANADA) filed by IVX Animal Health, Inc. The supplemental ANADA provides for use of ivermectin oral paste for the treatment and control of additional species of gastrointestinal parasites in horses.

DATES: This rule is effective February 10, 2009.

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

SUPPLEMENTARY INFORMATION: IVX Animal Health, Inc., 3915 South 48th Street Ter., St. Joseph, MO 64503, filed a supplement to ANADA 200–286 that provides for oral use of PHOENECTIN (ivermectin) Paste 1.87 percent for the treatment and control of additional species of gastrointestinal parasites in horses. The supplemental ANADA is approved as of December 18, 2008, and the regulations are amended in 21 CFR 520.1192 to reflect the approval.

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

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subject in 21 CFR Part 520

Animal drugs.

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

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

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

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

■ 2. In § 520.1192, remove paragraphs (b)(3), (e)(1)(ii)(A), and (e)(1)(ii)(B); and revise paragraphs (b)(1), (b)(2), and (e)(1)(ii) to read as follows:

§ 520.1192 Ivermectin paste.

* * * * *

(b) * * *

(1) No. 050604 for use of a 1.87 percent paste as in (e)(1) of this section and a 0.153 percent paste for use as in paragraph (e)(2) of this section.

(2) Nos. 051311, 054925, 059130, and 061623 for use of a 1.87 percent paste for use as in paragraph (e)(1) of this section.

* * * * *

(e) * * *

(1) * * *

(ii) *Indications for use*. For treatment and control of Large Strongyles (adults): *Strongylus vulgaris* (also early forms in blood vessels), *S. edentatus* (also tissue stages), *S. equinus*, *Triodontophorus* spp. including *T. brevicauda* and *T. serratus*, and *Craterostomum acuticaudatum*; Small Strongyles (adults, including those resistant to some benzimidazole class compounds): *Coronocyclus* spp. including *C. coronatus*, *C. labiatus*, and *C. labratus*, *Cyathostomum* spp. including *C. catinatum* and *C. pateratum*, *Cylicocyclus* spp. including *C. insigne*, *C. leptostomum*, *C. nassatus*, and *C. brevicapsulatus*, *Cylicodontophorus* spp., *Cylicostephanus* spp. including *C. calicatus*, *C. goldi*, *C. longibursatus*, and *C. minutus*, and *Petrovinema poculatum*; Small Strongyles (fourth-stage larvae); Pinworms (adults and fourth-stage larvae): *Oxyuris equi*; Ascarids (adults and third- and fourth-stage larvae): *Parascaris equorum*; Hairworms (adults): *Trichostrongylus axei*; Large mouth Stomach Worms (adults): *Habronema muscae*; Bots (oral and gastric stages): *Gasterophilus* spp. including *G. intestinalis* and *G. nasalis*; Lungworms (adults and fourth-stage larvae): *Dictyocaulus arnfieldi*; Intestinal Threadworms (adults): *Strongyloides westeri*; Summer Sores caused by *Habronema* and *Draschia* spp. cutaneous third-stage larvae; Dermatitis caused by neck threadworm microfilariae, *Onchocerca* sp.

* * * * *

Dated: February 3, 2009.

Steven D. Vaughn,

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

[FR Doc. E9–2749 Filed 2–9–09; 8:45 am]

BILLING CODE 4160–01–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV102–6039; FRL–8750–1]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; administrative change.

SUMMARY: EPA is updating the materials submitted by West Virginia that are incorporated by reference (IBR) into the State Implementation Plan (SIP). The regulations affected by this update have been previously submitted by the West Virginia Department of Environmental Protection and approved by EPA. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration (NARA), the Air and Radiation Docket and Information Center located at EPA Headquarters in Washington, DC, and the Regional Office.

DATES: *Effective Date:* This action is effective February 10, 2009.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, EPA Headquarters Library, Room Number 3334, EPA West Building, 1301 Constitution Ave., NW., Washington, DC 20460, and the National Archives and Records Administration. If you wish to obtain materials from a docket in the EPA Headquarters Library, please call the Office of Air and Radiation (OAR) Docket/Telephone number: (202) 566–1742; or the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 814–2108 or by e-mail at *frankford.harold@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The SIP is a living document which the State revises as necessary to address the unique air pollution problems.

Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations to make them part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference Federally-approved SIPs, as a result of consultations between EPA and the Office of the Federal Register (OFR). The description of the revised SIP document, IBR procedures and ''Identification of plan'' format are discussed in further detail in the May 22, 1997 **Federal Register** document. On February 10, 2005 (70 FR 7024), EPA published a **Federal Register** beginning the new IBR procedure for West Virginia. On February 28, 2007 (72 FR 8903), EPA published an update to the IBR material in West Virginia.

II. EPA Action

In this document, EPA is doing the following:

1. Announcing the update to the IBR material as of October 1, 2008.

2. Making corrections to the following entries listed in the paragraph 52.2520(c) chart, as described below:

a. Revising the dates in the State effective date and EPA approval date columns of paragraph 52.2520(c) where applicable so that the date format is consistent throughout the paragraph.

b. 45 CSR 5—Correcting the regulation title.

c. 45 CSR 14 and 45 CSR 19, ''Additional explanation at 40 CFR § 52.2565'' column, all entries—removing the SIP effective date from each entry.

EPA has determined that today's rule falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation, and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. Under section 553 of the APA, an agency may find good cause where procedures are ''impractical, unnecessary, or contrary to the public interest.'' Public comment is ''unnecessary'' and ''contrary to the public interest'' since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations and incorrect chart entries.

III. Statutory and Executive Order Reviews

A. General Requirements

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

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

EPA has also determined that the provisions of section 307(b)(1) of the Clean Air Act pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the West Virginia SIP compilations had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for this ''Identification of plan'' reorganization update action for West Virginia.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 2, 2008.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart XX—West Virginia

■ 2. Section 52.2520 is amended by revising paragraphs (b), (c), and (d) to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(b) Incorporation by reference.

(1) Material listed as incorporated by reference in paragraphs (c) and (d) of this section was approved for incorporation by reference by the

Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates on or after October 1, 2008 will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region III certifies that the rules/regulations and source-specific requirements provided by EPA at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations and source-specific requirements which have been approved as part of the State implementation plan as of October 1, 2008.

(3) Copies of the materials incorporated by reference may be inspected at the EPA Region III Office at 1650 Arch Street, Philadelphia, PA 19103. For further information, call (215) 814–2108; the EPA, Air and Radiation Docket and Information Center, Room Number 3334, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20460. For further information, call (202) 566–1742; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(c) *EPA-Approved Regulations*

EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP

State citation [Chapter 16–20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.2565
[45 CSR] Series 1 NO_X Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides				
Section 45–1–1	General	5/1/06	9/28/06; 71 FR 56881.	
Section 45–1–2	Definitions	5/1/06	9/28/06; 71 FR 56881.	
Section 45–1–3	Acronyms	5/1/06	9/28/06; 71 FR 56881.	
Section 45–1–4	NO_X Budget Trading Program Applicability	5/1/06	9/28/06; 71 FR 56881.	
Section 45–1–5	Retired Unit Exemption	5/1/06	9/28/06; 71 FR 56881.	
Section 45–1–6	NO_X Budget Trading Program Standard Requirements.	5/1/02	5/10/02; 67 FR 37133	(c)(46).
Section 45–1–7	Computation of Time	5/1/02	5/10/02; 67 FR 37133	(c)(46).
Section 45–1–10	Authorization and Responsibilities of the NO_X Authorized Account Representative.	5/1/02	5/10/02; 67 FR 37133	(c)(46).
Section 45–1–11	Alternate NO_X Authorized Account Representative.	5/1/02	5/10/02; 67 FR 37133	(c)(46).
Section 45–1–12	Changing the NO_X Authorized Account Representative and the Alternate NO_X Authorized Account Representative; Changes in Owners and Operators.	5/1/02	5/10/02; 67 FR 37133	(c)(46).
Section 45–1–13	Account Certificate of Representation	5/1/02	5/10/02; 67 FR 37133	(c)(46).
Section 45–1–14	Objections Concerning the NO_X Authorized Account Representative.	5/1/02	5/10/02; 67 FR 37133	(c)(46).
Section 45–1–20	General NO_X Budget Trading Program Permit Requirements.	5/1/02	5/10/02; 67 FR 37133	(c)(46).
Section 45–1–21	NO_X Budget Permit Applications	5/1/02	5/10/02; 67 FR 37133	(c)(46).
Section 45–1–22	Information Requirements for NO_X Budget Permit Applications.	5/1/06	9/28/06; 71 FR 56881.	
Section 45–1–23	NO_X Budget Permit Contents	5/1/02	5/10/02; 67 FR 37133	(c)(46).
Section 45–1–24	NO_X Budget Permit Revisions	5/1/02	5/10/02; 67 FR 37133	(c)(46).
Section 45–1–30	Compliance Certification Report	5/1/02	5/10/02; 67 FR 37133	(c)(46).
Section 45–1–31	Secretary's and Administrator's Action on Compliance Certifications.	5/1/02	5/10/02; 67 FR 37133	(c)(46).
Section 45–1–40	State NO_X Trading Program Budget	5/1/02	5/10/02; 67 FR 37133	(c)(46).
Section 45–1–41	Timing Requirements for State NO_X Allowance Allocations.	5/1/02	5/10/02; 67 FR 37133	(c)(46).
Section 45–1–42	State NO_X Allowance Allocations	5/1/02	5/10/02; 67 FR 37133	(c)(46).
Section 45–1–43	Compliance Supplement Pool	5/1/02	5/10/02; 67 FR 37133	(c)(46).
Section 45–1–50	NO_X Allowance Tracking System Accounts	5/1/02	5/10/02; 67 FR 37133	(c)(46).
Section 45–1–51	Establishment of Accounts	5/1/02	5/10/02; 67 FR 37133	(c)(46).
Section 45–1–52	NO_X Allowance Tracking System Responsibilities of NO_X Authorized Account Representative.	5/1/02	5/10/02; 67 FR 37133	(c)(46).
Section 45–1–53	Recordation of NO_X Allowance Allocations	5/1/02	5/10/02; 67 FR 37133	(c)(46).
Section 45–1–54	Compliance	5/1/02	5/10/02; 67 FR 37133	(c)(46).
Section 45–1–55	NO_X Allowance Banking	5/1/02	5/10/02; 67 FR 37133	(c)(46).
Section 45–1–56	Account Error	5/1/02	5/10/02; 67 FR 37133	(c)(46).
Section 45–1–57	Closing of General Accounts	5/1/02	5/10/02; 67 FR 37133	(c)(46).
Section 45–1–60	Submission of NO_X Allowance Transfers	5/1/02	5/10/02; 67 FR 37133	(c)(46).
Section 45–1–61	Allowance Transfer Recordation	5/1/02	5/10/02; 67 FR 37133	(c)(46).
Section 45–1–62	Notification	5/1/02	5/10/02; 67 FR 37133	(c)(46).
Section 45–1–70	General Monitoring Requirements	5/1/06	9/28/06; 71 FR 56881.	
Section 45–1–71	Initial Certification and Recertification Procedures	5/1/06	9/28/06; 71 FR 56881.	
Section 45–1–72	Out of Control Periods	5/1/06	9/28/06; 71 FR 56881.	
Section 45–1–73	Notifications	5/1/02	5/10/02; 67 FR 37133	(c)(46).
Section 45–1–74	Recordkeeping and Reporting	5/1/06	9/28/06; 71 FR 56881.	
Section 45–1–75	Petitions	5/1/02	5/10/02; 67 FR 37133	(c)(46).

EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP—Continued

State citation [Chapter 16–20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.2565
Section 45–1–76	Additional Requirements to Provide Heat Input Data.	5/1/02	5/10/02; 67 FR 37133	(c)(46).
Section 45–1–80	Individual Opt-in Applicability	5/1/02	5/10/02; 67 FR 37133	(c)(46).
Section 45–1–81	Opt-in General Requirements	5/1/02	5/10/02; 67 FR 37133	(c)(46).
Section 45–1–82	Opt-in NO_X Authorized Account Representative	5/1/02	5/10/02; 67 FR 37133	(c)(46).
Section 45–1–83	Applying for NO_X Budget Opt-in Permit	5/1/02	5/10/02; 67 FR 37133	(c)(46).
Section 45–1–84	Opt-in Process	5/1/02	5/10/02; 67 FR 37133	(c)(46).
Section 45–1–85	NO_X Budget Opt-in Permit Contents	5/1/02	5/10/02; 67 FR 37133	(c)(46).
Section 45–1–86	Withdrawal from NO_X Budget Trading Program	5/1/02	5/10/02; 67 FR 37133	(c)(46).
Section 45–1–87	Change in Regulatory Status	5/1/02	5/10/02; 67 FR 37133	(c)(46).
Section 45–1–88	NO_X Allowance Allocations to Opt-in Units	5/1/02	5/10/02; 67 FR 37133	(c)(46).
Section 45–1–89	Appeal Procedures	5/1/06	9/28/06; 71 FR 56881.	
Section 45–1–90	Requirements for Stationary Internal Combustion Engines.	5/1/06	9/28/06; 71 FR 56881.	
Section 45–1–100	Requirements for Emissions of NO_X from Cement Manufacturing Kilns.	5/1/06	9/28/06; 71 FR 56881.	
[45 CSR] Series 2 To Prevent and Control Particulate Air Pollution From Combustion of Fuel in Indirect Heat Exchangers				
Section 45–2–1	General	8/31/00	8/11/03; 68 FR 47473	(c)(56).
Section 45–2–2	Definitions	8/31/00	8/11/03; 68 FR 47473	(c)(56).
Section 45–2–3	Visible Emissions of Smoke And/Or Particulate Matter Prohibited And Standards of Measurement.	8/31/00	8/11/03; 68 FR 47473	(c)(56).
Section 45–2–4	Weight Emission Standards	8/31/00	8/11/03; 68 FR 47473	(c)(56).
Section 45–2–5	Control of Fugitive Particulate Matter	8/31/00	8/11/03; 68 FR 47473	(c)(56).
Section 45–2–6	Registration	8/31/00	8/11/03; 68 FR 47473	(c)(56).
Section 45–2–7	Permits	8/31/00	8/11/03; 68 FR 47473	(c)(56).
Section 45–2–8	Testing, Monitoring, Recordkeeping, and Reporting.	8/31/00	8/11/03; 68 FR 47473	(c)(56).
Section 45–2–9	Start-ups, Shutdowns, and Malfunctions	8/31/00	8/11/03; 68 FR 47473	(c)(56).
Section 45–2–10	Variances	8/31/00	8/11/03; 68 FR 47473	(c)(56).
Section 45–2–11	Exemptions	8/31/00	8/11/03; 68 FR 47473	(c)(56).
Section 45–2–12	Inconsistency Between Rules	8/31/00	8/11/03; 68 FR 47473	(c)(56).
Table 45–2A	[Total Allowable Particulate Matter Emission Rate for All Type "c" Fuel Burning Units Located at One Plant].	8/31/00	8/11/03; 68 FR 47473	(c)(56).
45 CSR 2 Appendix Compliance Test Procedures for 45 CSR 2				
Section 1	General	8/31/00	8/11/03; 68 FR 47473	(c)(56).
Section 3	Symbols	8/31/00	8/11/03; 68 FR 47473	(c)(56).
Section 4	Adoption of Test Methods	8/31/00	8/11/03; 68 FR 47473	(c)(56).
Section 5	Unit Load and Fuel Quality Requirements	8/31/00	8/11/03; 68 FR 47473	(c)(56).
Section 6	Minor Exceptions	8/31/00	8/11/03; 68 FR 47473	(c)(56).
Section 7	Pretest and Post Test General Requirements	8/31/00	8/11/03; 68 FR 47473	(c)(56).
Section 8	Heat Input Data Measurements	8/31/00	8/11/03; 68 FR 47473	(c)(56).
Section 9	Computations and Data Analysis	8/31/00	8/11/03; 68 FR 47473	(c)(56).
[45 CSR] Series 3 To Prevent and Control Air Pollution From the Operation of Hot Mix Asphalt Plants				
Section 45–3–1	General	8/31/00	10/11/02; 67 FR 63270	(c)(48).
Section 45–3–2	Definitions	8/31/00	10/11/02; 67 FR 63270	(c)(48).
Section 45–3–3	Emission of Smoke and/or Particulate Matter Prohibited and Standards of Measurement—Visible.	8/31/00	10/11/02; 67 FR 63270	(c)(48).
Section 45–3–4	Emission of Smoke and/or Particulate Matter Prohibited and Standards of Measurement—Weight Emissions.	8/31/00	10/11/02; 67 FR 63270	(c)(48).
Section 45–3–5	Permits	8/31/00	10/11/02; 67 FR 63270	(c)(48).
Section 45–3–6	Reports and Testing	8/31/00	10/11/02; 67 FR 63270	(c)(48).
Section 45–3–7	Variance	8/31/00	10/11/02; 67 FR 63270	(c)(48).
Section 45–3–8	Circumvention	8/31/00	10/11/02; 67 FR 63270	(c)(48).
Section 45–3–9	Inconsistency Between Rules	8/31/00	10/11/02; 67 FR 63270	(c)(48).
[45 CSR] Series 5 To Prevent and Control Air Pollution From the Operation of Coal Preparation Plants and Coal Handling Operations				
Section 45–5–1	General	8/31/00	10/7/02; 67 FR 62379	(c)(47).
Section 45–5–2	Definitions	8/31/00	10/7/02; 67 FR 62379	(c)(47).
Section 45–5–3	Emission of Particulate Matter Prohibited and Standards of Measurement.	8/31/00	10/7/02; 67 FR 62379	(c)(47).

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State citation [Chapter 16–20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.2565
Section 45–5–4	Control and Prohibition of Particulate Emissions from Coal Thermal Drying Operations of a Coal Preparation Plant.	8/31/00	10/7/02; 67 FR 62379	(c)(47).
Section 45–5–5	Control and Prohibition of Particulate Emissions From an Air Table Operation of a Coal Preparation Plant.	10/22/93	7/13/99; 64 FR 37681	(c)(42).
Section 45–5–6	Control and Prohibition of Fugitive Dust Emissions From Coal Handling Operations and Preparation Plants.	8/31/00	10/7/02; 67 FR 62379	(c)(47).
Section 45–5–7	Standards for Coal Refuse Disposal Areas	8/31/00	10/7/02; 67 FR 62379	(c)(47).
Section 45–5–8	Burning Coal Refuse Disposal Areas	8/31/00	10/7/02; 67 FR 62379	(c)(47).
Section 45–5–9	Monitoring of Operations	8/31/00	10/7/02; 67 FR 62379	(c)(47).
Section 45–5–10	Construction, Modification, and Relocation Permits.	8/31/00	10/7/02; 67 FR 62379	(c)(47).
Section 45–5–11	Operating Permits	8/31/00	10/7/02; 67 FR 62379	(c)(47).
Section 45–5–12	Reporting and Testing	8/31/00	10/7/02; 67 FR 62379	(c)(47).
Section 45–5–13	Variance	8/31/00	10/7/02; 67 FR 62379	(c)(47).
Section 45–5–14	Transfer of Permits	8/31/00	10/7/02; 67 FR 62379	(c)(47).
Section 45–5–15	Inconsistency Between Rules	8/31/00	10/7/02; 67 FR 62379	(c)(47).
Appendix	Particulate Emission Limitations and Operational monitoring Requirements Applicable to Thermal Dryers Installed Before October 24, 1974.	8/31/00	10/7/02; 67 FR 62379	(c)(47).
[45 CSR] Series 6 To Prevent and Control Air Pollution From Combustion of Refuse				
Section 45–6–1	General	7/1/01	2/10/03; 68 FR 6627	(c)(51).
Section 45–6–2	Definitions	7/1/01	2/10/03; 68 FR 6627	(c)(51).
Section 45–6–3	Open Burning Prohibited	7/1/01	2/10/03; 68 FR 6627	(c)(51).
Section 45–6–4	Emission Standards for Incinerators and Incineration.	7/1/01	2/10/03; 68 FR 6627	(c)(51).
Section 45–6–5	Registration	7/1/01	2/10/03; 68 FR 6627	(c)(51).
Section 45–6–6	Permits	7/1/01	2/10/03; 68 FR 6627	(c)(51).
Section 45–6–7	Reports and Testing	7/1/01	2/10/03; 68 FR 6627	(c)(51).
Section 45–6–8	Variances	7/1/01	2/10/03; 68 FR 6627	(c)(51).
Section 45–6–9	Emergencies and Natural Disasters	7/1/01	2/10/03; 68 FR 6627	(c)(51).
Section 45–6–10	Effect of the Rule	7/1/01	2/10/03; 68 FR 6627	(c)(51).
Section 45–6–11	Inconsistency Between Rules	7/1/01	2/10/03; 68 FR 6627	(c)(51).
[45 CSR] Series 7 To Prevent and Control Particulate Matter Air Pollution From Manufacturing Process Operations				
Section 45–7–1	General	08/31/00	06/03/03; 68 FR 33010	(c)(55).
Section 45–7–2	Definitions	08/31/00	06/03/03; 68 FR 33010	(c)(55).
Section 45–7–3	Emission of Smoke and/or Particulate Matter Prohibited and Standards of Measurement.	08/31/00	06/03/03; 68 FR 33010	(c)(55).
Section 45–7–4	Control and Prohibition of Particulate Emissions by Weight from Manufacturing Process Source Operations.	08/31/00	06/03/03; 68 FR 33010	(c)(55).
Section 45–7–5	Control of Fugitive Particulate Matter	08/31/00	06/03/03; 68 FR 33010	(c)(55).
Section 45–7–6	Registration	08/31/00	06/03/03; 68 FR 33010	(c)(55).
Section 45–7–7	Permits	08/31/00	06/03/03; 68 FR 33010	(c)(55).
Section 45–7–8	Reporting and Testing	08/31/00	06/03/03; 68 FR 33010	(c)(55).
Section 45–7–9	Variance	08/31/00	06/03/03; 68 FR 33010	(c)(55).
Section 45–7–10	Exemptions	08/31/00	06/03/03; 68 FR 33010	(c)(55).
Section 45–7–11	Alternative Emission Limits for Duplicate Source Operations.	08/31/00	06/03/03; 68 FR 33010	(c)(55).
Section 45–7–12	Inconsistency Between Rules.	08/31/00	06/03/03; 68 FR 33010	(c)(55).
TABLE 45–7A TABLE 45–7B.	[Maximum Allowable Emission Rates From Sources Governed by 45 CFR Series 7].	08/31/00	06/03/03; 68 FR 33010	(c)(55).
[Ch. 16–20] TP–4 Compliance Test Procedures for Regulation VII—''To Prevent and Control Particulate Air Pollution From Manufacturing Process Operations''				
Section 1	General	2/23/84	6/28/85; 45 FR 26732	no (c) number.
Section 2	Visible Emission Test Procedure	2/23/84	6/28/85; 45 FR 26732	no (c) number.
Section 3	Mass Emission Test Procedures	2/23/84	6/28/85; 45 FR 26732	no (c) number.
[45 CSR] Series 8 Ambient Air Quality Standards for Sulfur Oxides and Particulate Matter				
Section 45–8–1	General	4/25/90	6/28/93; 58 FR 34526	(c)(28).
Section 45–8–2	Definitions	4/25/90	6/28/93; 58 FR 34526	(c)(28).
Section 45–8–3	Ambient Air Quality Standards	4/25/90	6/28/93; 58 FR 34526	(c)(28).

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State citation [Chapter 16–20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.2565
Section 45–8–4	Methods of Measurement	4/25/90	6/28/93; 58 FR 34526	(c)(28).
Section 45–8–5	Inconsistency Between Regulations	4/25/90	6/28/93; 58 FR 34526	(c)(28).
[45 CSR] Series 9 Ambient Air Quality Standards for Carbon Monoxide and Ozone				
Section 45–9–1	General	6/1/00	10/7/02; 67 FR 62381	(c)(50).
Section 45–9–2	Anti-Degradation Policy	6/1/00	10/7/02; 67 FR 62381	(c)(50).
Section 45–9–3	Definitions	6/1/00	10/7/02; 67 FR 62381	(c)(50).
Section 45–9–4	Ambient Air Quality Standards	6/1/00	10/7/02; 67 FR 62381	(c)(50).
Section 45–9–5	Methods of Measurement	6/1/00	10/7/02; 67 FR 62381	(c)(50).
[45 CSR] Series 10 To Prevent and Control Air Pollution from the Emission of Sulfur Oxides				
Section 45–10–1	General	8/31/00	6/3/03; 68 FR 33002	(c)(53).
Section 45–10–2	Definitions	8/31/00	6/3/03; 68 FR 33002	(c)(53).
Section 45–10–3	Sulfur Dioxide Weight Emission Standards for Fuel Burning Units.	8/31/00	6/3/03; 68 FR 33002	(c)(53).
Section 45–10–4	Standards for Manufacturing Process Source Operations.	8/31/00	6/3/03; 68 FR 33002	(c)(53).
Section 45–10–5	Combustion of Refinery or Process Gas Streams	8/31/00	6/3/03; 68 FR 33002	(c)(53).
Section 45–10–6	Registration	8/31/00	6/3/03; 68 FR 33002	(c)(53).
Section 45–10–7	Permits	8/31/00	6/3/03; 68 FR 33002	(c)(53).
Section 45–10–8	Testing, Monitoring, Recordkeeping and Reporting.	8/31/00	6/3/03; 68 FR 33002	(c)(53).
Section 45–10–9	Variance	8/31/00	6/3/03; 68 FR 33002	(c)(53).
Section 45–10–10	Exemptions and Recommendations	8/31/00	6/3/03; 68 FR 33002	(c)(53).
Section 45–10–11	Circumvention	8/31/00	6/3/03; 68 FR 33002	(c)(53).
Section 45–10–12	Inconsistency Between Rules	8/31/00	6/3/03; 68 FR 33002	(c)(53).
TABLE 45–10A	[Priority Classifications]	8/31/00	6/3/03; 68 FR 33002	(c)(53).
TABLE 45–10B	[Allowable Percent Sulfur Content of Fuels]	8/31/00	6/3/03; 68 FR 33002	(c)(53).
[45 CSR] Series 11 Prevention of Air Pollution Emergency Episodes				
Section 45–11–1	General	4/25/90	6/28/93; 58 FR 34526	(c)(28).
Section 45–11–2	Definitions	4/25/90	6/28/93; 58 FR 34526	(c)(28).
Section 45–11–3	Episode Criteria	4/25/90	6/28/93; 58 FR 34526	(c)(28).
Section 45–11–4	Methods of Measurement	4/25/90	6/28/93; 58 FR 34526	(c)(28).
Section 45–11–5	Preplanned Reduction Strategies	4/25/90	6/28/93; 58 FR 34526	(c)(28).
Section 45–11–6	Emission Reduction Plans	4/25/90	6/28/93; 58 FR 34526	(c)(28).
TABLE I	Emission Reduction Plans-Alert Level	4/25/90	6/28/93; 58 FR 34526	(c)(28).
TABLE II	Emission Reduction Plans-Warning Level	4/25/90	6/28/93; 58 FR 34526	(c)(28).
TABLE III	Emission Reduction Plans-Emergency Level	4/25/90	6/28/93; 58 FR 34526	(c)(28).
Section 45–11–7	Air Pollution Emergencies; Contents of Order; Hearings; Appeals.	4/25/90	6/28/93; 58 FR 34526	(c)(28).
Section 45–11–8	Inconsistency Between Regulations	4/25/90	6/28/93; 58 FR 34526	(c)(28).
[45 CSR] Series 12 Ambient Air Quality Standard for Nitrogen Dioxide				
Section 45–12–1	General	6/1/00	10/7/02; 67 FR 62378	(c)(49).
Section 45–12–2	Anti-Degradation Policy	6/1/00	10/7/02; 67 FR 62378	(c)(49).
Section 45–12–3	Definitions	6/1/00	10/7/02; 67 FR 62378	(c)(49).
Section 45–12–4	Ambient Air Quality Standard	6/1/00	10/7/02; 67 FR 62378	(c)(49).
Section 45–12–5	Methods of Measurement	6/1/00	10/7/02; 67 FR 62378	(c)(49).
[45 CSR] Series 13 Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Temporary Permits, General Permits, and Procedures for Evaluation				
Section 45–13–1	General	6/1/03	2/8/07; 72 FR 5932.	
Section 45–13–2	Definitions	6/1/03	2/8/07; 72 FR 5932.	
Section 45–13–3	Reporting Requirements for Stationary Sources	6/1/03	2/8/07; 72 FR 5932.	
Section 45–13–4	Administrative Updates to Existing Permits and General Permit Registrations.	6/1/03	2/8/07; 72 FR 5932.	
Section 45–13–5	Permit Application and Reporting Requirements for Construction of and Modifications to Stationary Sources.	6/1/03	2/8/07; 72 FR 5932.	
Section 45–13–6	Determination of Compliance of Stationary Sources.	6/1/03	2/8/07; 72 FR 5932.	
Section 45–13–7	Modeling	6/1/03	2/8/07; 72 FR 5932.	
Section 45–13–8	Public Review Procedures	6/1/03	2/8/07; 72 FR 5932.	
Section 45–13–9	Public Meetings	6/1/03	2/8/07; 72 FR 5932.	

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State citation [Chapter 16–20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.2565
Section 45–13–10	Permit Transfer, Suspension, Revocation and Responsibility.	6/1/03	2/8/07; 72 FR 5932.	
Section 45–13–11	Temporary Construction or Modification Permits	6/1/03	2/8/07; 72 FR 5932.	
Section 45–13–12	Permit Application Fees	6/1/03	2/8/07; 72 FR 5932.	
Section 45–13–13	Inconsistency Between Rules	6/1/03	2/8/07; 72 FR 5932.	
Section 45–13–14	Statutory Air Pollution	6/1/03	2/8/07; 72 FR 5932.	
Section 45–13–15	Hazardous Air Pollutants	6/1/03	2/8/07; 72 FR 5932.	
TABLE 45–13A	Potential Emission Rate	6/1/00	2/28/03; 68 FR 9559	(c)(52).
TABLE 45–13B	De Minimis Sources	6/1/03	2/8/07; 72 FR 5932.	
[45 CSR] Series 14	**Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration**			
Section 45–14–1	General	6/1/05	11/2/06; 71 FR 64470.	
Section 45–14–2 (Except: 14–2.17, 14–2.40.i, 14–2.46.d.2, 14–2.46.g.4, and 14–2.56.).	Definitions	6/1/05	11/2/06; 71 FR 64470.	
Section 45–14–3 (Except: 4–3.4.e, 14–3.4.f (part), and 14–3.6).	Applicability	6/1/05	11/2/06; 71 FR 64470	New Section.
Section 45–14–4	Ambient Air Quality Increments and Ceilings	6/1/05	11/2/06; 71 FR 64470	Formerly Section 45–14–3.
Section 45–14–5	Area Classification	6/1/05	11/2/06; 71 FR 64470	Formerly Section 45–14–4.
Section 45–14–6	Prohibition of Dispersion Enhancement Techniques.	6/1/05	11/2/06; 71 FR 64470	Formerly Section 45–14–5.
Section 45–14–7	Registration, Report and Permit Requirements for Major Stationary Sources and Major Modifications.	6/1/05	11/2/06; 71 FR 64470	Formerly Section 45–14–6.
Section 45–14–8	Requirements Relating to Control Technology	6/1/05	11/2/06; 71 FR 64470	Formerly Section 45–14–7.
Section 45–14–9	Requirements Relating to the Source's Impact on Air Quality.	6/1/05	11/2/06; 71 FR 64470	Formerly Section 45–14–8.
Section 45–14–10	Modeling Requirements	6/1/05	11/2/06; 71 FR 64470	Formerly Section 45–14–9.
Section 45–14–11	Air Quality Monitoring Requirements	6/1/05	11/2/06; 71 FR 64470	Formerly Section 45–14–10.
Section 45–14–12	Additional Impacts Analysis Requirements	6/1/05	11/2/06; 71 FR 64470	Formerly Section 45–14–11.
Section 45–14–13	Additional Requirements and Variances for Sources Impacting Federal Class I Areas.	6/1/05	11/2/06; 71 FR 64470	Formerly Section 45–14–12.
Section 45–14–14	Procedures for Sources Employing Innovative Control Technology.	6/1/05	11/2/06; 71 FR 64470	Formerly Section 45–14–13.
Section 45–14–15	Exclusions From Increment Consumption	6/1/05	11/2/06; 71 FR 64470	Formerly Section 45–14–14.
Section 45–14–16	Specific Exemptions	6/1/05	11/2/06; 71 FR 64470	Formerly Section 45–14–15.
Section 45–14–17	Public Review Procedures	6/1/05	11/2/06; 71 FR 64470	Formerly Section 45–14–16.
Section 45–14–18	Public Meetings	6/1/05	11/2/06; 71 FR 64470	Formerly Section 45–14–17.
Section 45–14–19 (Except part of 14–19.8).	Permit Transfer, Cancellation, and Responsibility	6/1/05	11/2/06; 71 FR 64470	Formerly Section 45–14–8.
Section 45–14–20	Disposition of Permits	6/1/05	11/2/06; 71 FR 64470	Formerly Section 45–14–19.
Section 45–14–21	Conflict with Other Permitting Rules	6/1/05	11/2/06; 71 FR 64470	Formerly Section 45–14–20.
Section 45–14–25	Actuals PALs	6/1/05	11/2/06; 71 FR 64470	New Section.
Section 45–14–26	Inconsistency Between Rules	6/1/05	11/2/06; 71 FR 64470	New Section.
[45 CSR] Series 19	**Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution Which Cause or Contribute to Nonattainment**			
Section 45–19–1	General	6/1/05	11/2/06; 71 FR 64468.	
Section 45–19–2 (Except: 19–2.16, 19–2.33.c.8, 19–2.39.b.2.C, 19–2.39.b.5, and 19–2.53).	Definitions	6/1/05	11/2/06; 71 FR 64468.	
Section 45–19–3 (Except: 19–3.4.e, 19–3.4.f (part), and 19–3.6).	Applicability	6/1/05	11/2/06; 71 FR 64468.	
Section 45–19–4	Conditions for a Permit Approval for Proposed Major Sources that Would Contribute to a Violation of NAAQS.	6/1/05	11/2/06; 71 FR 64468.	

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State citation [Chapter 16–20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.2565
Section 45–19–5	Conditions for Permit Approval for Sources Locating In Attainment or Unclassifiable Areas that Would Cause a New Violation of a NAAQS.	6/1/05	11/2/06; 71 FR 64468.	
Section 45–19–7	Baseline for Determining Credit for Emission Offsets.	6/1/05	11/2/06; 71 FR 64468.	
Section 45–19–8	Location of Emissions Offsets	6/1/05	11/2/06; 71 FR 64468.	
Section 45–19–9	Administrative Procedures for Emission Offset Proposals.	6/1/05	11/2/06; 71 FR 64468.	
Section 45–19–12	Reasonable Further Progress	6/1/05	11/2/06; 71 FR 64468.	
Section 45–19–13	Source Impact Analysis	6/1/05	11/2/06; 71 FR 64468.	
Section 45–19–14	Permit Requirements for Major Stationary Sources and Major Modifications.	6/1/05	11/2/06; 71 FR 64468.	
Section 45–19–15	Public Review Procedures	6/1/05	11/2/06; 71 FR 64468.	
Section 45–19–16	Public Meetings	6/1/05	11/2/06; 71 FR 64468.	
Section 45–19–17 (Except part of 19–17.4).	Permit Transfer, Cancellation and Responsibility	6/1/05	11/2/06; 71 FR 64468.	
Section 45–19–18	Disposition of Permits	6/1/05	11/2/06; 71 FR 64468.	
Section 45–19–19	Requirements for Air Quality Models	6/1/05	11/2/06; 71 FR 64468.	
Section 45–19–23	Actuals PAL	6/1/05	11/2/06; 71 FR 64468.	
Section 45–19–24	Conflict with Other Permitting Rules	6/1/05	11/2/06; 71 FR 64468.	
Section 45–19–25	Inconsistency Between Rules	6/1/05	11/2/06; 71 FR 64468.	
Table 45–19A	No Title [Table of Significance Levels]	6/1/05	11/2/06; 71 FR 64468.	
Table 45–19B	Averaging Time (hours)	6/1/05	11/2/06; 71 FR 64468.	
[45 CSR] Series 20 Good Engineering Practice as Applicable to Stack Heights				
Section 45–20–1	General	7/14/89	4/19/94; 59 FR 18489	(c)(27).
Section 45–20–2	Definitions	7/14/89	4/19/94; 59 FR 18489	(c)(27).
Section 45–20–3	Standards	7/14/89	4/19/94; 59 FR 18489	(c)(27).
Section 45–20–4	Public Review Procedures	7/14/89	4/19/94; 59 FR 18489	(c)(27).
Section 45–20–5	Inconsistency Between Regulations	7/14/89	4/19/94; 59 FR 18489	(c)(27).
[45 CSR] Series 21 Regulation To Prevent and Control Air Pollution From the Emission of Volatile Organic Compounds				
Section 45–21–1	General	7/7/93	2/1/95; 60 FR 6022	(c)(33).
Section 45–21–2	Definitions	7/7/93	2/1/95; 60 FR 6022	(c)(33).
Section 45–21–3	Applicability	7/7/93	2/1/95; 60 FR 6022	(c)(33).
Section 45–21–4	Compliance Certification, Recordkeeping, and Reporting Procedures for Coating Sources.	7/7/93	2/1/95; 60 FR 6022	(c)(33).
Section 45–21–5	Compliance Certification, Recordkeeping, and Reporting Requirements for Non-Coating Sources.	7/7/93	2/1/95; 60 FR 6022	(c)(33).
Section 45–21–6	Requirements for Sources Complying by Use of Control Devices.	7/7/93	2/1/95; 60 FR 6022	(c)(33).
Section 45–21–7	Circumvention	7/7/93	2/1/95; 60 FR 6022	(c)(33).
Section 45–21–8	Handling, Storage, and Disposal of Volatile Organic Compounds (VOCs).	7/7/93	2/1/95; 60 FR 6022	(c)(33).
Section 45–21–9	Compliance Programs, Registration, Variance, Permits, Enforceability.	7/7/93	2/1/95; 60 FR 6022	(c)(33).
Section 45–21–11	Can Coating	7/7/93	2/1/95; 60 FR 6022	(c)(33).
Section 45–21–12	Coil Coating	7/7/93	2/1/95; 60 FR 6022	(c)(33).
Section 45–21–14	Fabric Coating	7/7/93	2/1/95; 60 FR 6022	(c)(33).
Section 45–21–15	Vinyl Coating	7/7/93	2/1/95; 60 FR 6022	(c)(33).
Section 45–21–16	Coating of Metal Furniture	7/7/93	2/1/95; 60 FR 6022	(c)(33).
Section 45–21–17	Coating of Large Appliances	7/7/93	2/1/95; 60 FR 6022	(c)(33).
Section 45–21–18	Coating of Magnet Wire	7/7/93	2/1/95; 60 FR 6022	(c)(33).
Section 45–21–19	Coating of Miscellaneous Metal Parts	7/7/93	2/1/95; 60 FR 6022	(c)(33).
Section 45–21–21	Bulk Gasoline Plants	7/7/93	2/1/95; 60 FR 6022	(c)(33).
Section 45–21–22	Bulk Gasoline Terminals	7/7/93	2/1/95; 60 FR 6022	(c)(33).
Section 45–21–23	Gasoline Dispensing Facility—Stage I Vapor Recovery.	7/7/93	2/1/95; 60 FR 6022	(c)(33).
Section 45–21–24	Leaks from Gasoline Tank Trucks	7/7/93	2/1/95; 60 FR 6022	(c)(33).
Section 45–21–25	Petroleum Refinery Sources	7/7/93	2/1/95; 60 FR 6022	(c)(33).
Section 45–21–26	Leaks from Petroleum Refinery Equipment	7/7/93	2/1/95; 60 FR 6022	(c)(33).
Section 45–21–27	Petroleum Liquid Storage in External Floating Roof Tanks.	7/7/93	2/1/95; 60 FR 6022	(c)(33).
Section 45–21–28	Petroleum Liquid Storage in Fixed Roof Tanks	7/7/93	2/1/95; 60 FR 6022	(c)(33).
Section 45–21–29	Leaks from Natural Gas/Gasoline Processing Equipment.	7/7/93	2/1/95; 60 FR 6022	(c)(33).

EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP—Continued

State citation [Chapter 16–20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.2565
Section 45–21–31	Cutback and Emulsified Asphalt	7/7/93	2/1/95; 60 FR 6022	(c)(33).
Section 45–21–39	Air Oxidation Processes in the Synthetic Organic Chemical Manufacturing Industry.	7/7/93	2/1/95; 60 FR 6022	(c)(33).
Section 45–21–41	Test Methods and Compliance Procedures: General Provisions.	7/7/93	2/1/95; 60 FR 6022	(c)(33).
Section 45–21–42	Test Methods and Compliance Procedures: Determining the Volatile Organic Compound (VOC) Content of Coatings and Inks.	7/7/93	2/1/95; 60 FR 6022	(c)(33).
Section 45–21–43	Test Methods and Compliance Procedures: Alternative Compliance Methods for Surface Coating.	7/7/93	2/1/95; 60 FR 6022	(c)(33).
Section 45–21–44	Test Methods and Compliance Procedures: Emission Capture and Destruction or Removal Efficiency and Monitoring Requirements.	7/7/93	2/1/95; 60 FR 6022	(c)(33).
Section 45–21–45	Test Methods and Compliance Procedures: Determining the Destruction or Removal Efficiency of a Control Device.	7/7/93	2/1/95; 60 FR 6022	(c)(33).
Section 45–21–46	Test Methods and Compliance Procedures: Leak Detection Methods for Volatile Organic Compounds (VOCs).	7/7/93	2/1/95; 60 FR 6022	(c)(33).
Section 45–21–47	Performance Specifications for Continuous Emissions Monitoring of Total Hydrocarbons.	7/7/93	2/1/95; 60 FR 6022	(c)(33).
Section 45–21–48	Quality Control Procedures for Continuous Emission Monitoring Systems (CEMS).	7/7/93	2/1/95; 60 FR 6022	(c)(33).
Appendix A	VOC Capture Efficiency	7/7/93	2/1/95; 60 FR 6022	(c)(33).
[45 CSR] Series 26	**No_X Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides From Electric Generating Units**			
Section 45–26–1	General	5/1/02	5/10/02; 67 FR 31733	(c)(46).
Section 45–26–2	Definitions	5/1/02	5/10/02; 67 FR 31733	(c)(46).
Section 45–26–3	Measurements, Abbreviations and Acronyms	5/1/02	5/10/02; 67 FR 31733	(c)(46).
Section 45–26–4	NO_X Budget Trading Program Applicability	5/1/02	5/10/02; 67 FR 31733	(c)(46).
Section 45–26–5	Retired Unit Exemption	5/1/02	5/10/02; 67 FR 31733	(c)(46).
Section 45–26–6	NO_X Budget Trading Program Standard Requirements.	5/1/02	5/10/02; 67 FR 31733	(c)(46).
Section 45–26–7	Computation of Time	5/1/02	5/10/02; 67 FR 31733	(c)(46).
Section 45–26–10	Authorization and Responsibilities of the NO_X Authorized Account Representative.	5/1/02	5/10/02; 67 FR 31733	(c)(46).
Section 45–26–11	Alternate NO_X Authorized Account Representative.	5/1/02	5/10/02; 67 FR 31733	(c)(46).
Section 45–26–12	Changing the NO_X Authorized Account Representative and the Alternate NO_X Authorized Account Representative; Changes in Owners and Operators.	5/1/02	5/10/02; 67 FR 31733	(c)(46).
Section 45–26–13	Account Certificate of Representation	5/1/02	5/10/02; 67 FR 31733	(c)(46).
Section 45–26–14	Objections Concerning the NO_X Authorized Account Representative.	5/1/02	5/10/02; 67 FR 31733	(c)(46).
Section 45–26–20	General NO_X Budget Trading Program Permit Requirements.	5/1/02	5/10/02; 67 FR 31733	(c)(46).
Section 45–26–21	NO_X Budget Permit Applications	5/1/02	5/10/02; 67 FR 31733	(c)(46).
Section 45–26–22	Information Requirements for NO_X Budget Permit Applications.	5/1/02	5/10/02; 67 FR 31733	(c)(46).
Section 45–26–23	NO_X Budget Permit Contents	5/1/02	5/10/02; 67 FR 31733	(c)(46).
Section 45–26–24	NO_X Budget Permit Revisions	5/1/02	5/10/02; 67 FR 31733	(c)(46).
Section 45–26–30	Compliance Certification Report	5/1/02	5/10/02; 67 FR 31733	(c)(46).
Section 45–26–31	Secretary's and Administrator's Action on Compliance Certifications.	5/1/02	5/10/02; 67 FR 31733	(c)(46).
Section 45–26–40	State NO_X Trading Program Budget	5/1/02	5/10/02; 67 FR 31733	(c)(46).
Section 45–26–41	Timing Requirements for State NO_X Allowance Allocations.	5/1/02	5/10/02; 67 FR 31733	(c)(46).
Section 45–26–42	State NO_X Allowance Allocations	5/1/02	5/10/02; 67 FR 31733	(c)(46).
Section 45–26–43	Compliance Supplement Pool	5/1/02	5/10/02; 67 FR 31733	(c)(46).
Section 45–26–50	NO_X Allowance Tracking System Accounts	5/1/02	5/10/02; 67 FR 31733	(c)(46).
Section 45–26–51	Establishment of Accounts	5/1/02	5/10/02; 67 FR 31733	(c)(46).
Section 45–26–52	NO_X Allowance Tracking System Responsibilities of NO_X Authorized Account Representative.	5/1/02	5/10/02; 67 FR 31733	(c)(46).
Section 45–26–53	Recordation of NO_X Allowance Allocations	5/1/02	5/10/02; 67 FR 31733	(c)(46).
Section 45–26–54	Compliance	5/1/02	5/10/02; 67 FR 31733	(c)(46).
Section 45–26–55	NO_X Allowance Banking	5/1/02	5/10/02; 67 FR 31733	(c)(46).

EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP—Continued

State citation [Chapter 16–20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.2565
Section 45–26–56	Account Error	5/1/02	5/10/02; 67 FR 31733	(c)(46).
Section 45–26–57	Closing of General Accounts	5/1/02	5/10/02; 67 FR 31733	(c)(46).
Section 45–26–60	Submission of NO_X Allowance Transfers	5/1/02	5/10/02; 67 FR 31733	(c)(46).
Section 45–26–61	Allowance Transfer Recordation	5/1/02	5/10/02; 67 FR 31733	(c)(46).
Section 45–26–62	Notification	5/1/02	5/10/02; 67 FR 31733	(c)(46).
Section 45–26–70	General Monitoring Requirements	5/1/02	5/10/02; 67 FR 31733	(c)(46).
Section 45–26–71	Initial Certification and Recertification Procedures	5/1/02	5/10/02; 67 FR 31733	(c)(46).
Section 45–26–72	Out of Control Periods	5/1/02	5/10/02; 67 FR 31733	(c)(46).
Section 45–26–73	Notifications	5/1/02	5/10/02; 67 FR 31733	(c)(46).
Section 45–26–74	Recordkeeping and Reporting	5/1/02	5/10/02; 67 FR 31733	(c)(46).
Section 45–26–75	Petitions	5/1/02	5/10/02; 67 FR 31733	(c)(46).
Section 45–26–76	Additional Requirements to Provide Heat Input Data.	5/1/02	5/10/02; 67 FR 31733	(c)(46).
[45 CSR] Series 29	**Rule Requiring the Submission of Emission Statements for Volatile Organic Compound Emissions and Oxides of Nitrogen Emissions**			
Section 45–29–1	General	7/7/93	8/4/95; 60 FR 39855	(c)(34).
Section 45–29–2	Definitions	7/7/93	8/4/95; 60 FR 39855	(c)(34).
Section 45–29–3	Applicability	7/7/93	8/4/95; 60 FR 39855	(c)(34).
Section 45–29–4	Compliance Schedule	7/7/93	8/4/95; 60 FR 39855	(c)(34).
Section 45–29–5	Emission Statement Requirements	7/7/93	8/4/95; 60 FR 39855	(c)(34).
Section 45–29–6	Enforceability	7/7/93	8/4/95; 60 FR 39855	(c)(34).
Section 45–29–7	Severability	7/7/93	8/4/95; 60 FR 39855	(c)(34).
[45 CSR] Series 35	**Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity)**			
Section 45–35–1	General	5/1/95	9/5/95; 60 FR 46029	(c)(37).
Section 45–35–2	Definitions	5/1/95	9/5/95; 60 FR 46029	(c)(37).
Section 45–35–3	Adoption of Criteria, Procedures and Requirements.	5/1/95	9/5/95; 60 FR 46029	(c)(37).
Section 45–35–4	Requirements	5/1/95	9/5/95; 60 FR 46029	(c)(37).
[45 CSR] Series 39	**Control of Annual Nitrogen Oxide Emissions to Mitigate Interstate Transport of Fine Particulate Matter and Nitrogen Oxides**			
Section 45–39–40	CAIR NO_X Annual Trading Budget	5/1/06	12/18/07; 72 FR 71576	Only Phase I (2009–2014).
Section 45–39–41	Timing Requirements for CAIR NO_X Annual Allowance Allocations.	5/1/06	12/18/07; 72 FR 71576	Only Phase I (2009–2014).
Section 45–39–42	CAIR NO_X Annual Allowance Allocations	5/1/06	12/18/07; 72 FR 71576	Only for Phase I (2009–2014).
[45 CSR] Series 40	**Control of Ozone Season Nitrogen Oxide Emissions to Mitigate Interstate Transport of Ozone and Nitrogen Oxides**			
Section 45–40–40	CAIR NO_X Ozone Season Trading Budget	5/1/06	12/18/07; 72 FR 71576	1. Except for subsection 40.3, and non-EGUs in subsection 40.1 table. 2. Only Phase I (2009–2014).
Section 45–40–41	Timing Requirements for CAIR NO_X Ozone Season Allowance Allocations.	5/1/06	12/18/07; 72 FR 71576	Only Phase I (2009–2014).
Section 45–40–42	CAIR NO_X Ozone Season Allowance Allocations	5/1/06	12/18/07; 72 FR 71576	1. Except for subsections 42.2.d, 42.2.e, 42.3.a.2, and 42.4.b. 2. Only Phase I (2009—2014).

(d) *EPA approved state source-specific requirements.*

EPA-APPROVED SOURCE SPECIFIC REQUIREMENTS

Source name	Permit/order or registration number	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.2565
Mountaineer Carbon Co	Consent Order	7/2/82	9/1/82 47 FR 38532	(c)(18).
National Steel Corp.—Weirton Steel Division.	Consent Order (Bubble)	7/6/82	12/9/82 47 FR 55396	(c)(19).
Columbia Gas Transmission Corporation—Lost River Station.	Consent Order	9/12/90	4/24/91 56 FR 18733	(c)(24).
Wheeling-Pittsburgh Steel Corp	Consent Order CO–SIP–91–29	11/14/91	7/25/94 59 FR 37696	(c)(26).
Standard Lafarge	Consent Order CO–SIP–91–30	11/14/91	7/25/94 59 FR 37696	(c)(26).
Follansbee Steel Corp	Consent Order CO–SIP–91–31	11/14/91	7/25/94 59 FR 37696	(c)(26).
Koppers Industries, Inc	Consent Order CO–SIP–91–32	11/14/91	7/25/94 59 FR 37696	(c)(26).
International Mill Service, Inc	Consent Order CO–SIP–91–33	11/14/91	7/25/94 59 FR 37696	(c)(26).
Starvaggi Industries, Inc	Consent Order CO–SIP–91–34	11/14/91	7/25/94 59 FR 37696	(c)(26).
Quaker State Corporation	Consent Order CO–SIP–95–1	1/9/95	11/27/96 61 FR 60191	(c)(35).
Weirton Steel Corporation	Consent Order CO–SIP–95–2	1/9/95	11/27/96 61 FR 60191	(c)(35).
PPG Industries, Inc	Consent Order CO–SIP–2000–1	1/25/00	8/2/00 65 FR 47339	(c)(44)(i)(B)(*1*).
Bayer Corporation	Consent Order CO–SIP–2000–2	1/26/00	8/2/00 65 FR 47339	(c)(44)(i)(B)(*2*).
Columbian Chemicals Company	Consent Order CO–SIP–2000–3	1/31/00	8/2/00 65 FR 47339	(c)(44)(i)(B)(*3*).
PPG Industries, Inc	Consent Order CO–SIP–C–2003–27	7/29/03	4/28/04 69 FR 23110	(c)(58).
Wheeling-Pittsburgh Steel Corporation	Operating Permit R13–1939A	8/19/03	05/05/04 69 FR 24986	(c)(59)(i)(B)(*1*).
Weirton Steel Corporation	Consent Order, CO–SIP–C–2003–28	8/4/03	05/05/04 69 FR 24986	(c)(59)(i)(B)(*2*).

* * * * *

[FR Doc. E9–2355 Filed 2–9–09; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2008–0694; FRL–8759–6]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of West Virginia. This revision establishes and requires ambient air quality standards for sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide, and lead equivalent to the national primary and secondary ambient air quality standards. This action is being taken under the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on March 12, 2009.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2008–0694. All documents in the docket are listed in the *http://www.regulations.gov* website. Although listed in the electronic docket, some information is not publicly available, *i.e.*, confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street, SE., Charleston, WV 25304.

FOR FURTHER INFORMATION CONTACT: Gobeail McKinley, (215) 814–2033, or by e-mail at *mckinley.gobeail@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On October 28, 2008 (73 FR 63915), EPA published a notice of proposed rulemaking (NPR) for the State of West Virginia. The NPR proposed approval of West Virginia's ambient air quality standards for sulfur oxides, particulate matter (PM), carbon monoxide, ozone, nitrogen dioxide, and lead equivalent to the national primary and secondary ambient air quality standards.

II. Summary of SIP Revision

On April 25, 2008, the State of West Virginia submitted as a SIP revision Rule 45CSR8—Ambient Air Quality Standards, which updates and incorporates all six criteria pollutants to be equivalent to the national ambient air quality standards. The revision repeals rules 45CSR9—Ambient Air Quality Standards for Carbon Monoxide and Ozone and 45CSR12—Ambient Air Quality Standard for Nitrogen Dioxide, and moves these ambient air quality standards into Rule 45CSR8. The revision includes a correction of the sulfur dioxide annual primary standard from 0.003 to 0.030 parts per million (ppm), removes the annual PM_{10} standard, and incorporates the annual $PM_{2.5}$ standard, the 24-hour $PM_{2.5}$ standard of 35 $\mu g/m^3$, the primary and secondary standards for lead, and the primary and secondary 1-hour and 8-hour ozone standards. The SIP revision includes the revocation of the 1-hour ozone standard except for Berkeley and Jefferson Counties and it identifies the 1-hour ozone maintenance areas. The SIP revision also adds new reference conditions for $PM_{2.5}$ and measurement methods for $PM_{2.5}$ and lead. Other specific requirements of West Virginia's ambient air quality standards and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

III. Final Action

EPA is approving Rule Section 45CSR8—Ambient Air Quality Standards as a revision to the West Virginia SIP.

IV. Statutory and Executive Order Reviews

A. General Requirements

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 130 Section 45 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 13, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action which establishes ambient air quality standards in West Virginia may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: December 15, 2008.

William T. Wisniewski,

Acting Regional Administrator, Region III.

■ 40 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for 40 CFR part 52 continues to read as follows:

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

Subpart XX—West Virginia

■ 2. In § 52.2520, the table in paragraph (c) is amended by revising the entries for [45 CSR] Series 8, Sections 45–8–1 through 45–8–5; adding entries for [45 CSR] Series 8, Sections 45–8–6 and 45–8–7; and removing the entries for [45 CSR] Series 9 and [45 CSR] Series 12. The amendments read as follows:

§ 52.2520 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP

State citation [Chapter 16–20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.2565
*	*	*	*	*
[45 CSR] Series 8 Ambient Air Quality Standards				
Section 45–8–1	General	6/1/08	02/10/09 *[Insert page number where the document begins].*	Added language to repeal provisions contained in Sections 45CSR9 and 45CSR12.
Section 45–8–2	Anti-Degradation Policy	6/1/08	02/10/09 *[Insert page number where the document begins].*	Added definitions for: Administrator, ambient air, clean air act, equivalent method, ozone, person, $PM_{2.5}$, and reference methods.
Section 45–8–3	Definitions	6/1/08	02/10/09 *[Insert page number where the document begins].*	

EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP—Continued

State citation [Chapter 16–20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.2565
Section 45–8–4	Ambient Air Quality Standards.	6/1/08	02/10/09 *[Insert page number where the document begins]*.	Added ambient air quality standards for $PM_{2.5}$, carbon monoxide, nitrogen dioxide, ozone and lead.
Section 45–8–5	Methods of Measurement	6/1/08	02/10/09 *[Insert page number where the document begins]*.	Added reference methods for $PM_{2.5}$, carbon monoxide, nitrogen dioxide, ozone and lead.
Section 45–8–6	Reference Conditions	6/1/08	02/10/09 *[Insert page number where the document begins]*.	New Section.
Section 45–8–7	Inconsistency Between Rules.	6/1/08	02/10/09 *[Insert page number where the document begins]*.	
*	*	*	*	*

[FR Doc. E9–2359 Filed 2–9–09; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106673–8011–02]

RIN 0648–XN01

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Greater Than or Equal To 60 Feet (18.3 Meters) Length Overall Using Pot Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by pot catcher vessels greater than or equal to 60 feet (≥18.3 meters (m)) length overall (LOA) in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season allowance of the 2009 Pacific cod allowable catch (TAC) specified for pot catcher vessels ≥60 feet (18.3 m) LOA in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 1, 2009, though 1200 hrs, A.l.t., September 1, 2009.

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

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

The A season allowance of the 2009 Pacific cod TAC allocated to pot catcher vessels ≥60 feet (18.3 m) LOA in the BSAI is 6,496 metric tons as established by the 2008 and 2009 final harvest specifications for groundfish in the BSAI (73 FR 10160, February 26, 2008). See § 679.20(c)(3)(iii), § 679.20(c)(5), and § 679.20(a)(7)(ii)(A) and (a)(7)(ii)(C)(*1*)(*iv*).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the A season directed fishing allowance of the 2009 Pacific cod TAC allocated to pot catcher vessels ≥60 feet (18.3 m) LOA in the BSAI has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by pot catcher vessels ≥60 feet (18.3 m) LOA in the BSAI.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by catcher vessels ≥60 ft (18.3 m) LOA using pot gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of January 29, 2009.

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

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

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

Dated: February 5, 2009.

Emily H. Menashes,

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

[FR Doc. E9–2745 Filed 2–5–09; 4:15 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106673–8011–02]

RIN 0648–XM95

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Processors Using Pot Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by pot catcher processors in the Bering Sea and

Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season allowance of the 2009 Pacific cod allowable catch (TAC) specified for pot catcher processors in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 28, 2009, though 1200 hrs, A.l.t., September 1, 2009.

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

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

The A season directed fishing allowance of the 2009 Pacific cod TAC allocated to pot catcher processors in the BSAI is 1,160 metric tons as established by the 2008 and 2009 final harvest specifications for groundfish in the BSAI (73 FR 10160, February 26, 2008). See § 679.20(c)(3)(iii), § 679.20(c)(5), and § 679.20(a)(7)(ii).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the A season allowance of the 2009 Pacific cod TAC allocated to pot catcher processors in the BSAI has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by pot catcher processors in the BSAI.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by pot catcher processors in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of January 26, 2009.

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

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

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

Dated: February 5, 2009.

Emily H. Menashes,

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

[FR Doc. E9–2744 Filed 5–5–09; 4:15 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106671–8010–02]

RIN 0648–XN09

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

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is reopening directed fishing for pollock in Statistical Area 630 of the Gulf of Alaska (GOA) for 12 hours. This action is necessary to fully use the A season allowance of the 2009 total allowable catch (TAC) of pollock specified for Statistical Area 630 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 11, 2009, through 2400 hrs, A.l.t., February 11, 2009. Comments must be received at the following address no later than 4:30 p.m., A.l.t., February 25, 2009.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by ''0648–XN09,'' by any one of the following methods:

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

All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

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

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

NMFS closed the directed fishery for pollock in Statistical Area 630 of the GOA under § 679.20(d)(1)(iii) on January 22, 2009 (74 FR 5627, January 30, 2009).

NMFS has determined that approximately 1,800 mt of pollock remain in the directed fishing allowance in Statistical Area 630 of the GOA. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C) and (a)(2)(iii)(D), and to fully utilize the A season allowance of the 2009 TAC of pollock in Statistical Area 630, NMFS is terminating the previous closure and is reopening directed fishing for pollock in Statistical Area 630 of the GOA. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will be reached after 12 hours. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA, effective 2400 hrs, A.l.t., February 11, 2009.

Classification

This action responds to the best available information recently obtained

from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of pollock in Statistical Area 630 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of January 30, 2009. The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow the TAC of pollock in Statistical Area 630 of the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until February 25, 2009.

This action is required by § 679.20 and § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: February 5, 2009.

Emily H. Menashes,

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

[FR Doc. E9–2747 Filed 2–5–09; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106671–8010–02]

RIN 0648–XM94

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Inshore Component in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2009 total allowable catch (TAC) of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component of the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 27, 2009, until 1200 hrs, A.l.t., September 1, 2009.

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

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

The A season allocation of the 2009 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component of the Central Regulatory Area of the GOA is 12,767 metric tons (mt) as established by the final 2008 and 2009 harvest specifications for groundfish of the GOA (73 FR 10562, February 27, 2008) and inseason adjustment (74 FR 233, January 5, 2009).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the A season allocation of the 2009 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component of the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 11,200 mt, and is setting aside the remaining 1,567 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component of the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of January 26, 2009.

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

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

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

Dated: February 5, 2009.

Emily H. Menashes,

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

[FR Doc. E9–2748 Filed 2–5–09; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 26
Tuesday, February 10, 2009

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 25

[Docket No. NM398; Notice No. 25–09–01–SC]

Special Conditions: Model C–27J Airplane; Interaction of Systems and Structures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions, withdrawal.

SUMMARY: The FAA is withdrawing a previously published notice that proposed special conditions for the Alenia Model C–27J airplane. We are withdrawing the notice in response to a White House request that appointees and designees be provided an opportunity to review new and pending regulations.

FOR FURTHER INFORMATION CONTACT: Holly Thorson, FAA, International Branch, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1357, facsimile 425–227–1149.

SUPPLEMENTARY INFORMATION:

Background

On January 26, 2009, the FAA published a Notice of proposed special conditions, Notice No. 25–09–01–SC, for the Model C–27J airplane on the subject of interaction of systems and structures (74 FR 4353). The C–27J airplane has novel or unusual design features when compared to the state of technology described in the airworthiness standards for transport category airplanes. These design features include electronic flight control systems. The proposed special conditions pertain to the effects of novel or unusual design features such as effects on the structural performance of the airplane. We requested comments on these proposed special conditions by February 25, 2009.

Reason for Withdrawal

We are withdrawing Notice No. 25–09–01–SC because of a White House memorandum, dated January 20, 2009, signed by the Assistant to the President and Chief of Staff as directed to the heads of executive departments and agencies. The memorandum stated the importance of the President's appointees and designees having the opportunity to review and approve any new or pending regulations. The subject Notice of proposed special conditions was inadvertently published without this review.

Conclusion

Withdrawal of Notice No. 25–09–01–SC does not preclude the FAA from issuing another notice on the subject matter in the future or committing the agency to any future course of action.

In response to the White House memorandum, the FAA withdraws Notice No. 25–09–01–SC, published at 74 FR 4353 on January 26, 2009.

Issued in Renton, Washington, on February 2, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–2754 Filed 2–9–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 414

[CMS–1561–NC]

RIN 0938–AP59

Medicare Program; Changes to the Competitive Acquisition of Certain Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) by Certain Provisions of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA)

ACTION: Notice of proposed delay of effective date.

SUMMARY: In accordance with the memorandum of January 20, 2009 from the Assistant to the President and Chief of Staff, entitled ''Regulatory Review,'' CMS is seeking public comment on a contemplated delay of 60 days in the effective date of the rule entitled ''Medicare Program; Changes to the Competitive Acquisition of Certain Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) by Certain Provisions of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA),'' published in the **Federal Register** on January 16, 2009 (74 FR 2873). That rule implements certain MIPPA provisions that delay implementation of Round 1 of the competitive bidding program; requires CMS to conduct a second Round 1 competition (the ''Round 1 rebid'') in 2009; and mandates certain changes for both the Round 1 rebid and subsequent rounds of the program, including a process for providing feedback to suppliers regarding missing financial documentation and requiring contractors to disclose to CMS information regarding subcontracting relationships. CMS is considering a temporary 60-day delay in effective date to allow CMS officials the opportunity for further review of the issues of law and policy raised by this rule, consistent with the Chief of Staff's memorandum of January 20, 2009. CMS solicits comments specifically on the contemplated delay in effective date and generally on the rule entitled ''Medicare Program; Changes to the Competitive Acquisition of Certain Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) by Certain Provisions of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA).''

DATES: Comments must be received on or before February 13, 2009.

ADDRESSES: You may submit comments by any of the following methods: In commenting, please refer to file code CMS–1561–NC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' and enter the filecode to find the document accepting comments.

2. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, *Attention:* CMS–1561–NC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

3. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to either of the following addresses:

a. Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201;

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov*. Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

FOR FURTHER INFORMATION CONTACT: Martique Jones, 410–786–4674.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: *February 5, 2009.*

Charlene Frizzera,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: *February 5, 2009.*

Charles E. Johnson,

Acting Secretary.

[FR Doc. E9–2839 Filed 2–6–09; 12:00 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R6–ES–2008–0127; MO92210–50083–B2]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Wyoming Pocket Gopher as Threatened or Endangered With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day 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 Wyoming pocket gopher (*Thomomys clusius*) as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). We find that the petition presents substantial scientific or commercial information indicating that listing the Wyoming pocket gopher may be warranted. Therefore, with the publication of this notice, we are initiating a status review of the species to determine if listing the species is warranted. To ensure that the review is comprehensive, we are soliciting scientific and commercial data and other information regarding this species. At the conclusion of this review, we will issue a 12-month finding to determine if the petitioned action is warranted. We will make a determination on critical habitat for this species if, and when, we initiate a listing action.

DATES: The finding announced in this document was made on February 10, 2009. To facilitate a timely 12-month finding for this petition, we request that we receive data, information, and comments on or before April 13, 2009.

ADDRESSES: You may submit information by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R6–ES–2008–0127; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222, Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all information received on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Information Solicited section below for more details).

FOR FURTHER INFORMATION CONTACT: Brian Kelly, Field Supervisor, Wyoming Ecological Services Field Office, 5353 Yellowstone Road, Cheyenne, WY 82009; telephone 307–772–2374. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Information Solicited

When we make a finding that a petition presents substantial information to indicate that listing a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information on the Wyoming pocket gopher. We request information, comments, and suggestions from the public, other governmental agencies, Tribes, the scientific community, industry, or any other interested parties concerning the status of the Wyoming pocket gopher. We are seeking information regarding: (1) The species' historical and current status and distribution; (2) its population size and trend; (3) its biology and ecology; (4) its taxonomy (especially genetics of the species); and (5) ongoing conservation measures for the species and its habitat.

We are also seeking information on the following five threat factors used to determine if a species, as defined under the Act, is threatened or endangered under section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*):

a. The present or threatened destruction, modification, or curtailment of the species' 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 and threats to the species or its habitat.

If we determine that listing the Wyoming pocket gopher under the Act is warranted, it is our intent to propose critical habitat to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, with regard to areas within the geographical range currently occupied by the species, we also request data and information on what may constitute physical or biological features essential to the conservation of the species, where these features are currently found, and whether any of these features may require special management considerations or protection. In addition, we request data and information regarding whether there are areas outside the geographical area occupied by the species that are essential to the conservation of the species. Please provide specific comments and information as to 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 the Act.

We will base our 12-month finding on a review of the best scientific and commercial information available, including all information received during the public comment period. Please note that 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, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species shall be made ''solely on the basis of the best scientific and commercial data available.'' At the conclusion of the status review, we will issue a 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act.

You may submit information by one of the methods listed in the **ADDRESSES** section. We will not consider submissions sent by e-mail or fax or to an address not 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 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 materials we receive, as well as supporting documentation we used in preparing this finding, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Wyoming Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section).

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 contained in the petition, supporting information submitted with the petition, and information otherwise readily 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 this finding promptly in the **Federal Register**.

Our standard for substantial information within the Code of Federal Regulations (CFR) regarding 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 the petition presented substantial information, we are required to promptly commence a review of the status of the species.

We base this 90-day finding on information provided by the petitioner that we determined to be reliable after reviewing sources referenced in the petition and information available in our files. We evaluated that information in accordance with 50 CFR 424.14(b). Our process in making this 90-day finding under section 4(b)(3)(A) of the Act and section 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the ''substantial information'' threshold.

On August 9, 2007, we received a petition from the Biodiversity Conservation Alliance and Center for Native Ecosystems, dated August 7, 2007, requesting that we list the Wyoming pocket gopher (*Thomomys clusius*), within its known historic range, as threatened or endangered under the Act. Additionally, the petition requested that we designate critical habitat concurrent with listing. The petition clearly identified itself as a petition and included the requisite identification information required at 50 CFR 424.14(a). We acknowledged receipt of the petition in a letter dated September 6, 2007. In that letter we advised the petitioners that we could not address their petition at that time because responding to existing court orders and settlement agreements for other listing actions required nearly all of our listing funding. We also concluded in our September 6, 2007, letter that emergency listing of the Wyoming pocket gopher was not warranted. Delays in responding to the petition continued due to the high priority of responding to court orders and settlement agreements, until funding became available to respond to this petition.

Previous Federal Actions

Region 2 of the U.S. Forest Service (USFS) and the Bureau of Land Management (BLM) in Wyoming each added the Wyoming pocket gopher to their sensitive species lists in 2001, and it has remained on those lists. Species-specific management actions, however, have not been developed (Keinath and Beauvais 2006, pp. 6–8).

Listable Entity Evaluation

Under section 3(16) of the Act, we may consider for listing any species or subspecies of fish, wildlife, or plants, or any distinct population segment of vertebrate fish or wildlife which interbreeds when mature. Such entities are considered eligible for listing under the Act (and are, therefore, referred to as ''listable entities''), should they be determined to meet the definition of a threatened or endangered species. In this case, the petitioner has requested that we consider the Wyoming pocket gopher for listing. This entity may be considered for listing as a species under the Act (16 U.S.C. 1532(16)).

Species Information

The Wyoming pocket gopher (*Thomomys clusius*) is a small, lighter-colored member of the Geomyidae family, with a length of 161–184 millimeters (mm) (6.44–7.36 inches (in)) and a weight of 44–72 grams (1.54–2.54 ounces (oz)) (Thaeler and Hinesley 1979, pp. 483–484). The species is characterized by very strong front limbs with long nails used for digging, small ears, small eyes, and fur-lined cheek pouches used to carry food. Pocket gophers are fossorial, living most of their lives in burrow systems and underground tunnels. Once pocket gophers establish territories and burrows, they may shift to other areas based on environmental conditions or interactions with other pocket gophers,

but they generally do not move to an entirely new area (Miller 1964, p. 262; Reichman *et al.* 1982, pp. 687–688).

Very little is known about the Wyoming pocket gopher, and assumptions about its distribution, ecology, and status are based on a few museum records and anecdotal reports from about 30 years ago. Distribution of the species is believed to be restricted to Sweetwater and Carbon Counties in Wyoming, with a possible occurrence in very northern Colorado (Keinath and Beauvais 2006, p. 11). Recent efforts to document gophers at several historic locations were inconclusive, leading to speculation about population declines and the rarity of the species (Keinath and Beauvais 2006, p. 12).

The range of the Wyoming pocket gopher occurs within the range of the northern pocket gopher (*Thomomys talpoides*), but the Wyoming pocket gopher is not likely sympatric with other pocket gophers (Keinath and Beauvais 2006, p. 8). The Wyoming pocket gopher is believed to occupy well-drained, gravelly ridges instead of the valley bottoms and riparian areas with deeper soils preferred by the northern pocket gopher (Thaeler and Hinesley 1979, p. 486). Based on the characterization of the species' size and habitat, it appears to fit the island model of isolation displayed by other species of pocket gophers specifically adapted to the soils of an area (Miller 1964, pp. 259–260). The Wyoming pocket gopher is limited in its distribution, which may be due to the species' habitat specialization (Keinath and Beauvais 2006, pp. 12–15).

Due to morphological similarities, the Wyoming pocket gopher and northern pocket gopher are difficult to distinguish. Positive identification requires karyotype analysis (i.e., a count of the number of diploid chromosomes). The Wyoming pocket gopher has a karyotype of 46 chromosomes, and the northern pocket gopher has a karyotype of 48 or 56, depending on the subspecies (Thaeler and Hinesley 1979, p. 483).

Based on the life histories of other pocket gophers, Wyoming pocket gophers likely do not live more than two breeding seasons, reproduce the calendar year following birth, and have one litter with 4 to 6 young per year (Keinath and Beauvais 2006, p. 18). The species' diet is likely primarily the roots, stems, and leaves of forbs, with some consumption of grasses and shrubs (Aldous 1951, pp. 85–86; Ward and Keith 1962, p. 747). Pocket gophers may cut their food into small pieces and carry it in their cheek pouches back to the burrow where it is consumed, stored for winter, used for nest building, or taken into runways and later pushed to the surface (Aldous 1951, p. 84; Verts and Carraway 1999, p. 6).

In general, the extensive tunneling activity of pocket gophers can affect soil formation, hydrology, nutrient flows, and the competitive interactions of plants. These effects can be important to ecosystem function, but also create undesirable interactions with human activities that lead to extermination efforts.

Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR 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: (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) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. In making this finding, we evaluated whether information on threats to the Wyoming pocket gopher presented in the petition and available in our files at the time of the petition review constitute substantial scientific or commercial information such that listing the species may be warranted. Our evaluation of this information is discussed below. Unless clearly stated that the information is from our files, all threats described below and their effects on the Wyoming pocket gopher are as described in the petition.

A. Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Information Provided in the Petition

The petitioners state that alteration of the species' habitat for oil and gas development is the primary threat to the species. They note that the species is particularly vulnerable to habitat loss because of its limited range and distribution. Oil and gas exploration and development increases road densities, which may fragment the species' habitat, create barriers to movement of the species, and isolate individual populations. The petitioners describe the soil disturbances that accompany oil and gas development, noting direct impacts to habitat that may lead to introduction of noxious weeds. They note that noxious weeds have been found to reduce population density of other fossorial mammals. The petitioners claim that herbicide use will accompany development and will affect the availability of forbs, which are a source of food and habitat for the species. They cite studies linking use of herbicides with negative impacts to other species of pocket gophers. The petitioners state that soil moisture may be altered during the course of development.

Analysis of Information Provided in the Petition and Information Readily Available

The majority of lands within the Wyoming pocket gopher's range have at least a moderate potential for energy development (BLM 2005, map). Additionally, most of the Federal lands within the species' range are already leased for oil and gas development (BLM 2008, map). This situation, and the high level of interest in increased extraction of energy resources described by the petitioners, indicate that the likelihood of oil and gas development throughout the species' range is high.

Energy exploration and development can cause various changes to a landscape that can impact Wyoming pocket gophers. Oil and gas geophysical exploration is conducted to generate a subsurface image of fluid minerals and usually involves either drilling holes and detonating explosives or using a vibrating pad that is driven across an area using heavy vehicles. The extent of impacts from either exploration method on pocket gophers is unknown, but the vibrations and potential soil impacts would, at a minimum, disturb habitat and pocket gophers in the immediate vicinity of operations. Oil and gas development involves staging a drilling rig and setting up additional equipment that is used during production. Generally, developers build roads to access each site and clear and level well pads. Expansion of road networks and placement of well pads may fragment the species' habitat as described by the petitioners and in their cited literature. Similarly, soil disturbance occurs in oil and gas fields and would impact the habitat that lies within the footprint of well pads and roads, and the habitat in areas disturbed during the development of that infrastructure. Any soil that is moved may have a direct impact on pocket gophers that are present. Once a rig is in place, the drilling process creates vibrations that may impact habitat and any pocket gophers in the area. Once a well has been drilled and is producing, energy companies make regular trips to well pads to monitor

production, conduct maintenance, or collect extracted resources. These regular trips may disturb pocket gophers that are present at or near well pad and roads. Energy producers often try to maintain a clear work area by using herbicides on well pads and along roads. Herbicide use and the direct impacts of development would reduce the availability and quality of forbs, creating negative impacts to Wyoming pocket gopher habitat. Wyoming pocket gopher habitat requirements are not fully understood, but the species is likely susceptible to habitat disturbance due to its restricted distribution and potentially limited dispersal capabilities (Keinath and Beauvais 2006, pp. 21–23).

Introduction and spread of noxious weeds may result from energy development activities and negatively impact Wyoming pocket gophers, and have been shown to limit populations of other burrowing herbivores (Keinath and Beauvais 2006, p. 23). However, noxious weeds are not currently thought to be a threat to Wyoming pocket gophers (Keinath and Beauvais 2006, p. 23). Assertions made in the petition regarding negative habitat impacts resulting from alterations to soil moisture are also not supported by information in the petition or our files.

Based on our evaluation of the information presented in the petition and readily available in our files regarding the expanding energy development within the range of the Wyoming pocket gopher, combined with the limited range of the species and its unknown population status, distribution, and trends, we find that, although information about the species and its habitat is limited, the petition presents substantial information indicating that listing the species may be warranted due to oil and gas exploration and development. Oil and gas developments could fragment habitat, directly impact soil and vegetation in the footprint of development sites, and cause negative impacts that are not understood at this time, such as creation of ground vibrations and increased noxious weeds. We will assess these factors more thoroughly during a status assessment in order to quantify and verify, if possible, potential effects from energy development on the Wyoming pocket gopher.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Information Provided in the Petition

The petitioners state that Wyoming pocket gopher overutilization occurs due to commercial and residential development, agriculture, and recreation. The petitioners provide general information about lethal control of other species of pocket gopher that often accompanies development. They claim that the planned development within the range of the species is likely to lead to similar targeted efforts.

The petitioners describe several options for lethal control of pocket gophers that could be used on farmlands and ranchlands where Wyoming pocket gophers occur. They indicate that the difficulty in distinguishing between species of pocket gophers could result in accidental poisoning of Wyoming pocket gophers. The petitioners cite literature describing the high mortality rates that occur in pocket gopher populations targeted by lethal control measures. The petitioners describe recreational facilities in Colorado that may have resulted in the death of individual pocket gophers.

Analysis of Information Provided in the Petition and Information Readily Available

The petitioners provide general information about lethal control of pocket gophers associated with development, farmlands, and ranchlands, but do not provide any specific information correlated with current overutilization rates. Additionally, the petitioners do not describe any plans for lethal control of any pocket gophers within the Wyoming pocket gopher's range, or what amount of lethal control would constitute overutilization. The petitioners do not detail impacts to the Wyoming pocket gopher resulting from recreational activities, and present no clear connection between recreational facilities and overutilization of the species. No information available in our files or the cited literature supports the petitioners' concerns regarding overuse of this species that limits its ability to persist.

On the basis of our evaluation of the information presented in the petition, and in our files, we determined that the petition does not present substantial information indicating that listing the Wyoming pocket gopher may be warranted due to overutilization for commercial, recreation, scientific, or educational purposes.

C. Disease or Predation

Information Provided in the Petition

The petitioners cite information from Keinath and Beauvais (2006, pp. 20–21) that parasites and disease have not been shown to limit pocket gopher populations, but the petitioners raise the possibility of disease and predation creating a significant threat to the Wyoming pocket gopher. The petitioners recommend erring on the side of caution in conserving the Wyoming pocket gopher since the role of disease and predation is uncertain. The petitioners describe situations of physiological stress caused by habitat alteration that lead to vulnerability to parasites and disease. The petitioners cite literature describing several parasites associated with pocket gophers and suggest parasites could significantly limit distribution and abundance of the Wyoming pocket gopher. The petitioners also describe the increased opportunities for predators to target pocket gophers as development occurs.

Analysis of Information Provided in the Petition and Information Readily Available

The petitioners' rationale describing threats to the Wyoming pocket gopher from disease and predation are not supported by literature or data. Keinath and Beauvais (2006, pp. 20–21) conclude that disease and predation are not likely to play a significant role in pocket gopher persistence, and their report, which was heavily relied on by the petitioners, is an updated synthesis of Wyoming pocket gopher information. The Wyoming pocket gopher and any associated parasites and predators have presumably coexisted for long periods of time. Although additional physiological stress caused by habitat alteration may lead to increased vulnerability to parasites and disease, the petitioners provided no information to verify or quantify this premise. Habitat alteration that increases opportunities for predation may have occurred, but no data were provided to describe this situation for the Wyoming pocket gopher. The scenarios described in the petition, regarding increased vulnerability to disease and predation, are presented as indirect effects resulting from habitat alteration, which is addressed in Factor A above.

On the basis of our evaluation of the information presented in the petition, we determined that the petition does not present substantial information indicating that listing the Wyoming pocket gopher may be warranted due to disease or predation.

D. Inadequacy of Existing Regulatory Mechanisms

Information Provided in the Petition

The petition describes actions taken by the Service, USFS, BLM, Wyoming Game and Fish Department (WGFD),

and Wyoming Natural Diversity Database (WYNDD) to classify the Wyoming pocket gopher's status and to identify and pursue conservation needs. The Service provides no special status to the Wyoming pocket gopher. The USFS and BLM both include the Wyoming pocket gopher on their sensitive species lists, and provide general management approaches for conservation. The WGFD includes the Wyoming pocket gopher on its list of Species of Greatest Conservation Need. WYNDD identifies the Wyoming pocket gopher as a G2/S2 species, meaning the species has a relatively high probability of global and Statewide extinction. Neither of the WYNDD designations provides regulatory authority for species conservation.

The petitioners indicate that management practices outlined by the USFS, BLM, and WGFD are sufficient to achieve conservation of the Wyoming pocket gopher if they are followed, and if additional information is collected and applied. However, the petitioners state that the agencies have made no efforts to collect basic information about the biology and ecology of the Wyoming pocket gopher, even though a significant conservation need exists. The petitioners indicate that the BLM included no reference to the Wyoming pocket gopher in its 2006 Final Environmental Impact Statement (FEIS) for the Atlantic Rim coalbed natural gas project.

Analysis of Information Provided in the Petition and Information Readily Available

The USFS, BLM, and WGFD have created general requirements for species conservation that can apply to the Wyoming pocket gopher. We agree that additional information could bolster conservation of the species, but lack of information does not necessarily indicate that regulatory mechanisms are inadequate. We agree that conservation approaches are only effective if they are implemented. The petitioners cite the absence of the Wyoming pocket gopher in the analysis in the 2006 Atlantic Rim FEIS as an example of the BLM's failure to follow its requirements for sensitive species management. However, based on our review of the FEIS, the BLM included a short analysis of the Wyoming pocket gopher (BLM 2006, p. 4–89). The petition did not present other information indicating that the conservation approaches described in the FEIS and other documents produced by the BLM and USFS are not being implemented.

We found no documentation to support the petitioners' suggestion that agencies are ignoring sensitive species management to the degree that regulatory mechanisms are inadequate for the Wyoming pocket gopher. On the basis of our evaluation of the information presented in the petition and readily available, we determined that the petition does not present substantial information indicating that listing the Wyoming pocket gopher may be warranted due to inadequacy of existing regulatory mechanisms. However, we will assess this factor more thoroughly during our status review of the species.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Information Provided in the Petition

The petitioners state that other natural and manmade threats to the species include: (1) Vulnerability of small populations; (2) climate change; (3) stress; and (4) continued oil and gas development.

Vulnerability of Small Populations

The petitioners describe the threats to the Wyoming pocket gopher that result from it being a narrow endemic species. They describe stochastic events that could harm populations to a degree that recovery may not be possible. Demographic events that result in an unbalanced sex ratio can lead to reduced population sizes. Weather, disease, or increases in predation can cause significant portions of a population to be negatively affected. Genetic stochasticity, the variable recombination of genes of the species, and inbreeding from a population that is too small can lead to loss of fitness. The petitioners note that these events work in combination with each other, and pose a particular risk to small populations.

Analysis of Information Provided in the Petition and Information Readily Available

We recognize the risks that stochastic events may present to small populations. Available data indicate the Wyoming pocket gopher has a limited distribution, which may exacerbate the species' vulnerability to these events. A definitive population size is not available, but information about the Wyoming pocket gopher indicates that the population size may be small enough that stochastic events could negatively affect the long-term conservation of the species. However, the Wyoming pocket gopher has evidently persisted for some period of time and may never have had a large population size. Although the small population size of the species may make it vulnerable, insufficient support for this conclusion is available, and very little information was provided in the petition about how the Wyoming pocket gopher or other pocket gopher species are impacted by stochastic events. Based on the information presented in the petition, we find that the petition does not present substantial information indicating that listing the Wyoming pocket gopher may be warranted due to vulnerability resulting from its small population size.

Climate Change

Information Provided in the Petition

The petitioners describe the potential impacts of climate change on the Wyoming pocket gopher, noting that other species of pocket gopher are more abundant during wetter years. The petitioners also note that, in addition to lack of precipitation, other types of climate variability, such as harsh winters, atypical duration of seasons, and excessively wet periods, can affect distribution and mortality of pocket gophers.

Analysis of Information Provided in the Petition and Information Readily Available

The petitioners describe general population responses of pocket gophers to natural climate variability, but the Wyoming pocket gopher is adapted to the natural climate variability that occurs within its range. For example, drought has been documented periodically within the range of the Wyoming pocket gopher, and may negatively affect the species; however, the species has continued to exist despite periods of natural drought.

The petitioners did not present specific information about how global climate change has affected or is likely to affect the Wyoming pocket gopher in a way that differs from past climate variability. Although warming of the climate globally is considered unequivocal (USGS 2008, p. 1), predicting local climate trends and determining how those trends will affect certain species is uncertain. Without additional information, the effect of long-term climate change on the Wyoming pocket gopher is unclear and could result in either a net positive or negative effect on the species. Based on our evaluation of information in the petition and in our files, we determined that the petition does not present substantial information indicating that listing the Wyoming pocket gopher may be warranted due to climate change.

Stress

Information Provided in the Petition

The petitioners provide information linking various habitat changes with increased stress levels for the Wyoming pocket gopher. They briefly describe the types of effects that stress from various sources may have on a species.

Analysis of Information Provided in the Petition and Information Readily Available

Stress may increase due to habitat changes that are addressed in Factor A above. Other sources of stress are not described in the petition to an extent that allows us to discern whether the conservation status of the Wyoming pocket gopher is affected by stress levels. Based on the information provided in the petition, we determined that the petition does not present substantial information indicating that listing the Wyoming pocket gopher may be warranted due to stress.

Continued Oil and Gas Development

Information Provided in the Petition

The petitioners describe the level of energy development that has occurred in various parts of Wyoming and some of the ecological consequences of that development. They note that the entire range of the Wyoming pocket gopher is leased for oil and gas development.

Analysis of Information Provided in the Petition and Information Readily Available

We addressed the impacts of oil and gas development in Factor A above, and did not find a description of any additional impacts in the petition under Factor E.

Summary of Factor E

We found no documentation to support the petitioners' suggestion that effects from small populations, climate change, increased stress, or oil and gas leasing (in itself) are significant to the degree that other natural or manmade factors are affecting the continued existence of the Wyoming pocket gopher. On the basis of our evaluation of the information presented in the petition and readily available, we determined that the petition does not present substantial information indicating that listing the Wyoming pocket gopher may be warranted due to other natural or manmade factors. However, we will assess the issues raised by the petitioners more thoroughly during our status review of the species.

Finding

We reviewed the petition, supporting information provided by the petitioners, and information in our files, and evaluated that information to determine whether the sources cited support the claims made in the petition. We find the petitioners presented substantial information under Factor A indicating that listing the Wyoming pocket gopher as threatened or endangered under the Act may be warranted due to habitat threats resulting from oil and gas exploration and development, particularly given the limited range and uncertain status of the species. Based on the amount of Federal land leased for energy development and general interest in energy extraction, the likelihood for energy development throughout the species' range is high. Although not supported with sufficient information, the petitioners also presented information about the susceptibility of the species to stochastic events due to its small population size and limited distribution (*see* Factor E). In our 12-month finding, we will further investigate and analyze this potential vulnerability. The petitioners' claim that regulatory mechanisms are inadequate for the Wyoming pocket gopher is not supported with sufficient information, but we will also assess this factor more thoroughly during our status review of the species.

Based on this review and evaluation, we find that the petition presents substantial scientific or commercial information indicating that listing the Wyoming pocket gopher may be warranted. Therefore, we are initiating a status review to determine whether listing the Wyoming pocket gopher under the Act is warranted. As part of our status review of the Wyoming pocket gopher, we will examine available information on the threats to the species and make a final determination on whether the species is warranted for listing as threatened or endangered under the Act. To ensure that the status review is comprehensive, we are soliciting scientific and commercial information regarding the Wyoming pocket gopher (as described above under the Information Solicited section).

The ''substantial information'' standard for a 90-day finding is in contrast to the Act's ''best scientific and commercial data'' standard that applies to a 12-month finding as to whether a petitioned action is warranted. A 90-day finding is not a status assessment of the species and does not constitute a status review under the Act. Our final determination as to whether a petitioned action is warranted is not made until we have completed a thorough status review of the species, which is conducted following a positive 90-day finding. Because the Act's standards for 90-day and 12-month findings are different, as described above, a positive 90-day finding does not mean that the 12-month finding also will be positive.

The petitioners requested that critical habitat be designated for this species. If we determine in our 12-month finding that listing the Wyoming pocket gopher is warranted, we will address the designation of critical habitat to the maximum extent prudent and determinable at the time of the proposed rulemaking.

References Cited

A complete list of all references cited in this document is available upon request from the Wyoming Ecological Services Field Office (*see* **FOR FURTHER INFORMATION CONTACT** section).

Author

The primary authors of this document are staff members of the Wyoming Ecological Services Field Office (*see* **FOR FURTHER INFORMATION CONTACT** section).

Authority: The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: February 2, 2009.

Kenneth Stansell,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. E9–2677 Filed 2–9–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 92

[FWS–R7–MB–2008–0099; 91200–1231–9BPP L2]

RIN 1018–AW29

Migratory Bird Subsistence Harvest in Alaska; Harvest Regulations for Migratory Birds in Alaska During the 2009 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service, are reopening the public comment period on our proposed rule to establish migratory bird subsistence harvest regulations in Alaska for the 2009 season. This action

will allow all interested parties an additional opportunity to comment on our proposal. The initial public comment period for the proposed rule ended on January 20, 2009. If you submitted comments previously, or in the interim, then you do not need to resubmit them because we have already incorporated them into the public record and we will fully consider them in preparation of our final determination.

DATES: We will accept comments received or postmarked on or before March 12, 2009.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: RIN 1018–AW29, Division of Policy and Directives Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 222, Arlington, VA 22203.

We will not accept e-mail or faxes. 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: Fred Armstrong, (907) 786–3887, or Donna Dewhurst, (907) 786–3499, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Mail Stop 201, Anchorage, AK 99503.

SUPPLEMENTARY INFORMATION:

Background

We, the U.S. Fish and Wildlife Service, published a proposed rule in the **Federal Register** on December 18, 2008 (73 FR 76994), to propose migratory bird subsistence harvest regulations in Alaska for the 2009 season. The proposed regulations would enable the continuation of customary and traditional subsistence uses of migratory birds in Alaska and prescribe regional information on when and where the harvesting of birds may occur. These proposed regulations were developed under a co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives. The rulemaking is necessary because the regulations governing the subsistence harvest of migratory birds in Alaska are subject to annual review. This rulemaking proposes region-specific regulations that would go into effect on April 2, 2009, and expire on August 31, 2009.

We are reopening the public comment period on our proposed rule for an additional 30 days (see **DATES** section) in response to written requests for additional time to comment that we received during the initial public comment period.

Public Comments Solicited

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section. We will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in the **DATES** section.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* If you provide personal identifying information in your comment, 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 this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Office of the Alaska Migratory Bird Co-management Council, 1011 E. Tudor Rd., Anchorage, AK 99503 (877) 229–2344.

Author(s)

The primary authors of this package are the staff members of the Office of the Alaska Migratory Bird Co-Management Council.

Authority

We derive our authority to issue these regulations from the Migratory Bird Treaty Act of 1918, 16 U.S.C. 712(1), which authorizes the Secretary of the Interior, in accordance with the treaties with Canada, Mexico, Japan, and Russia, to ''issue such regulations as may be necessary to assure that the taking of migratory birds and the collection of their eggs, by the indigenous inhabitants of the State of Alaska, shall be permitted for their own nutritional and other essential needs, as determined by the Secretary of the Interior, during seasons established so as to provide for the preservation and maintenance of stocks of migratory birds.''

Dated: January 30, 2009.

Jane Lyder,

Assistant Deputy Secretary.

[FR Doc. E9–2793 Filed 2–9–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 090122047–9050–01]

RIN 0648–XM11

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; 2009 Georges Bank Cod Hook Sector Operations Plan and Agreement, and Allocation of Georges Bank Cod Total Allowable Catch

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule provides interested parties an opportunity to comment on the proposed sector operations plan and supplemental environmental assessment (EA) prior to final approval or disapproval of the sector operations plan and allocation of a Georges Bank (GB) cod total allowable catch (TAC) to the GB Cod Hook Sector (Hook Sector) for fishing year (FY) 2009.

Amendment 13 to the Northeast (NE) Multispecies Fishery Management Plan (FMP) implemented the Hook Sector and authorized annual allocation of up to 20 percent of the GB cod TAC to the Hook Sector. Pursuant to that authorization, a representative of the Hook Sector has submitted an operations plan and sector agreement (contract), and requested an allocation of GB cod to the Hook Sector for FY 2009.

DATES: Written comments must be received on or before February 25, 2009.

ADDRESSES: You may submit comments, identified by 0648–XM11, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov*,
- *Fax:* (978) 281–9135, *Attn:* Mark Grant,
- *Mail:* 55 Great Republic Drive, Gloucester, MA 01930.

Instructions: All comments received are part of the public record and will

generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

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

Copies of the Sector Agreement and the EA are available from the NE Regional Office at the mailing address specified above.

FOR FURTHER INFORMATION CONTACT: Mark Grant, Sector Policy Analyst, phone (978) 281–9145, fax (978) 281–9135, e-mail *Mark.Grant@NOAA.gov*.

SUPPLEMENTARY INFORMATION: NMFS announces that the Administrator, NE Region, NMFS (Regional Administrator), has made a preliminary determination that the 2009 Hook Sector Operations Plan and Agreement, which contains the sector contract and operations plan, is consistent with the goals of the FMP, as currently implemented, and other applicable law and is in compliance with the regulations governing the development and operation of a sector as specified under § 648.87. The final rule implementing Amendment 13 (69 FR 22906, April 27, 2004) specified a process for the formation of sectors within the NE multispecies fishery and the allocation of TAC for specific groundfish species (or days-at-sea (DAS)), implemented restrictions that apply to all sectors, implemented the Hook Sector, established the GB Cod Hook Sector Area (Sector Area), and specified a formula for the allocation of GB cod TAC to the Hook Sector.

The principal regulations applying to the Hook Sector specify that: (1) All vessels with a valid limited access NE multispecies DAS permit are eligible to participate in the Hook Sector; (2) membership in the Hook Sector is voluntary, but each member is required to remain in the Hook Sector for the entire fishing year and cannot fish in the NE multispecies DAS program outside the sector during the fishing year, unless certain conditions are met; (3) vessels fishing in the Hook Sector are confined to fishing in the Sector Area, which is that portion of the GB cod stock area north of 39° 00′ N. lat. and east of 71° 40′ W. long; and (4) participating vessels are required to comply with all pertinent Federal fishing regulations, unless specifically exempted by a Letter of Authorization issued by the Regional Administrator, and the provisions of an approved operations plan.

While Amendment 13 implemented the Hook Sector, in order for GB cod to be allocated to the Hook Sector and for the Hook Sector to be authorized to fish, the Hook Sector must submit an operations plan and sector contract to the Regional Administrator annually for approval. The operations plan and sector contract must contain certain elements, including a contract signed by all Hook Sector participants and a plan containing the management rules that the Hook Sector participants agree to abide by in order to avoid exceeding the allocated TAC. An additional analysis of the impacts of the Hook Sector's proposed operations may also be required in order to comply with the National Environmental Policy Act. Further, the public must be provided an opportunity to comment on the proposed operations plan and sector contract. The regulations require that, upon completion of the public comment period, the Regional Administrator will make a determination regarding approval of the sector contract and operations plan. If approved by the Regional Administrator, participating vessels would be authorized to fish under the terms of the operations plan and sector contract.

The Hook Sector was authorized to fish in FYs 2004, 2005, 2006, 2007, and 2008; and, based upon the GB cod landings history of its members, was allocated 12.60, 11.70, 10.03, 8.02, and 6.44 percent, respectively, of the annual GB cod TAC.

On September 30, 2008, the Hook Sector submitted its FY 2009 operations plan and sector agreement to NMFS. A draft environmental assessment (EA) was submitted on November 14, 2008. The proposed 2009 Hook Sector agreement and operations Plan contains the same elements and proposed exemptions as the 2008 Hook Sector agreement and operations plan. The Hook Sector would be overseen by a Board of Directors and a Sector Manager. The Hook Sector Agreement specifies, in accordance with Amendment 13, that the Hook Sector's GB cod TAC would be based upon the number of Hook Sector members and their historic landings of GB cod. The GB cod TAC is a ''hard'' TAC, meaning that, once the TAC is reached, Hook Sector vessels could not fish under a DAS, possess or land GB cod or other regulated species managed under the FMP (regulated species), or use gear capable of catching groundfish (unless fishing under charter/party or recreational regulations). Should the hard TAC be exceeded, the Hook Sector's allocation would be reduced by the amount of the overharvest in the following year.

The 2009 operations plan proposes exemptions from the following restrictions of the FMP: The GB cod trip limit; the GB Seasonal Closure Area; the 3,600–hook limit for longline gear in the GB Regulated Mesh Area (RMA); the 2,000–hook limit for longline gear in the Gulf of Maine (GOM) and Southern New England (SNE) RMAs; the Western U.S./Canada Area 72–hr observer notification requirement; the DAS Leasing Program vessel size restrictions; and differential DAS counting implemented by Framework Adjustment (FW) 42 and any temporary rules. Justification for the proposed exemptions and analysis of the potential impacts of the operations plan are contained in the EA. A Regulatory Impact Review/Initial Regulatory Flexibility Analysis (IRFA) is summarized in the Classification section of this proposed rule.

Twenty-four prospective Hook Sector members signed the 2009 Hook Sector Contract. The GB cod TAC calculation is based upon the historic GB cod landings of the participating vessels, using all gear. The allocation percentage is calculated by dividing the sum of total landings of GB cod by Hook Sector members for FY 1996 through 2001 by the sum of the total accumulated landings of GB cod harvested by all NE multispecies vessels for the same time period. Based upon the 24 prospective members (and their associated GB cod landings history), the Hook Sector's share of the overall U.S. portion of the GB cod TAC would be 8.09 percent, or 625,570 lb (284 mt) (8.09 percent times the fishery-wide GB cod target TAC of 7,729,408 lb (3,506 mt)). If prospective members of the Hook Sector are deemed ineligible to, or decide not to, participate in the Hook Sector after the publication of this proposed rule and prior to a final decision by the Regional Administrator, it is possible that the total number of participants in the Hook Sector and the TAC for the Hook Sector may be reduced from the numbers above, but no additional members may join the Hook Sector for FY 2009.

The Sector Contract contains procedures for the enforcement of the operations plan, a schedule of penalties, and provides the authority to the Hook Sector Manager to issue stop fishing orders to members of the Hook Sector. Participating vessels would be required to land fish only in designated landing ports and would be required to provide the Hook Sector Manager with a copy of the Vessel Trip Report (VTR) within 48

hr of offloading. Dealers purchasing fish from participating vessels would be required to provide the Hook Sector Manager with a copy of the dealer report on a weekly basis. On a monthly basis, the Hook Sector Manager would transmit to NMFS aggregate catch data from dealer slips and aggregate discard data from the VTRs. After 90 percent of the Hook Sector's allocation has been harvested, the Hook Sector Manager would be required to provide NMFS with aggregate reports on a weekly basis. A total of 1/12 of the Hook Sector's GB cod TAC would be allocated to each month of the fishing year. GB cod quota that is not landed during a given month would be rolled over into the following month. If landings exceed the monthly quota, the excess would be deducted from subsequent monthly quotas to ensure the Hook Sector does not exceed its GB cod TAC. The harvest rules would not preclude a vessel from fishing under the charter/party or recreational regulations, provided the vessel fishes under the applicable charter/party and recreational rules on separate trips.

Participating vessels would not be allowed to fish with or have on board gear other than jigs, non-automated demersal longline, or handgear. Participating Hook Sector vessels could use an unlimited number of hooks in the Sector Area and would be exempt from the GB Seasonal Closure Area.

Participating vessels would be required to call the Sector Manager prior to leaving port on a fishing trip. All legal-sized cod caught would be retained, landed and counted against the Hook Sector's GB cod TAC. For each fishing trip, participating vessels would be required to fish under the NE multispecies DAS program regulations to account for any incidental groundfish species that they may catch while fishing for GB cod. In addition, participating vessels would have a 1,000–lb (454–kg) trip limit for white hake (consistent with current regulations); a 2,000–lb (907–kg) trip limit for GB winter flounder (more restrictive than current regulations); and a 100–lb (45–kg) trip limit for all yellowtail flounder (more restrictive than current regulations). All of these exemptions were approved for FY 2006 and FY 2007.

In FY 2006 and FY 2007 the exemption from differential DAS counting was approved because the combination of a hard TAC for GB cod and specific trip limits for GB winter flounder, yellowtail flounder, and white hake was determined to be conservation equivalent to differential DAS counting in the existing GOM and SNE Differential DAS Areas for meeting the mortality reduction and stock rebuilding goals of both the 2006 Secretarial Action and FW 42. NMFS is concerned about granting this exemption in FY 2009 because of the new differential DAS counting area proposed in the Secretarial Interim Action (74 FR 2959). The proposed Hook Sector operations plan and agreement, and supporting EA, were drafted and submitted prior to the publication of the proposed Secretarial Interim Action and therefore do not contain a justification for, or analysis of the impacts of, exempting the Hook Sector from the proposed differential DAS area. Therefore, NMFS may partially approve the Hook Sector operations plan and agreement, disapproving the differential DAS exemption requested, unless further information demonstrates that the operations plan would be the conservation equivalent of the differential DAS counting. Accordingly, NMFS is particularly interested in receiving public comment on the Hook Sector's request for an exemption from differential DAS counting as proposed in the Secretarial Interim Action.

The EA prepared for the Hook Sector's operations concludes that the biological impacts of the Hook Sector will be positive because the hard TAC and the use of DAS would provide two means of restricting both the landings and effort of the Hook Sector. Implementation may have a positive impact on essential fish habitat and bycatch, if the Hook Sector's quota is caught prior to the end of the fishing year, by reducing the amount of time that gear would be in the water. The analysis of economic impacts of the Hook Sector concludes that the members would realize higher economic returns if the Hook Sector is implemented. The EA asserts that fishing in accordance with the Sector Contract rules enables more efficient harvesting of GB cod with hook gear than would be possible if the participating vessels were fishing in accordance with the common pool (non-sector) rules. The social benefits of the Hook Sector would accrue to sector members, as well as the Chatham, MA, and Harwichport, MA, communities, which are more dependent upon groundfish revenues as a percentage of fishery-derived landings than many other communities. The EA concludes that the self-governing nature of the Hook Sector and the member's opportunity to develop rules governing the way in which they harvest their GB cod TAC enables stewardship of the cod resource by the Hook Sector. The cumulative impacts of the Hook Sector are expected to be positive due to a positive biological impact, potential positive impact on habitat, and a positive social and economic impact. In contrast, the cumulative impact of the no action alternative is estimated to be neutral, with negative social and economic impacts.

Should the Regional Administrator approve the Sector Contract as proposed, a Letter of Authorization would be issued to each member of the Hook Sector exempting them, conditional upon their compliance with the Sector Contract, from the GB cod possession restrictions, the 3,600–hook limit in the GB RMA, the 2,000–hook limit in the GOM and SNE RMAs, the GB Seasonal Closure Area, the Western U.S./Canada Area 72–hr observer notification requirement, the DAS Leasing Program vessel size restrictions, and differential DAS counting, as specified in §§ 658.86(b)(2), 648.80(a)(4)(v), 648.80(a)(3)(v), 648.80(b)(2)(v), 648.81(g), 648.85(a)(3)(ii)(C), 648.82(k)(4)(ix), 648.82 (e)(2), respectively.

Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the NE Multispecies FMP as currently implemented, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment, particularly in light of whether the Secretarial Interim Action is implemented.

This action is exempt from review under Executive Order (E.O.) 12866.

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. The IRFA consists of this section, the preamble, and the EA prepared for this action. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule and in sections 1.0, 2.0, and 3.0 of the EA prepared for this action. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

The Small Business Administration size standard for small commercial fishing entities is $4 million in average annual receipts, and the size standard for small charter/party operators is $6.5 million in average annual receipts. All permitted and participating vessels in the groundfish fishery, including

prospective Hook Sector members, are considered to be small entities because gross sales by any one entity (vessel) do not exceed this threshold, and, therefore there is no disproportionate impact between large and small entities. While an entity may own multiple vessels, available data make it difficult to determine which vessels may be controlled by a single entity. For this reason, each vessel is treated as a single entity for purposes of size determination and impact assessment. All permitted and participating vessels in the groundfish fishery, including prospective Hook Sector members, are considered to be small entities because gross sales by any one entity (vessel) do not exceed this threshold. The number of prospective participants in the Hook Sector is 24, substantially less than the total number of active vessels in the groundfish fishery. Only these 24 vessels would be subject to the regulatory exemptions and operational restrictions proposed for the Hook Sector for FY 2009.

Economic Impacts of the Proposed Action

The proposed alternative would allocate a GB cod TAC of 284 mt to the Hook Sector. Once the GB cod TAC is harvested, participating vessels would not be allowed to fish under a NE multispecies DAS, possess or land GB cod, or other regulated species managed under the NE multispecies FMP, or use gear capable of catching groundfish (unless fishing under recreational or charter/party regulations). Vessels intending to fish in the Hook Sector during FY 2009 may only fish with hook gear. Under the proposed operations plan, members would be exempt from several restrictions of the FMP described in the preamble to this proposed rule and in the EA.

The Hook Sector fishermen and the Chatham, MA, and Harwichport, MA, communities are dependent upon GB cod and other groundfish. The Amendment 13 restrictions that reduced the GB cod trip limit had a disproportionate affect on these fishermen. According to Amendment 13, Chatham's overall community dependence on NE multispecies as a percentage of total fisheries revenues from federally permitted vessels averaged about 71 percent, and it was likely that at least some of the active groundfish vessels in Chatham and Harwichport were even more than 71–percent dependent on the NE multispecies fishery.

Haddock and cod comprised the largest proportion of Hook Sector landings (62.47 percent and 32.46 percent, respectively, in FY 2007). During FY 2007, members of the Hook Sector made 239 trips, landed 155,453 lb (70,512 kg) of cod and 299,126 lb (135,681 kg) of haddock, and generated approximately $ 290,697, and $ 523,471 in revenue from those species, respectively (assuming a dockside price of $ 1.87 and $ 1.75 per lb [$4.11 and $ 3.85 per kg], respectively). The FY 2007 data indicated a 34–percent decline in the number of trips, a 13–percent decline in cod landings, and a 16–percent increase in haddock landings compared to FY 2006. The net effect was a 3.2–percent increase in revenue from cod and haddock and a 55–percent increase in revenue per trip from these species compared to FY 2006. Hook Sector members also landed various other species, which increased their revenue. In general, the operation of the Hook Sector would continue to mitigate the negative economic impacts that result from the current suite of regulations that apply to the groundfish fishery (most recently FW 42; October 23, 2006; 71 FR 62156). The Hook Sector, by fishing under rules that are designed to meet their needs (as well as the conservation requirements of the FMP), is afforded a larger degree of flexibility and efficiency, which result in economic gains. For example, Hook Sector members are able to plan their fishing activity and income in advance with more certainty due to the fact that there is a cod TAC, which is apportioned to each month of the year. They are able to maximize their efficiency (revenue per trip) due to the exemption from trip limits and limits on the number of hooks fished. Forty-one of the Hook Sector's 239 trips (17 percent) in FY 2007 landed more than the daily GB cod trip limit (1,000 lb/day; 454 kg/day) in place for the common pool vessels (non-sector vessels). This resulted in an additional 77,429 lb (35,121 kg) (49.8 percent of the Hook Sector's FY 2007 cod landings) being landed, rather than discarded. For some vessel owners in the Hook Sector, participation in the Hook Sector enables their businesses to remain economically viable.

No other alternatives in addition to the No Action and the proposed action were considered. The RFA requires each IRFA to include a description of significant alternatives that accomplish the objectives of applicable statues (in this case, sector provisions) and minimize any significant economic impact to small entities. The objective of sector management, as originally developed and implemented under Amendment 13 to the FMP, is to provide opportunities for like-minded vessel operators to govern themselves so that they can operate in a more effective and efficient manner. The Hook Sector developed the proposed operations plan after consultation with prospective members. Prospective members then signed a binding sector contract to abide by the measures specified in the proposed operations plan. As described above, the proposed operations plan minimizes economic impacts to participating vessels by allowing them to operate more efficiently. Accordingly, the proposed operations plan reflects the management measures preferred by vessels participating in the Hook Sector during FY 2009 and represents all of the significant alternatives that accomplish the objectives of sector provisions and minimize economic impacts to small entities, as required by the RFA. Therefore, in conjunction with the NEPA requirement to consider a reasonable range of alternatives, no other alternatives were considered as part of this proposed action.

Economic Impacts of Alternative to the Proposed Action

Under the No Action alternative, the Hook Sector operations plan is disapproved and no modified operations plan is submitted. While the Hook Sector would remain implemented under the NE Multispecies FMP under the No Action Alternative, the Hook Sector would not be authorized to fish, would not be allocated a GB cod TAC, and all vessels would remain in the Common Pool and fish under the regulations implemented in Amendment 13 and subsequent FW to the NE Multispecies FMP.

Because cod usually represents a high proportion of total fishing income for Cape Cod-based hook gear vessels, revenues for such vessel owners are very sensitive to regulations that impact how and when they can fish for cod, such as trip limits and restrictions on the number of hooks fished. Under the common pool rules implemented by FW 42 (e.g., differential DAS counting) and Amendment 13 (restrictive daily trip limits for cod), it is likely that Hook Sector vessels would experience revenue losses in comparison to proposed action. It is more likely under the No Action alternative that disruption to the Chatham/Harwichport communities would occur.

If the proposed Hook Sector operations plan is approved without the exemption from differential DAS counting it will have a lesser benefit to the members, but will not result in the same level of revenue losses as the No Action alternative.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule

This proposed rule contains no collection-of-information requirement subject to the Paperwork Reduction Act.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on proposed sector operations plans and TAC allocations.

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

Dated: February 4, 2009

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

[FR Doc. E9–2781 Filed 2–9–09; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 74, No. 26
Tuesday, February 10, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Okanogan and Wenatchee National Forests Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Wenatchee-Okanogan Resource Advisory Committee will meet on Thursday, February 26, and Wednesday, March 4 at the Okanogan-Wenatchee National Forest Headquarters Office, 215 Melody Lane, Wenatchee, WA, and on March 18 at the Rural County Fire District #1 Sunnyslope Fire Station, 206 Easy Street, Wenatchee, WA. These meetings will begin at 9 a.m. and continue until 3 p.m. On February 26, committee members will review Okanogan County projects, on March 4, committee members will review Chelan County projects, and on March 18, committee members will review Kittitas County and Yakima County projects proposed for Resource Advisory Committee consideration under Title II of the Secure Rural Schools and Community Self-Determination Act of 2000.

All Wenatchee-Okanogan Resource Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Robin DeMario, Public Affairs Specialist, Okanogan-Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801, (509) 664–9200.

Dated: January 27, 2009.

Maureen R. Hanson,

Okanogan-Wenatchee National Forest, Acting Forest Supervisor.

[FR Doc. E9–2766 Filed 2–9–09; 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: Bureau of Industry and Security (BIS).

Title: Miscellaneous Short Supply Activities.

OMB Control Number: 0694–0102.

Form Number(s): None.

Type of Request: Regular submission.

Burden Hours: 201.

Number of Respondents: 2.

Average Hours per Response: 1 hour for a USAG; and 200 for a Petition.

Needs and Uses: This information collection is comprised of two rarely used short supply activities: ''Registration of U.S. Agricultural Commodities for Exemption from Short Supply Limitations on Export,'' and ''Petitions for the Imposition of Monitoring or Controls on Recyclable Metallic Materials; Public Hearings.'' These activities are statutory in nature and, therefore, must remain a part of BIS's information collection budget authorization.

Affected Public: Business and other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Jasmeet Seehra, (202) 395–3123.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jasmeet Seehra, Office of Management and Budget (OMB), by e-mail to *jseehra@omb.eop.gov*, or by fax to (202) 395–7285.

Dated: February 5, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–2724 Filed 2–9–09; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 3–2009]

Foreign-Trade Zone 124—Gramercy, LA; Expansion of Subzone; Marathon Petroleum Company LLC (Oil Refinery); Garyville, LA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of South Louisiana, grantee of FTZ 124, requesting authority to expand the subzone and the scope of manufacturing activity conducted under zone procedures within Subzone 124E, on behalf of Marathon Petroleum Company LLC in Garyville, Louisiana. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on February 3, 2009.

Subzone 124E (950 employees, 255,000 barrel per day capacity) was approved by the Board in 1995 for the manufacture of fuel products and certain petrochemical feedstocks (Board Order 773, 60 FR 49565, 9/26/1995, as amended by Board Order 1116, 65 FR 52696–52697, 9/30/2000). The subzone consists of one site (1,370 acres) located between U.S. 61 and the Mississippi River in Garyville, St. John the Baptist Parish, Louisiana, some 35 miles northwest of New Orleans.

The applicant is now requesting authority to expand the subzone to include an additional parcel (319 acres) adjacent to the subzone. The proposed expansion would include a new crude processing ''train'' as well as downstream units and would increase employment at the facility by 285. The expansion request also includes seven new hydrocarbon storage tanks within the existing subzone boundary and a new ''receipts dock'' for the admission of crude oil and other feedstocks into the refinery. The proposed expansion would increase the overall crude distillation capacity allowed under FTZ procedures to 435,000 barrels per day.

No additional feedstocks or products have been requested.

Zone procedures would exempt production associated with the proposed expansion from customs duty payments on the foreign products used in exports. On domestic sales, the company would be able to choose the customs duty rates for certain petrochemical feedstocks (duty-free) by admitting foreign crude oil in non-privileged foreign status. The application indicates that the savings from zone procedures help improve the refinery's international competitiveness.

In accordance with the Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 13, 2009. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to April 27, 2009.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.*

For further information, contact Elizabeth Whiteman at *Elizabeth_Whiteman@ita.doc.gov* or (202) 482–0473.

Dated: February 3, 2009.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–2643 Filed 2–6–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

Order No. 1603

Reorganization/Expansion of Foreign–Trade Zone 176, Rockford, Illinois, Area

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, the Greater Rockford Airport Authority, grantee of Foreign–Trade Zone 176, submitted an application to the Board for authority to reorganize and expand FTZ 176–Site 1 to include additional acreage and Temporary Site 1A on a permanent basis, expand the zone to include five additional sites (Sites 8 - 12), and to formally delete existing Site 2 and Site 5 from the zone project within the Rockford Customs and Border Protection port of entry (FTZ Docket 31–2008, filed 5/9/08);

Whereas, notice inviting public comment was given in the **Federal Register** (73 FR 28429, 5/16/08) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendation of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to reorganize and expand FTZ 176 is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, subject to the Board's standard 2,000–acre activation limit for the overall general–purpose zone project, and further subject to a sunset provision that would terminate authority on January 31, 2014, for Sites 8, 9, 10, 11 and 12 where no activity has occurred under FTZ procedures before that date.

Signed at Washington, DC, this 30th day of January 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary of Commercefor Import Administration, Alternate Chairman, Foreign–Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–2649 Filed 2–9–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–900, A–580–855]

Diamond Sawblades and Parts Thereof from the People's Republic of China and the Republic of Korea: Notice of Court Decision Not In Harmony With Final Determination of the Antidumping Duty Investigations

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

SUMMARY: On January 13, 2009, the United States Court of International Trade (''CIT'') affirmed the International Trade Commission's (''ITC'') amended determination upon remand that an industry in the United States is threatened with material injury by reason of imports of diamond sawblades and parts thereof (''diamond sawblades'') from the People's of China (''PRC'') and the Republic of Korea (''Korea''). *Diamond Sawblades Mfrs. Coalition v. United States*, No. 06–00247, Slip Op. 09–05 (CIT January 13, 2009) (''*DSMC*''). The case arises out of the ITC's final determination in the antidumping duty investigations. *See* {Investigations Nos. 731–TA–1092 and 1093 (Final)} *Diamond Sawblades and Parts Thereof From China and Korea*, 71 FR 39128 (July 11, 2006) (''*Final Determination*''). The judgment in this case was not in harmony with the ITC's *Final Determination*. If the CIT's opinion in this case is not appealed, or is affirmed on appeal, then antidumping duty orders on diamond sawblades from the PRC and Korea will be issued. In accordance with the decision of the U.S. Court of Appeals for the Federal Circuit (''CAFC'') in *Timken Co. v. United States*, 893 F.2d 337, 341 (Fed. Cir. 1990) (''*Timken*''), the Department will order the suspension of liquidation of the subject merchandise.

EFFECTIVE DATE: January 23, 2009.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–3208.

SUPPLEMENTARY INFORMATION:

Background

On July 11, 2006, the ITC published its final determination that an industry in the United States was not materially injured or threatened with material injury by reason of imports of diamond sawblades from the PRC and Korea. *Final Determination*, 71 FR 39128. The petitioners[1] in the antidumping duty investigation instituted an action challenging the ITC's final determination. On February 6, 2008, the CIT issued *Diamond Sawblades Mfrs. Coalition v. United States*, No. 06–247, Slip Op. 2008–18 (CIT February 6, 2008), which remanded the determination to the ITC for reconsideration. Upon remand, the ITC changed its determination and found that a U.S. industry is threatened with material injury by reason of imports of diamond sawblades from the PRC and Korea. *See* ITC Pub. 4007 (May 2008), *Diamond Sawblades and Parts Thereof*

[1] The Diamond Sawblade Manufacturers' Coalition.

from China and Korea: Investigation Nos. 731–TA–1092 and 1093 (Final)(Remand), which can be accessed directly at (http://www.usitc.gov/trade_remedy/731_ad_701_cvd/investigations/index_opinions/index.htm). The CIT issued a confidential opinion regarding the ITC's determination on remand on January 13, 2009. *DSMC*, Slip Op. 09–05. The ITC informed the Department of Commerce (''Department'') by letter dated January 22, 2009, that the CIT's January 13, 2009, opinion in *DSMC* sustains the ITC's threat–of-material–injury determination. Accordingly, upon notice from the ITC of no appeal or, if appealed, of a ''conclusive'' decision by the CAFC affirming *DSMC*, antidumping duty orders on diamond sawblades from the PRC and Korea will be issued.

Suspension of Liquidation

In *Timken*, the CAFC held that, pursuant to section 516A(c)(1) of the Tariff Act of 1930, as amended (''the Act''), the Department must publish notice of a court decision that is not ''in harmony'' with an ITC determination. *Timken*, 893 F.2d at 341. The CIT's January 13, 2009, opinion in DSMC constitutes a decision not in harmony with the ITC's *Final Determination. See* ITC January 22, 2009, Letter. Thus, publication of this notice fulfills the obligation arising under *Timken*. The CAFC also held that the Department must suspend liquidation of the subject merchandise until there is a ''conclusive'' decision in the case. *Timken*, 893 F.2d at 341; *Smith Corona Corp. v. United States*, 915 F.2d 683, 688 (Fed. Cir. 1990). Therefore, effective January 23, 2009, the Department is suspending liquidation pending the expiration of the period to appeal or pending a final decision of the CAFC if *DSMC* is appealed.

Comments submitted by interested parties are addressed in the Memorandum from John M. Andersen, Acting Deputy Assistant Secretary, Antidumping and Countervailing Duty Operations, for Import Administration, to Ronald K. Lorentzen, Acting Assistant Secretary for Import Adminstration, dated February 3, 2009, which is available in Room 1117 of the Department of Commerce building.

This notice is issued and published in accordance with section 516A(c)(1) of the Act.

Dated: February 3, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–2642 Filed 2–9–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–848

Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission of Review in Part

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

SUMMARY: On October 6, 2008, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China. The review covers one exporter. The period of review is September 1, 2006, through August 31, 2007.

Based on our analysis of the comments received, we have made no changes to our margin calculations. Therefore, the final results do not differ from the preliminary results. The final weighted–average dumping margin for the reviewed firm is listed below in the section entitled ''Final Results of the Review.''

EFFECTIVE DATE: February 10, 2009

FOR FURTHER INFORMATION CONTACT: Dmitry Vladimirov or Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0665 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 6, 2008, the Department of Commerce (the Department) published the preliminary results of review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC). See *Freshwater Crawfish Tail Meat From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind Review in Part*, 73 FR 58115 (October 6, 2008) (*Preliminary Results*). The administrative review covers Yancheng Hi–King Agriculture Developing Co., Ltd. (Hi–King). We invited interested parties to comment on the preliminary results. On November 5, 2008, we received a case brief from the petitioners, the Crawfish Processors Alliance and the Louisiana Department of Agriculture and Forestry. On November 10, 2008, we received a rebuttal brief from Hi–King. The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The product covered by the antidumping duty order is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or unpurged), grades, and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 1605.40.10.10 and 1605.40.10.90, which are the HTSUS numbers for prepared foodstuffs, indicating peeled crawfish tail meat and other, as introduced by the CBP in 2000, and HTSUS numbers 0306.19.00.10 and 0306.29.00.00, which are reserved for fish and crustaceans in general. The HTSUS subheadings are provided for convenience and customs purposes only. The written description of the scope of the order is dispositive.

Partial Rescission of Administrative Review

In the *Preliminary Results*, we preliminarily found that Shanghai Now Again International Trading Co., Ltd. (Shanghai Now Again), and Xiping Opeck Food Co., Ltd. (Xiping Opeck), had no shipments of subject merchandise during the period of review and we stated our intent to rescind the administrative review with respect to these companies. See *Preliminary Results*, 73 FR at 58116. We have received no comments concerning our intent to rescind this administrative review in part. We continue to find that Shanghai Now Again and Xiping Opeck had no shipments of freshwater crawfish tail meat from the PRC during the period of review. In accordance with 19 CFR 351.213(d)(3), we are rescinding our review of Shanghai Now Again and Xiping Opeck.

Surrogate Country

In the *Preliminary Results*, we treated the PRC as a non–market-economy (NME) country and, therefore, we calculated normal value in accordance with section 773(c) of the Act. Also, we

stated that we selected India[1] as the appropriate surrogate country to use in this review because (1) it is a significant producer of merchandise comparable to subject merchandise and (2) it is at a level of economic development comparable to the PRC, pursuant to section 773(c)(4) of the Act. See *Preliminary Results*, 73 FR at 58117. No interested party commented on our designation of the PRC as an NME country or the selection of India as the primary surrogate country. Therefore, for the final results of review, we have continued to treat the PRC as an NME country and have used the same primary surrogate country, India, for these final results.

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

In the *Preliminary Results*, we found that Hi–King demonstrated its eligibility for separate–rate status. See *Preliminary Results*, 73 FR at 58117–58118. We received no comments from interested parties regarding the separate–rate status of this company. Therefore, in these final results of review, we continue to find that the evidence placed on the record of this review by Hi–King demonstrates an absence of government control, both in law and in fact, with respect to its exports of the merchandise under review. Thus, we have determined that Hi–King is eligible to receive a separate rate.

Duty Absorption

In the *Preliminary Results*, we stated that we will not make a duty–absorption determination with respect to Jingdezhen Garay Foods Co., Ltd., Shanghai Now Again, Xiping Opeck, Anhui Tongxin Aquatic Product & Food Co., Ltd., and Xuzhou Jinjiang Foodstuffs Co., Ltd., because we have either rescinded or were announcing our intent to rescind in part the review with respect to these companies. See *Preliminary Results*, 73 FR at 58117. In addition, we stated that we have not investigated whether Hi–King absorbed duties because there is no record evidence indicating that Hi–King sold subject merchandise in the United States through an affiliated importer. See *Preliminary Results*, 73 FR at 58117.

While we continue to not make a duty–absorption determination for the final results, we are clarifying our analysis. Section 751(a)(4) of the Act provides that, if requested, the Department shall determine during an administrative review initiated two or four years after the publication of the order ''whether antidumping duties have been absorbed by a foreign producer or exporter. . . if the subject merchandise is sold in the United States'' through an affiliated importer. Because the order on crawfish tail meat from the PRC was published on September 15, 1997, and this review was initiated ten years thereafter on October 31, 2007, this review was not initiated two or four years after the publication of the order. Therefore, pursuant to section 751(a)(4) of the Act, the Department continues to not make a duty–absorption determination in this review.

Analysis of Comments Received

A single issue raised in the case and rebuttal briefs by parties in this review is addressed in the ''Issues and Decision Memorandum'' (Decision Memo) from John M. Andersen, Acting Deputy Assistant Secretary, to Ronald K. Lorentzen, Acting Assistant Secretary, dated February 3, 2009, which is hereby adopted by this notice. The issue which parties have raised and to which we have responded in the Decision Memo relates to the appropriate calculation of surrogate values for inland–freight expenses. Parties can find a complete discussion of the issue raised in this review and the corresponding recommendation in this public memorandum, which is on file in the Department's Central Records Unit, Room 1117 of the main Commerce building (CRU). In addition, a complete version of the Decision Memo can be accessed directly on the Web at http://ia.ita.doc.gov/frn. The paper copy and electronic version of the Decision Memo are identical in content.

Changes Since the Preliminary Results

There are no changes in the calculations from those we completed for the *Preliminary Results*.

Final Results of the Review

The Department has determined that the following final weighted–average dumping margin exists for the period September 1, 2006, through August 31, 2007:

Manufacturer/Exporter	Percent Margin
Yancheng Hi–King Agriculture Developing Co., Ltd.	0.00

Assessment Rates

The Department intends to issue assessment instructions to U.S. Customs and Border Protection (CBP) 15 days after the date of publication of these final results of review. Because we calculated a margin of zero percent for Hi–King, we will instruct CBP to liquidate the entries of merchandise exported by Hi–King without regard to antidumping duties.

Cash–Deposit Requirements

The following cash–deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2)(C) of the Act: (1) for subject merchandise exported by Hi–King, the cash–deposit rate will be 0.00 percent; (2) for previously reviewed or investigated companies not listed above that have separate rates, the cash–deposit rate will continue to be the company–specific rate published for the most recent period; (3) for all other PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash–deposit rate will be PRC–wide rate of 223.01 percent; (4) for all non–PRC exporters of subject merchandise the cash–deposit rate will be the rate applicable to the PRC entity that supplied that exporter. These deposit requirements shall remain in effect until further notice.

Notifications

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

[1] We have selected India as the primary surrogate country in which to value all inputs with the exception of live crawfish, the primary input, and the by-product, crawfish scrap shell. See *Preliminary Results*, 73 FR at 58117, for a discussion regarding the valuation of live crawfish and the selection of Indonesia as the secondary surrogate country.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: February 3, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–2767 Filed 2–9–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–844]

Certain Lined Paper Products From India: Final Results of Countervailing Duty Administrative Review

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

SUMMARY: On October 6, 2008, the U.S. Department of Commerce (''the Department'') published in the **Federal Register** its preliminary results of the administrative review of the countervailing duty (''CVD'') order on certain lined paper products (''lined paper'') from India for the period of review (''POR'') February 15, 2006, through December 31, 2006.[1] *See Certain Lined Paper Products from India: Notice of Preliminary Results of Countervailing Duty Administrative Review*, 73 FR 58121 (October 6, 2008) (''*Preliminary Results*''). We found that respondent, Navneet Publication India Limited (''Navneet'') received countervailable subsidies during the POR. We received comments on our preliminary results from petitioners[2] and rebuttal comments from respondent. The final results are listed in the section ''Final Results of Review'' below.

DATES: *Effective Date:* February 10, 2009.

FOR FURTHER INFORMATION CONTACT: Jolanta Lawska at (202) 482–8362, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On September 28, 2006, the Department published in the **Federal Register** the CVD order on certain lined paper products from India. *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People's Republic of China; Notice of Antidumping Duty Orders: Certain Lined Paper Products from India, Indonesia and the People's Republic of China; and Notice of Countervailing Duty Orders: Certain Lined Paper Products from India and Indonesia*, 71 FR 56949 (September 28, 2006). On October 6, 2008, the Department published in the **Federal Register** its preliminary results of the administrative review of this order for the period February 15, 2006, through December 31, 2006. *See Preliminary Results*, 73 FR at 58121. In accordance with 19 CFR 351.213(b), this administrative review covers Navneet, a producer and exporter of subject merchandise.

In the *Preliminary Results*, we invited interested parties to submit briefs or request a hearing. On November 13, 2008, we received comments from petitioners. On November 26, 2008, we received rebuttal comments from respondent. No party requested a hearing.

Scope of Order

The scope of this order includes certain lined paper products, typically school supplies,[3] composed of or including paper that incorporates straight horizontal and/or vertical lines on ten or more paper sheets,[4] including but not limited to such products as single- and multi-subject notebooks, composition books, wireless notebooks, looseleaf or glued filler paper, graph paper, and laboratory notebooks, and with the smaller dimension of the paper measuring 6 inches to 15 inches (inclusive) and the larger dimension of the paper measuring 8¾ inches to 15 inches (inclusive). Page dimensions are measured size (not advertised, stated, or ''tear-out'' size), and are measured as they appear in the product (*i.e.*, stitched and folded pages in a notebook are measured by the size of the page as it appears in the notebook page, not the size of the unfolded paper). However, for measurement purposes, pages with tapered or rounded edges shall be measured at their longest and widest points. Subject lined paper products may be loose, packaged or bound using any binding method (other than case bound through the inclusion of binders board, a spine strip, and cover wrap). Subject merchandise may or may not contain any combination of a front cover, a rear cover, and/or backing of any composition, regardless of the inclusion of images or graphics on the cover, backing, or paper. Subject merchandise is within the scope of this order whether or not the lined paper and/or cover are hole punched, drilled, perforated, and/or reinforced. Subject merchandise may contain accessory or informational items including but not limited to pockets, tabs, dividers, closure devices, index cards, stencils, protractors, writing implements, reference materials such as mathematical tables, or printed items such as sticker sheets or miniature calendars, if such items are physically incorporated, included with, or attached to the product, cover and/or backing thereto.

Specifically excluded from the scope of this order are:

- Unlined copy machine paper;
- Writing pads with a backing (including but not limited to products commonly known as ''tablets,'' ''note pads,'' ''legal pads,'' and ''quadrille pads''), provided that they do not have a front cover (whether permanent or removable). This exclusion does not apply to such writing pads if they consist of hole-punched or drilled filler paper;
- Three-ring or multiple-ring binders, or notebook organizers incorporating such a ring binder provided that they do not include subject paper;
- Index cards;

[1] Pursuant to 19 CFR 351.213(e)(2)(ii), because the Department received Navneet's request during the first anniversary month after publication of the order, this administrative review covers entries from February 15, 2006, the date of suspension of liquidation through December 31, 2006, the end of the most recently completed calendar year. The date of suspension of liquidation corresponds to the publication in the **Federal Register** of the *Notice of Preliminary Affirmative Countervailing Duty Determination and Preliminary Negative Critical Circumstances Determination: Certain Lined Paper Products from India*, 71 FR 7916 (February 15, 2006) (*Preliminary Determination of Lined Paper Investigation*). However, for purposes of this administrative review, we will analyze data corresponding to calendar year 2006 (January 1, 2006, through December 31, 2006) to determine the subsidy rate for exports of subject merchandise made during the period in which liquidation of entries was suspended.

[2] Petitioners are the Association of American School Paper Suppliers and its members Mead Westvaco Corporation, Top Flight Inc., and Norcom Inc.

[3] For purposes of this scope definition, the actual use or labeling of these products as school supplies or non-school supplies is not a defining characteristic.

[4] There shall be no minimum page requirement for looseleaf filler paper.

• Printed books and other books that are case bound through the inclusion of binders board, spine strip, and cover wrap;
• Newspapers;
• Pictures and photographs;
• Desk and wall calendars and organizers (including but not limited to such products generally known as ''office planners,'' ''time books,'' and ''appointment books'');
• Telephone logs;
• Address books;
• Columnar pads & tablets, with or without covers, primarily suited for the recording of written numerical business data;
• Lined business or office forms, including but not limited to: preprinted business forms, lined invoice pads and paper, mailing and address labels, manifests, and shipping log books;
• Lined continuous computer paper;
• Boxed or packaged writing stationery (including but not limited to products commonly known as ''fine business paper,'' ''parchment paper,'' and ''letterhead''), whether or not containing a lined header or decorative lines;
• Stenographic pads (''steno pads''), Gregg ruled,[5] measuring 6 inches by 9 inches;

Also excluded from the scope of this order are the following trademarked products:

• Fly™ lined paper products: A notebook, notebook organizer, loose or glued note paper, with papers that are printed with infrared reflective inks and readable only by a Fly™ pen-top computer. The product must bear the valid trademark Fly™.[6]
• Zwipes™: A notebook or notebook organizer made with a blended polyolefin writing surface as the cover and pocket surfaces of the notebook, suitable for writing using a specially-developed permanent marker and erase system (known as a Zwipes™ pen). This system allows the marker portion to mark the writing surface with a permanent ink. The eraser portion of the marker dispenses a solvent capable of solubilizing the permanent ink allowing the ink to be removed. The product must bear the valid trademark Zwipes™.[7]
• FiveStar® Advance™: A notebook or notebook organizer bound by a continuous spiral, or helical, wire and with plastic front and rear covers made of a blended polyolefin plastic material joined by 300 denier polyester, coated on the backside with PVC (poly vinyl chloride) coating, and extending the entire length of the spiral or helical wire. The polyolefin plastic covers are of specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). Integral with the stitching that attaches the polyester spine covering, is captured both ends of a 1″ wide elastic fabric band. This band is located 2⅜″ from the top of the front plastic cover and provides pen or pencil storage. Both ends of the spiral wire are cut and then bent backwards to overlap with the previous coil but specifically outside the coil diameter but inside the polyester covering. During construction, the polyester covering is sewn to the front and rear covers face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. The flexible polyester material forms a covering over the spiral wire to protect it and provide a comfortable grip on the product. The product must bear the valid trademarks FiveStar® Advance™.[8]
• FiveStar Flex™: A notebook, a notebook organizer, or binder with plastic polyolefin front and rear covers joined by 300 denier polyester spine cover extending the entire length of the spine and bound by a 3-ring plastic fixture. The polyolefin plastic covers are of a specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). During construction, the polyester covering is sewn to the front cover face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. During construction, the polyester cover is sewn to the back cover with the outside of the polyester spine cover to the inside back cover. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. Each ring within the fixture is comprised of a flexible strap portion that snaps into a stationary post which forms a closed binding ring. The ring fixture is riveted with six metal rivets and sewn to the back plastic cover and is specifically positioned on the outside back cover. The product must bear the valid trademark FiveStar Flex™.[9]

Merchandise subject to this order is typically imported under headings 4810.22.5044, 4811.90.9090, 4820.10.2010, 4820.10.2020, 4820.10.2050, and 4820.10.4000 of the Harmonized Tariff Schedule of the United States (HTSUS).[10] The tariff classifications are provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

Analysis of Comments

On November 13, 2008 petitioners filed comments. On November 26, 2008, Navneet filed rebuttal comments. All issues in the petitioners' case and Navneet's rebuttal briefs are addressed in the accompanying Issues and Decision Memorandum for the Countervailing Duty Administrative Review on Certain Lined Paper Products from India (''Decision Memorandum''), which is hereby adopted by this notice. A listing of the issues that parties raised and to which we have responded is attached to this notice as Appendix I. Parties can find a complete discussion of the issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Department's Central Record Unit (CRU), Room 1117 of the main commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the World Wide Web at *http://ia.ita.doc.gov/frn*. The paper copy and the electronic version of the Decision Memorandum are identical in content.

Final Results of Review

In accordance with section 751(a)(7)(A) of the Tariff Act of 1930, as amended (The Act), and 19 CFR 351.221(b)(5), we calculated a subsidy rate for Navneet for the POR. We determine the total net countervailable subsidy rate for Navneet is 8.76 percent *ad valorem* for the POR.

Assessment Rates/Cash Deposits

The Department intends to issue assessment instructions to U.S. Customs and Border Protection (''CBP'') 15 days after the date of publication of these final results of review to liquidate shipments of subject merchandise by Navneet entered, or withdrawn from

[5] ''Gregg ruling'' consists of a single- or double-margin vertical ruling line down the center of the page. For a six-inch by nine-inch stenographic pad, the ruling would be located approximately three inches from the left of the book.

[6] Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

[7] Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

[8] Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

[9] Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

[10] During the investigation additional HTSUS headings were identified.

warehouse, for consumption on or after February 15, 2006, through December 31, 2006, at the *ad valorem* rate listed above. We will also instruct CBP to collect a cash deposit for Navneet of estimated countervailing duties at the rate indicated above on all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results of review.

For all non-reviewed companies, the Department has instructed CBP to assess countervailing duties at the cash deposit rates in effect at the time of entry, for entries between February 15, 2006, and December 31, 2006. The cash deposit rates for all companies not covered by this review are not changed by the results of this review.

Return or Destruction of Proprietary Information

This notice serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 3, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix I—Issues in Decision Memorandum

I. *List of Issues*
- 1. Whether the Department Should Apply Total Adverse Facts Available to Navneet
- 2. In the Alternative, Whether the Department Should Apply Partial Adverse Facts Available in Calculating Navneet's Duty Entitlement Passbook Scheme (''DEPS'') Subsidy
- 3. Whether the Department Erred in Calculating the Benefit on the 80IB Tax Program

II. *Subsidies Valuation Information*
- A. Benchmarks for Long Term Loans and Discount Rates
- B. Allocation Period

III. *Analysis of Programs*
- A. *Programs Determined To Confer Subsidies*
  - 1. Duty Entitlement Passbook Scheme (DEPS)
  - 2. Export Promotion Capital Goods Scheme (EPCGS)
  - 3. The Government of India's Income Deduction Program (80IB Tax Program)
- B. *Programs Determined Not To Be Used*

Programs Administered by the Government of India
- 1. Duty Replenishment Certificate Scheme
- 2. Advance License Program
- 3. Export Processing Zones and Export Oriented Units
- 4. Target Plus Scheme
- 5. Export Processing Zones
- 6. Income Tax Exemption Scheme (Sections 10A, 10B, and 80HHC)
- 7. Market Development Assistance
- 8. Status Certificate Program
- 9. Market Access Initiative
- 10. Loan guarantees from the GOI
- 11. Exemption of Export Credit from Interest Taxes
- 12. Pre and Post-shipment Export Financing

Programs Administered by the State Governments
- 1. State Government of Gujarat Provided Tax Incentives (State Government of Gujarat Program)

State Government of Maharashtra Programs:
- 2. Sales Tax Program from Maharashtra
- 3. Electricity Duty Exemptions Under the State Government of Maharashtra's (SGM) Package Scheme of Incentives of 1993 (PSI of 1993)
- 4. Refunds of Octroi Under the PSI of 1993, Maharashtra Industrial Policy (MIP of 2001), and Maharashtra Industrial Policy (MIP of 2006)
- 5. Infrastructure Subsidies to Mega Projects
- 6. Land for Less than Adequate Remuneration (for firms operating in areas outside the Bombay and Pune metropolitan areas)
- 7. Loan Guarantees Based on Octroi Refunds by the SGM

IV. *Total Ad valorem Rate*

V. *Analysis of Comments*
- 1. Whether the Department Should Apply Total Adverse Facts Available to Navneet
- 2. In the Alternative, Whether the Department Should Apply Partial Adverse Facts Available in Calculating Navneet's Duty Entitlement Passbook Scheme (''DEPS'') Subsidy
- 3. Whether the Department Erred in Calculating the Benefit on the 80IB Tax Program

[FR Doc. E9–2765 Filed 2–9–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Inventions Available for Licensing

AGENCY: National Institute of Standards and Technology, Commerce.

SUMMARY: The inventions listed below are owned in whole or in part by the U.S. Government, as represented by the Secretary of Commerce. The U.S. Government's interest in these inventions is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR Part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: National Institute of Standards and Technology, Office of Technology Partnerships, Attn: Mary Clague, Building 222, Room A240, Gaithersburg, MD 20899. Information is also available via telephone: 301–975–4188, fax 301–975–3482, or e-mail: *mary.clague@nist.gov.* Any request for information should include the NIST Docket number and title for the invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into a Cooperative Research and Development Agreement (''CRADA'') with the licensee to perform further research on the invention for purposes of commercialization. The inventions available for licensing are:

[NIST Docket Number: 07–002]

Title: Zero Order Overly Targets.

Abstract: This invention consists of a method and target design for overlay measurements using optical methods. The key is twofold. One aspect is to allow optical overlay measurements using device-sized dimensions and very dense targets while at the same time using only conventional image based methods. The other aspect is to enable a magnification of the actual overlay by factors of 10 or 20, for example, based on the relative values of the to be described pitch. That is, a 2 nm actual overlay offset can yield a 20 run or 40 nm offset in the reflected signal. The new target designs are unique for overlay and provide a new and revolutionary technique for overlay measurements using overlaid dense structures. This technique has no immediate limitation on feature size and density and in fact very dense features will perform well using this technique.

[NIST Docket Number: 08–002]

Title: Design Modifications and Attachment to the Home Lift Position and Rehabilitation (HLPR) Chair.

Abstract: This invention is owned in whole by the U.S. Government. The invention provides a number of improvements to the original NIST Home Lift Position and Rehabilitation (HLPR) Chair. The HLPR Chair provides lift and mobility capabilities to those dependent on wheelchairs not otherwise available and greatly reduces reliance on healthcare workers to assist in moving a patient to/from the toilet, bed, or rehabilitation.

Dated: February 4, 2009.

Patrick Gallagher,

Deputy Director.

[FR Doc. E9–2759 Filed 2–9–09; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Economic Surveys for U.S. Commercial Fisheries

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

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 April 13, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Rita Curtis, (301) 713–2328 or *Rita.Curtis@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Economic data for selected United States (U.S.) commercial fisheries will be collected for each of the following groups of operations: (1) Processors, including onshore plants, floating processing plants, mothership vessels, and catcher/processor vessels; (2) catcher vessels; and (3) for-hire vessels. The companies associated with these groups will be surveyed for expenditure, earnings, effort, ownership, and employment data; and basic demographic data on fishing and processing crews. These economic data collection programs contribute to legally-mandated analyses required under the Magnuson-Stevens Fishery Conservation and Management Act (MFCMA), the National Environmental Policy Act (NEPA), the Regulatory Flexibility Act (RFA), Executive Order 12866 (EO 12866) as well as a variety of state statutes including Florida Statute 120.54, Hawaii Revised Statute 201M–2, New Jersey Permanent Statutes 52:14B–19 and Oregon Revised Statutes 183.335 and 183.540.

In general, questions will be asked concerning ex-vessel and wholesale prices and revenue, variable and fixed costs, expenditures, effort, ownership, dependence on the fisheries, and fishery employment. The data collection efforts will be coordinated to reduce the additional burden for those who participate in multiple fisheries. Participation in these data collections will be voluntary.

The data will be used for the following three purposes: (1) To monitor the economic performance of these fisheries through primary processing; (2) to analyze the economic performance effects of current management measures; and (3) to analyze the economic performance effects of alternative management measures. The measures of economic performance to be supported by this data collection program include the following: (1) Contribution to net national benefit; (2) contribution to income of groups of participants in the fisheries (*i.e.*, fishermen, vessel owners, processing plant employees, and processing plant owners); (3) employment; (4) regional economic impacts (income and employment); and (5) factor utilizations rates. As required by law, the confidentiality of the data will be protected.

Data collections will focus each year on a different component of the U.S. commercial fisheries, with only limited data collected in previously surveyed components of these fisheries. The latter will be done to update the models that will be used to track economic performance and to evaluate the economic effects of alternative management actions. This cycle of data collection will facilitate economic performance data being available and updated for all the components of the U.S. commercial fisheries identified above.

II. Method of Collection

The surveys will be conducted via mail, telephone and in-person interview. The fisherman will be mailed a copy of the survey instrument in advance of a telephone or in-person interview.

III. Data

OMB Control Number: 0648–0369.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 7,000.

Estimated Time per Response: 1–2 hours for a response from a catcher vessel or for-hire vessel for operating cost, annual cost, revenue, effort, employment, ownership, and limited demographic data; 20–30 minutes per response from a catcher vessel or for-hire vessel for operating cost data; 30 minutes to 1 hour and 30 minutes per response from a catcher vessel or for-hire vessel for annual expenditure and demographic data; 8 hours for a response from a West Coast or Alaska processor, including catcher/processor vessels, mothership vessels, floating processing plants, and onshore plants; 1–2 hours for a response from an East Coast or Gulf processor.

Estimated Total Annual Burden Hours: 7,000.

Estimated Total Annual Cost to Public: $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: February 5, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–2728 Filed 2–9–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XN07

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability and request for comment.

SUMMARY: Notice is hereby given that The Northwest Indian Fisheries Commission (NWIFC) has submitted an amendment to its Tribal Resource Management Plan (Tribal Plan) for NMFS to evaluate. The amendment would allow tribal researchers to take adult and juvenile Puget Sound steelhead and adult Puget Sound Chinook salmon in addition to the fish they already take under the current Tribal Plan. It was presented by the Bureau of Indian Affairs (BIA) on behalf of the Northwest Indian Tribes; the submission fulfills the Tribes' obligations under the protective regulations promulgated for Puget Sound Chinook salmon, Puget Sound steelhead, and Hood Canal summer-run chum salmon under the Endangered Species Act (ESA). The Tribal Plan describes research and assessment activities that may affect listed Puget Sound Chinook salmon, Puget Sound steelhead, and Hood Canal summer-run chum salmon in Washington State. NMFS has completed an evaluation of how well the Tribal Plan fulfills ESA criteria and proposes to determine that the Tribal Plan will not appreciably reduce any listed species' likelihood of survival and recovery. The Secretary of Commerce is making NMFS' evaluation and proposed determination available for public comment.

DATES: Written comments on the Secretary's evaluation and proposed determination must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific Standard Time on March 12, 2009.

ADDRESSES: Written comments and requests for copies of the proposed evaluation should be addressed to Gary Rule, Protected Resources Division, National Marine Fisheries Service, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232–1274. Comments may also be sent via fax to (503) 230 5441. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Gary Rule, Portland, OR (ph.: 503- 230 5424, Fax: 503–210–5441, e-mail: *gary.rule@noaa.gov*).

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

Puget Sound Chinook salmon (*Oncorhynchus tshawytscha*)

Puget Sound steelhead (*O. mykiss*)

Hood Canal summer-run chum salmon (*O. keta*)

Authority

Under section 4 of the ESA, the Secretary is required to adopt such regulations as he deems necessary and advisable for the conservation of the species listed as threatened. The ESA Tribal 4(d) rule (70 FR 37160, June 28, 2005) states that the ESA section 9 take prohibitions do not apply to Tribal Plans that will not appreciably reduce any listed species' likelihood of survival and recovery.

The Tribal Plan

The NWIFC – through the BIA and on behalf of the Northwest Indian Tribes – has submitted an amendment to its Tribal Plan for scientific research and assessment activities within the range of ESA-listed Puget Sound Chinook salmon, Puget Sound steelhead, and Hood Canal summer-run chum salmon. The amendment would alter the current Tribal Plan by allowing researchers to take adult and juvenile Puget Sound steelhead and adult Puget Sound Chinook salmon. The Northwest Indian Tribes conduct, independently and in cooperation with other agencies, a variety of research and assessment projects. These projects provide the technical basis for managing fisheries and conserving and restoring salmon stocks and their habitat. The need for an improved understanding of salmonid survival in the freshwater and early marine life stages drives much of the current research. The Tribal Plan includes implementation, monitoring, and evaluation procedures designed to ensure that the research is consistent with the objectives of the ESA. The research activities described in the Tribal Plan would take place over an 8–year period starting in 2009.

As 50 CFR 223.209 requires, the Secretary must determine whether the Tribal Plan would appreciably reduce the likelihood of survival and recovery for Puget Sound Chinook salmon, Puget Sound steelhead, and Hood Canal summer-run chum salmon. In keeping with those requirements, the Secretary must take comments on how well the Tribal Plan addresses the criteria in § 223.209 when making that determination. NMFS proposes after having evaluated the submission to determine that the Tribal plan will not appreciably reduce the likelihood of survival and recovery for Puget Sound Chinook salmon, Puget Sound steelhead, or Hood Canal summer-run chum salmon.

Dated: February 4, 2009.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–2652 Filed 2–9–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of State Coastal Management Programs and National Estuarine Research Reserves

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Office of Ocean and Coastal Resource Management, National Ocean Service, Commerce.

ACTION: Notice of Intent to Evaluate and Notice of Availability of Final Findings.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the Mississippi Coastal Management Program and the San Francisco Bay Conservation and Development Commission and the California State Coastal Conservancy components of the California Coastal Management Program.

The Coastal Zone Management Program evaluations will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972, as amended (CZMA) and regulations at 15 CFR Part 923, Subpart L. The CZMA requires continuing review of the performance of states with respect to coastal program implementation. Evaluation of Coastal Management Programs requires findings concerning the extent to which a state has met the national objectives, adhered to its Coastal Management Program document approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA.

Each evaluation will include a site visit, consideration of public comments, and consultations with interested Federal, state, and local agencies and members of the public. A public meeting will be held as part of the site visit. Notice is hereby given of the dates of the site visits for the listed evaluations, and the dates, local times, and locations of the public meetings during the site visits.

Dates and Times: The joint San Francisco Bay Conservation and Development Commission and California State Coastal Conservancy evaluation site visit will be held March

9–13, 2009. One public meeting will be held during the week. The public meeting will be held on Monday, March 9, 2009, at 5 p.m. at the San Francisco Bay Conservation and Development Commission, McAteer-Petris Conference Room, 50 California Street, Suite 2600, San Francisco, California.

The Mississippi Coastal Management Program evaluation site visit will be held March 16–20, 2009. One public meeting will be held during the week. The public meeting will be held on Monday, March 16, 2009, at 6 p.m., at the Mississippi Department of Marine Resources, 1141 Bayview Avenue, Biloxi, Mississippi.

ADDRESSES: Copies of states' most recent performance reports, as well as OCRM's evaluation notification and supplemental information request letters to the states, are available upon request from OCRM. Written comments from interested parties regarding these Programs are encouraged and will be accepted until 15 days after the last public meeting held for a Program. Please direct written comments to Kate Barba, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, N/ORM7, Silver Spring, Maryland 20910. When the evaluation is completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the availability of the final evaluation findings for the South Carolina and Virgin Islands Coastal Management Programs (CMPs) and the Jacques Cousteau (NJ) and Grand Bay (MS) National Estuarine Research Reserves (NERRs). Sections 312 and 315 of the Coastal Zone Management Act of 1972 (CZMA), as amended, require a continuing review of the performance of coastal states with respect to approval of CMPs and the operation and management of NERRs.

The Jacques Cousteau and Grand Bay NERRs were found to be adhering to programmatic requirements of the NERR System. The State of South Carolina was found to be implementing and enforcing its federally approved coastal management program, addressing the national coastal management objectives identified in CZMA Section 303(2)(A)–(K), and adhering to the programmatic terms of their financial assistance awards. The evaluation of the Virgin Islands Coastal Management Program focused solely on staffing issues, and the Territory of the U.S. Virgin Islands was found to continue to have difficulty attracting, hiring, and retaining well-qualified staff in sufficient numbers, thus hampering effective implementation of the program.

Copies of these final evaluation findings may be obtained upon written request from: Kate Barba, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, N/ORM7, Silver Spring, Maryland 20910, or *Kate.Barba@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Kate Barba, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, N/ORM7, Silver Spring, Maryland 20910, (301) 563–1182.

Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration

Dated: January 22, 2009.

David M. Kennedy,

Director, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. E9–2676 Filed 2–9–09; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XN05

Fisheries in the Western Pacific; Western Pacific Crustacean Fisheries; 2009 Northwestern Hawaiian Islands Lobster Harvest Guideline

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

ACTION: Notification of harvest guideline for crustaceans.

SUMMARY: NMFS announces that the annual harvest guideline for the commercial lobster fishery in the Northwestern Hawaiian Islands (NWHI) for calendar year 2009 is established at zero lobsters.

FOR FURTHER INFORMATION CONTACT: Bob Harman, NMFS Pacific Islands Region, 808–944–2271.

SUPPLEMENTARY INFORMATION: The NWHI commercial lobster fishery is managed under the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region (Crustaceans FMP). The regulations at 50 CFR 665.50(b)(2) require NMFS to publish an annual harvest guideline for lobster Permit Area 1, comprised of Federal waters around the NWHI.

Regulations governing the Papahanaumokuakea Marine National Monument in the NWHI prohibit the unpermitted removal of monument resources (50 CFR 404.7), and establish a zero annual harvest guideline for lobsters (50 CFR 404.10(a)). Accordingly, NMFS establishes the harvest guideline at zero lobsters for the NWHI commercial lobster fishery for calendar year 2009; thus, no harvest of NWHI lobster resources is allowed.

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

Dated: January 30, 2009.

Emily H. Menashes,

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

[FR Doc. E9–2779 Filed 2–9–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XN14

Marine Mammals; File Nos. 14210 and 782–1719

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

ACTION: Notice; receipt of application and an application for amendment.

SUMMARY: Notice is hereby given that LGL Alaska Research Associates (Dr. Tamara McGuire, Principal Investigator), 1101 E. 76th Ave, Suite B, Anchorage, Alaska 99518 (File No. 14210), and the National Marine Mammal Laboratory (NMML), Alaska Fisheries Science Center (Dr. John L. Bengtson, Principal Investigator), 7600 Sand Point Way, NE., Seattle, Washington 98115–6349 (File No. 782–1719) have applied in due form for a permit and a permit amendment, respectively, to conduct research on the Cook Inlet stock of beluga whales (*Delphinapterus leucas*).

DATES: Written, telefaxed, or e-mail comments must be received on or before March 12, 2009.

ADDRESSES: The applications and related documents are available for review by selecting ''Records Open for Public Comment'' from the Features box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov/index.cfm*, and then selecting File No. 14210 or 782–1719 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on the particular request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File Nos. 14210 and 782–1719.

FOR FURTHER INFORMATION CONTACT: Kristy Beard or Amy Hapeman, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit and permit amendment are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

LGL Alaska Research Associates requests a 5–year permit to approach beluga whales in Cook Inlet, Alaska for photo-identification. The purpose of the research is to identify individual whales and to provide information about movement patterns, habitat use, survivorship, reproduction, and population size. The applicant requests to harass up to 54 belugas, up to 3 times each, between May and October each year.

NMML requests an amendment to Permit No. 782–1719–07 to conduct aerial monitoring of beluga whales in Cook Inlet, Alaska, year-round. The objective is to survey the entire population at least once annually. Up to 585 belugas would be harassed annually during 20 aerial surveys flown at 800 feet. The purposes of the surveys are to (1) provide distribution information during June and July; (2) compare distribution changes over time; (3) provide group size estimates for calculations of stock size; (4) estimate fractions of calves and juveniles in the population; and (5) calibrate and improve survey methodology. The amendment would be valid until the permit expires.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of these applications to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: February 5, 2009.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–2799 Filed 2–9–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2009–HA–0018]

Privacy Act of 1974; System of Records

AGENCY: Uniformed Services University of the Health Sciences, DoD.

ACTION: Notice to amend a system of records notice.

SUMMARY: The Office of the Secretary of Defense is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on March 12, 2009 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Cindy Allard at (703) 588–6830.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record systems being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: February 4, 2009.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

WUSU 03

SYSTEM NAME:

Uniformed Services University of the Health Sciences (USUHS) Student Records (February 16, 1995, 60 FR 9016).

CHANGES:

* * * * *

AUTHORITIES FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 2114, Student; selection; status; obligation and E.O. 9397 (SSN).''

PURPOSE(S):

Delete entry and replace with ''Provides academic data to each student upon request, e.g., transcripts, individual course grades, grade point average, etc.; providing academic data within the Uniformed Services University of the Health Sciences for official use only purposes; and providing data to the respective Surgeon General when a specific and authorized need requires it.''

* * * * *

STORAGE:

Delete entry and replace with ''Paper records in file folders and electronic storage media.''

RETRIEVABILITY:

Delete entry and replace with ''By individual's name and Social Security Number (SSN).''

SAFEGUARDS:

Delete entry and replace with ''The computer facility at the USUHS is operated by the Office of the Registrar. The tapes and hard copies of material are secured in government-approved security containers constructed of four-hour heat-resistant steel material. The physical location of the computer hardware, disks, and printer are located to the extreme rear of the room with access being blocked by a large counter staffed by two office personnel. All access to the computers in the Office of the Registrar is via user identification

and sign-on password. Computer software ensures that only properly identified users can access the Privacy Act files on this system. Passwords are changed when notified by University Information Systems, or upon departure of any person knowing the password.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete and replace with ''Assistant Vice President for Academic Records, The Registrar, Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, MD 20814–4799.''

NOTIFICATION PROCEDURE:

Delete first paragraph and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Registrar, Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

Requests should contain individuals name, Social Security Number (SSN) and dates attended.''

RECORD ACCESS PROCEDURES:

Delete first paragraph and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the OSD/JS FOIA Requester Service Center, 1155 Defense Pentagon, Washington, DC 20301–1155.

Written requests should include name, Social Security Number (SSN) and dates attended.''

* * * * *

WUSU 03

SYSTEM NAME:

Uniformed Services University of the Health Sciences (USUHS) Student Records

SYSTEM LOCATION:

The file will be maintained in the Registrar's Office, USUHS, 4301 Jones Bridge Road, Bethesda, MD 20814–4799. Supplemental files consisting of student evaluation forms, grades, and course examinations pertaining to their Department will be maintained in each department by department chairperson, as well as in the Registrar's office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records will be maintained on all students who matriculate to the University.

CATEGORIES OF RECORDS IN THE SYSTEM:

Grade reports and instructor evaluations of performance/achievement; transcripts summarizing by course title, grade, and credit hours; records of awards, honors, or distinctions earned by students; and data carried forward from the Applicant File System, which includes records containing personal data, e.g., name, rank, Social Security Number, undergraduate school, academic degree(s), current addresses, course grades, and grade point average from undergraduate work and other information as furnished by non-Government agencies such as the American Medical College Admission Service which certifies all information prior to being submitted to the University.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 2114, Student; selection; status; obligation and E.O. 9397 (SSN).

PURPOSE(S):

Provides academic data to each student upon request, e.g., transcripts, individual course grades, grade point average, etc.; providing academic data within the Uniformed Services University of the Health Sciences for official use only purposes; and providing data to the respective Surgeon General when a specific and authorized need is required.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Academic data may be provided to other educational institutions upon the written request of a student.

The ''Blanket Routine Uses'' set forth at the beginning of the USUHS' compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By individual's name and Social Security Number (SSN).

SAFEGUARDS:

The computer facility at the USUHS is operated by the Office of the Registrar. The tapes and hard copies of material are secured in government-approved security containers constructed of four-hour heat-resistant steel material. The physical location of the computer hardware, disks, and printer are located to the extreme rear of the room with access being blocked by a large counter staffed by two office personnel. All access to the computers in the Office of the Registrar is via user identification and sign-on password. Computer software ensures that only properly identified users can access the Privacy Act files on this system. Passwords are changed when notified by University Information Systems, or upon departure of any person knowing the password.

RETENTION AND DISPOSAL:

Files are closed upon Graduation, Transfer, Withdrawal, or Death of student. Records are held in USUHS current file area for 20 years. Retire records to the Washington National Records Center. Records will be destroyed in accordance with the Privacy Act when 50 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Vice President for Academic Records, The Registrar, Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Registrar, Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

Requests should contain individuals name, Social Security Number (SSN) and dates attended.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the OSD/JS FOIA Requester Service Center, 1155 Defense Pentagon, Washington, DC 20301–1155.

Written requests should include name, Social Security Number (SSN) and dates attended.

CONTESTING RECORD PROCEDURES:

The rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 315; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is furnished by instructor personnel, the individual concerned; the National Board of Medical

Examiners; and the Applicant File System.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–2762 Filed 2–9–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2009–OS–0017]

Privacy Act of 1974; System of Records

AGENCY: National Security Agency/Central Security Service, DoD.

ACTION: Notice to amend system of records.

SUMMARY: The National Security Agency/Central Security Service is proposing to amend an exempt system of records to its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action would be effective without further notice on March 12, 2009 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the National Security Agency/Central Security Service, Office of Policy, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Hill at (301) 688–6527.

SUPPLEMENTARY INFORMATION: The National Security Agency's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: February 4, 2009.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

GNSA 06

SYSTEM NAME:

NSA/CSS Health, Medical and Safety Files (February 22, 1993, 58 FR 10531).

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS IN THE SYSTEM:

Delete entry and replace with ''NSA/CSS civilian employees, military assignees, applicants, retirees, certain contract employees that are seen in the Medical Center for first-aid/urgent care treatment, or referred by Security for psychological assessment, families of employees who are nominated for PCS, building concessionaires, visitors requiring emergency treatment, blood donors, designated Health and Safety Officers.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Files may consist of Individual name, Social Security Number (SSN), Employee Identification Number, completed medical and psychological questionnaires, results of physical and laboratory tests, records of medical and psychological treatment, diagnostic test results (e.g., X-rays, EKGs, etc.) correspondence with the individual's medical or psychiatric provider, medical center reports, absence and attendance records, medical and psychological evaluations, child abuse reporting forms, mandatory OSHA and Federal Occupational Injury reports, various NSA/CSS and DoD forms (e.g., consent form), a list of blood donors, and a list of telecommuters.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''E.O. 12196, ''Occupational Safety and Health Programs for Federal Employees; 5 U.S.C. Chapter 81, Compensation for Work Inquiries; 42 U.S.C. 290dd–2, Confidentiality of Records; 20 CFR Part 10, Claims for Compensation under the Federal Employees' Compensation Act, as amended; and E.O. 9397 (SSN).''

PURPOSE:

Delete entry and replace with ''To determine applicant eligibility for hiring, fitness for continued employability and/or access to classified information, Permanent Change of Station (PCS), deployment and/or TDY eligibility; processing of accident and compensation forms; correction of hazardous conditions; eligibility for disability retirement; maintain list of blood donors; and a list of telecommuters; participation in psychological treatment; mandatory health and safety reporting.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to entry ''DoD'' before 'Blanket Routine Uses' set forth at the beginning of the NSA/CSS' compilation of systems of records notice apply.

STORAGE:

Delete entry and replace with ''Paper in file folders and electronic storage media''.

RETRIEVABILITY:

Delete entry and replace with ''By name, Social Security Number (SSN) or Employee Identification Number.''

SAFEGUARDS:

Delete entry and replace with ''Buildings are secured by a series of guarded pedestrian gates and checkpoints. Access to facilities is limited to security-cleared personnel and escorted visitors only. Within the facilities themselves, access to paper and computer printouts are controlled by limited-access facilities and lockable containers. Access is on a need-to-know basis. Paper records are logged and tracked for accountability. Access to electronic means is limited and controlled by computer password protection. Individual access is limited to information needed to perform official functions.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Applicant medical files are maintained for no more than 1 year; files on military assignees are transferred to parent service upon reassignment from NSA/CSS; all other medical case files are destroyed 60 years after retirement/separation. Psychological files on applicants not denied for cause are destroyed after 5 years and those denied for cause are reviewed for retention after 25 years; files on military assignees are destroyed 30 years after the date of the last psychological evaluation; employee files are destroyed 60 years after date of earliest document in folder or 30 years after separation, whichever is later.

Decentralized System—files are either transferred with employee or assignee, or retained as appropriate then destroyed.

Records are destroyed by pulping, burning, shredding, or erasure or destruction of magnet media''.

SYSTEM MANAGER:

Delete entry and replace with ''Chief, Occupational Health, Environment & Safety Services, National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should

address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act/ Privacy Act Office, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000.

Written inquiries should contain the individual's full name, Social Security Number (SSN) and mailing address.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000.

Written inquiries should contain the individual's full name, Social Security Number (SSN) and mailing address. ''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The NSA/CSS rules for contesting contents and appealing initial determinations are published at 32 CFR part 322 or may be obtained by written request addressed to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000.''

* * * * *

GNSA 06

SYSTEM NAME:

NSA/CSS Health, Medical and Safety Files.

SYSTEM LOCATION:

Primary location: National Security Agency/Central Security Service, Fort George G. Meade, MD 20755–6000.

Decentralized segments: Each staff, line, contract and field element as appropriate.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NSA/CSS civilian employees, military assignees, applicants, retirees, certain contract employees that are seen in the Medical Center for first-aid/urgent care treatment, or referred by Security for psychological assessment, families of employees who are nominated for PCS, building concessionaires, visitors requiring emergency treatment, blood donors, designated Health and Safety Officers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files may consist of Individual name, Social Security Number (SS), Employee Identification Number, addresses, completed medical and psychological questionnaires, results of physical and laboratory tests, records of medical and psychological treatment, diagnostic test results (e.g., X-rays, EKG's, etc.) correspondence with the individual's medical or psychiatric provider, medical center reports, absence and attendance records, medical and psychological evaluations, child abuse reporting forms, mandatory OSHA and Federal Occupational Injury reports, various NSA/CSS and DoD forms (e.g., consent form), a list of blood donors, and a list of telecommuters.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

E.O. 12196, Occupational Safety and Health Programs for Federal Employees; 5 U.S.C. Chapter 81, Compensation for Work Inquiries; 42 U.S.C. 290dd–2, Confidentiality of Records; 20 CFR Part 10, Claims for Compensation under the Federal Employees' Compensation Act, as amended; and E.O. 9397 (SSN).

PURPOSE(S):

To determine applicant eligibility for hiring, fitness for continued employability and/or access to classified information, Permanent Change of Station (PCS), deployment and/or TDY eligibility; processing of accident and compensation forms; correction of hazardous conditions; eligibility for disability retirement; maintain list of blood donors; and a list of telecommuters; participation in psychological treatment; mandatory health and safety reporting.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Labor in those cases involving compensation claims and to other government entities to make determinations as noted in the purpose above.

The 'DoD Blanket Routine Uses' set forth at the beginning of the NSA/CSS' compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper in file folders and electronic storage media.

RETRIEVABILITY:

By name, Social Security Number (SSN) or Employee Identification Number.

SAFEGUARDS:

Buildings are secured by a series of guarded pedestrian gates and checkpoints. Access to facilities is limited to security-cleared personnel and escorted visitors only. Within the facilities themselves, access to paper and computer printouts are controlled by limited-access facilities and lockable containers. Access is on a need-to-know basis. Paper records are logged and tracked for accountability. Access to electronic means is limited and controlled by computer password protection. Individual access is limited to information needed to perform official functions.

RETENTION AND DISPOSAL:

Applicant medical files are maintained for no more than 1 year; files on military assignees are transferred to parent service upon reassignment from NSA/CSS; all other medical case files are destroyed 60 years after retirement/separation. Psychological files on applicants not denied for cause are destroyed after 5 years and those denied for cause are reviewed for retention after 25 years; files on military assignees are destroyed 30 years after the date of the last psychological evaluation; employee files are destroyed 60 years after date of earliest document in folder or 30 years after separation, whichever is later.

Decentralized System—files are either transferred with employee or assignee, or retained as appropriate then destroyed.

Records are destroyed by pulping, burning, shredding, or erasure or destruction of magnet media.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Occupational Health, Environment & Safety Services, National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act/ Privacy Act Office, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000.

Written inquiries should contain the individual's full name, Social Security Number (SSN) and mailing address.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the National Security

Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000.

Written inquiries should contain the individual's full name, Social Security Number (SSN) and mailing address.

CONTESTING RECORD PROCEDURES:

The NSA/CSS rules for contesting contents and appealing initial determinations are published at 32 CFR part 322 or may be obtained by written request addressed to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000.

RECORD SOURCE CATEGORIES:

Applicants, employees, assignees, official personnel folders, NSA Safety Officers and records, witnesses to accidents and injuries, medical and administrative personnel, blood donor personnel, members of employee's family with employee's permission and other sources as appropriate and required.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Individual records in this file may be exempt pursuant to 5 U.S.C. 552a(k)(1), (k)(4), (k)(5) and (k)(6) and may also be subject to certain special access procedures established pursuant to 5 U.S.C. 552a, subsection (f)(3).

Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8, may be exempt pursuant to 5 U.S.C. 552a(k)(4).

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

Testing or examination material used solely to determine individual qualifications for appointment or promotion in the federal or military service, if the disclosure would compromise the objectivity or fairness of the test or examination process may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

An exemption rule for this record system has been promulgated according to the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 322. For additional information contact the system manager.

[FR Doc. E9–2785 Filed 2–9–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2009–OS–0019]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice to add a new system of records.

SUMMARY: The Defense Finance and Accounting Service (DFAS) is proposing to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This Action will be effective without further notice on March 12, 2009, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the FOIA/PA Program Manager, Corporate Communications and Legislative Liaison, Defense Finance and Accounting Service, 8899 East 56th Street, Indianapolis, IN 46249–0150.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Krabbenhoft at (303) 589–3510.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on February 4, 2009, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records about Individuals,' dated December 12, 2000, 65 FR 239.

Dated: February 4, 2009.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

T4165

SYSTEM NAME:

DFAS Transportation Incentive Program Records.

SYSTEM LOCATION(S):

Defense Finance and Accounting Service, *Attn:* Support Services, 8899 E. 56th Street, Indianapolis, IN 46246–0201.

Defense Finance and Accounting Service—Limestone, 27 Arkansas Road, Limestone, ME 04751–1500.

Defense Finance and Accounting Service—TSO Patuxent River, 22299 Exploration Park Drive, Lexington Park, MD 20653–2051.

Defense Finance and Accounting Service—TSO Pensacola, 250 Raby Avenue, Pensacola, FL 32509–5122.

Defense Finance and Accounting Service—Rome, 325 Brooks Road, Rome, NY 13441–4527.

Defense Finance and Accounting Service, DFAS—Texarkana, P.O. BOX 611, Texarkana, Texas 75505–6111.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Defense Finance and Accounting Service (DFAS) civilian employees, active duty military and reservist on active duty for more than 30 days.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, home address and telephone number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 7905, Programs to Encourage Commuting by Means other than Single-Occupancy Motor Vehicles; E.O. 12191, Federal Facility Ride Sharing Program; E.O. 13150, Federal Workforce Transportation and E.O. 9397 (SSN).

PURPOSE(S):

In support of the DFAS Transportation Incentive Program for receipt and processing of employee applications and distribution of the fare media; to reimburse participants; to track the use of funds used to support the program; to evaluate employee participation in the program and to prevent misuse of the funds involved for participants outside the National Capitol Region (NCR). Participant records may be used by the DFAS site parking authorities for the purpose of identifying those individuals who receive a fare subsidy and also make use of a DFAS site parking sticker.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To U.S. Department of Transportation for the purposes of administering the Public Transportation Benefit Program and/or verifying the eligibility of individuals to receive a fare subsidy pursuant to transportation benefit program operated by the DoD or other Federal agencies.

The DoD 'Blanket Routine Uses' set forth at the beginning of the DFAS compilation of systems of records notices apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on paper forms and on electronic storage media.

RETRIEVABILITY:

Name and last 4 digits of the Social Security Number (SSN).

SAFEGUARDS:

Records are stored in an office building protected by guards, controlled screening, use of visitor registers, electronic access, and/or locks. Access to records is limited to individuals who are properly screened and cleared on a need to know basis in the performance of their duties. User IDs and passwords are used to control access to the system data, and procedures are in place to deter and detect browsing and unauthorized access.

RETENTION AND DISPOSAL:

Documents relating to the disbursement of transportation subsidies to employees, including applications of employees no longer in the program, superseded applications, certification logs, vouchers, spreadsheets, and other forms used to document the disbursement of subsidies are destroyed when 3 years old. Documents relating to cash reimbursements for transportation expenses associated with transit passes or vanpools, specifically Standard Form (SF) 1164, entitled ''Claim for Reimbursement for Expenditures on Official Business'' are destroyed 6 years and 3 months after period covered by account.

SYSTEM MANAGER(S) AND ADDRESS:

Defense Finance and Accounting Service, Transportation Incentive Program (TIP) Manager, Defense Finance and Accounting Service, *Attn:* Support Services, 8899 E. 56th Street, Indianapolis, IN 46249–0201.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this record system should address written inquiries to the Defense Finance and Accounting Service, Freedom of Information/ Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

Individuals should furnish full name, Social Security Number (SSN), current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

Individuals should furnish full name, Social Security Number (SSN), current address and telephone number.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from Defense Finance and Accounting Service, Freedom of Information/ Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

RECORD SOURCE CATEGORIES:

From the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–2787 Filed 2–9–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2009–OS–0015]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Office of the Secretary of Defense is altering a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on March 12, 2009 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Office of the Secretary of Defense, Privacy Act Coordinator, Records Management Section, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard at (703) 588–6830.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r), of the Privacy Act of 1974, as amended, was submitted on February 2, 2009 to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: February 4, 2009.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DHA 04

SYSTEM NAME:

Defense Bone Marrow Donor Program (February 22, 1993, 58 FR 10227).

CHANGES:

Change System ID to ''DHA 04 DoD''

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Primary system: Naval Medical Research Center, Silver Spring, MD 20910 and C.W. Bill Young/Department of Defense Marrow Donor Center, Naval Medical Research Center and Georgetown University Medical Center, 11333 Woodglen Drive, Rockville, MD 20852–3071.

SECONDARY LOCATIONS:

The National Marrow Donor Program Coordinating Center, 3001 Broadway

Street NE., Minneapolis, MN 55413–2195 (maintains no personal identification information).

National Marrow Donor Program (NMDP) Approved Marrow Collection Centers and NMDP approved Apheresis Centers for collection of adult peripheral blood stem cells. Addresses for these collection centers are available from the System Manager.

System users at secondary locations may access this system via internet. This remote access is limited to users with the appropriate system accounts and permission levels. A list of these secondary locations is available from the System Manager.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Department of Defense military and civilian personnel and their dependents that have volunteered for and been accepted as potential bone marrow donors.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Donor registration and consent forms (or a notation in writing if the consent was obtained telephonically) including consents for testing and to donate a blood sample or buccal swab for HLA (human leukocyte antigen) typing and other genetic tests needed for matching a potential donor and patient that may affect transplant outcome; a consent to donate platelets; a consent to donate hematopoietic progenitor cells (HPC) from the bone marrow or from blood, if compatible with a patient; a consent to undergo anesthesia if selected to donate marrow or a consent to receive filgrastim followed by phereses for blood progenitor cells; consent for blood donation or phereses to collect donor blood lymphocytes for donor lymphocyte infusion as part of the transplant; report of physical examination of the donor to include complete medical history and the results of laboratory and other tests (X-ray, electrocardiogram, virology, etc.) and examining physician's report to the donor center; information pertinent to the collection process including post hospitalization follow-up; donor's written consent for further donations and insurance information offered through the National Marrow Donor Program. Donors may be contacted for additional approved research programs and if the donor agrees additional consents will be obtained. Data items include: Name, Social Security Number (SSN), a bar-coded Donor Identification Number (DIN) and genetic matching types (human leukocyte antigen) type and additional transplant matching type; donor's address, place of work, home and work telephone numbers; names, addresses and telephone numbers of donor's relatives and friends; donor's race/ethnicity; hospital and hospital provider number, city and state; name of transplant center; medical follow-up on the donor after marrow or blood hematopoietic progenitor cell donation.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 113, Secretary of Defense; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 8013, Secretary of the Air Force; Public Law 101–302, Dire Emergency Supplemental Appropriations for Disaster Assistance, Food Stamps, Unemployment Compensation Administration, and Other Urgent Needs, and Transfers, and Reducing Funds Budgeted for Military Spending Act of 1990 and E.O. 9397 (SSN).''

PURPOSE(S):

Delete entry and replace with ''To tissue type as many donors as possible for inclusion in the National Registry of marrow donors. This will offer patients requiring bone marrow or blood hematopoietic progenitor cell (PBSC) transplants access to as many potential donors as possible for the purpose of obtaining compatible match.

To register donors with the National Coordinating Center for the purpose of obtaining a marrow match. Information released will consist of Donor Identification Number, donor's race, date of birth and sex, genetic matching types (HLA), only.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''To the National Coordinating Center for the purpose of obtaining insurance coverage for the donor selected to provide cells for a clinical transplant. Information released will consist of name, address, Social Security Number (SSN) and date of birth. Name and address only for the purpose of direct informational mailing (in such a way that the individual is not linked to his or her donor identification number or human leukocyte antigen type).

To a NMDP-approved civilian medical facility in only those cases where required medical examination and/or actual marrow or blood hematopoietic progenitor cell procurement is performed.

Note: This system of records contains individually identifiable health information. DoD 6025.18–R, ''DoD Health Information Privacy Regulation'' issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.''

POLICIES AND PRACTICES FOR STORING, RETRIEVING/ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Delete entry and replace with ''Records are maintained on paper in file folders and electronic storage media.''

RETRIEVABILITY:

Delete entry and replace with ''By donor's name, Social Security Number (SSN) or Donor Identification Number, human leukocyte antigen type, date of birth, sex and racial/ethnic group.''

SAFEGUARDS:

Delete entry and replace with ''Records are accessed by authorized personnel with an official need-to-know who have been trained for handling personally identifiable information. Hard copy records are maintained in locked cabinets in restricted access areas. Computer files are accessed on a password-protected stand-alone microcomputer system that includes a complete array of certified intrusion protection with computers housed in restricted areas with mechanical locks for additional protection. Computer files containing personal identifiers are maintained in a database server on a network using strict firewall rules for access and data files are maintained on a database encoded format that cannot be read without access through the secure database. Backup data containing personal identifiers are maintained in secure locked cabinets and the data is encrypted. Medical information required to facilitate the donation process is maintained on a local system developed as part of the National Marrow Donor Program. The database requires a second and third level of password protection for access by DoD Marrow Donor Program personnel with a need-to-know.

Specific permitted information (without personal identifiers) is transmitted to and received from the national coordinating center of the National Marrow Donor Program in a secure system to facilitate selection of donors for transplantation and provide

information about the progress of the donation process.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Pending. Until National Archives and Records Administration approves the retention and disposition schedule, treat records as permanent.''

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Assistant Secretary of Defense (Health Affairs), Office of Professional Affairs and Quality Assurance, Room 3D366, 1200 Defense Pentagon, Washington, DC 20301–1200, where a log of these requests will be maintained.

Individuals may also determine if they are included by contacting the Donor Center of the C.W. Bill Young Marrow Donor Recruitment and Research Program, the DoD Bone Marrow Donor Program, 11333 Woodglen Drive, Rockville, MD 20852–3071.

The request should contain the individual's full name and Social Security Number (SSN).''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the OSD/JS FOIA Requester Service Center, 1155 Defense Pentagon, Washington, DC 20301–1155.

The request should contain the individual's full name, Social Security number (SSN), and, if applicable, the name of the medical facility where examinations, tests, bone marrow collection, and follow-up procedures were conducted.''

* * * * *

DHA 04 DoD

SYSTEM NAME:

Defense Bone Marrow Donor Program.

SYSTEM LOCATION:

Primary system: Naval Medical Research Center, Silver Spring, MD 20910 and C.W. Bill Young/Department of Defense Marrow Donor Center, Naval Medical Research Center and Georgetown University Medical Center, 11333 Woodglen Drive, Rockville MD 20852–3071.

SECONDARY LOCATIONS:

The National Marrow Donor Program Coordinating Center, 3001 Broadway Street, NE., Minneapolis, MN 55413–2195 (no personal identification information).

National Marrow Donor Program (NMDP) Approved Marrow Collection Centers and NMDP approved Apheresis Centers for collection of adult peripheral blood stem cells. Addresses for these collection centers are available from the System Manager.

System users at secondary locations may access this system via internet. This remote access is limited to users with the appropriate system accounts and permission levels. A list of these secondary locations is available from the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Defense military and civilian personnel and their dependents that have volunteered for and been accepted as potential bone marrow donors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Donor registration and consent forms (or a notation in writing if the consent was obtained telephonically) including consents for testing and to donate a blood sample or buccal swab for HLA (human leukocyte antigen) typing and other genetic tests needed for matching a potential donor and patient that may affect transplant outcome; a consent to donate platelets; a consent to donate hematopoietic progenitor cells (HPC) from the bone marrow or from blood, if compatible with a patient; a consent to undergo anesthesia if selected to donate marrow or a consent to receive filgrastim followed by phereses for blood progenitor cells or consent for blood donation or phereses to collect donor blood lymphocytes for donor lymphocyte infusion as part of the transplant; report of physical examination of the donor to include complete medical history and the results of laboratory and other tests (X-ray, electrocardiogram, virology, etc.) and examining physician's report to the donor center; information pertinent to the collection process including post hospitalization follow-up; donor's written consent for further donations and insurance information offered through the National Marrow Donor Program. Donors may be contacted for additional approved research programs and if the donor agrees additional consents will be obtained. Data items include: Name, Social Security Number (SSN), a bar-coded Donor Identification Number (DIN) and genetic matching types (HLA) type and additional transplant matching type; donor's address, place of work, home and work telephone numbers; names, addresses and telephone numbers of donor's relatives and friends; donor's race/ethnicity; hospital and hospital provider number, city and State; name of transplant center; medical follow-up on the donor after marrow or blood hematopoietic progenitor cell donation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 113, Secretary of Defense; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 8013, Secretary of the Air Force; Public Law 101–302, Dire Emergency Supplemental Appropriations for Disaster Assistance, Food Stamps, Unemployment Compensation Administration, and Other Urgent Needs, and Transfers, and Reducing Funds Budgeted for Military Spending Act of 1990 and E.O. 9397 (SSN).

PURPOSE(S):

To tissue type as many donors as possible for inclusion in the National Registry of marrow donors. This will offer patients requiring bone marrow or blood hematopoietic progenitor cell (PBSC) transplants access to as many potential donors as possible for the purpose of obtaining compatible match.

To list registered donors with the National Coordinating Center for the purpose of obtaining a marrow match. Information released will consist of DIN, donor's race, date of birth and sex, genetic matching types (HLA), only.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the National Coordinating Center for the purpose of obtaining insurance coverage for the donor selected to provide cells for a clinical transplant. Information released will consist of name, address, Social Security Number and date of birth. Name and address only for the purpose of direct informational mailing (in such a way that the individual is not linked to his or her donor identification number or HLA-type).

To a NMDP-approved civilian medical facility in only those cases where required medical examination and/or actual marrow or blood hematopoietic progenitor cell procurement is performed.

Note: This system of records contains individually identifiable health information. DoD 6025.18–R, ''DoD Health Information Privacy Regulation'' issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING/ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper in file folders and electronic storage media.

RETRIEVABILITY:

By donor's name, Social Security Number (SSN) or Donor Identification Number, HLA type, date of birth, gender and racial/ethnic group.

SAFEGUARDS:

Records are accessed by authorized personnel with an official need-to-know who have been trained for handling personally identifiable information. Hard copy records are maintained in locked cabinets in restricted access areas. Computer files are accessed on a password-protected stand-alone microcomputer system that includes a complete array of certified intrusion protection with computers housed in restricted areas with mechanical locks for additional protection. Computer files containing personal identifiers are maintained in a database server on an enclaved network using strict firewall rules for access and data files are maintained on a database encoded format that cannot be read without access through the secure database. Backup data containing personal identifiers are maintained in secure locked cabinets and the data is encrypted. Medical information required to facilitate the donation process is maintained on a local system developed as part of the National Marrow Donor Program; the database requires a second and third level of password protection for access by DoD Marrow Donor Program personnel with a need-to-know.

Specific permitted information (without personal identifiers) is transmitted to and received from the national coordinating center of the National Marrow Donor Program in a secure system to facilitate selection of donors for transplantation, and provide information about the progress of the donation process.

RETENTION AND DISPOSAL:

Pending. Until National Archives and Records Administration approves the retention and disposition schedule, treat records as permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Secretary of Defense (Health Affairs), Office of Professional Affairs and Quality Assurance, Room 3D366, 1200 Defense Pentagon, Washington, DC 20301–1200.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Assistant Secretary of Defense (Health Affairs), Office of Professional Affairs and Quality Assurance, Room 3D366, 1200 Defense Pentagon, Washington, DC 20301–1200, where a log of these requests will be maintained.

Individuals may also determine if they are included by contacting the Donor Center of the C.W. Bill Young Marrow Donor Recruitment and Research Program, the DoD Bone Marrow Donor Program, 11333 Woodglen Drive, Rockville, MD 20852–3071.

The request should contain the individual's full name, Social Security Number (SSN), and, if applicable, the name of the medical facility where examinations, tests, bone marrow collection, and follow-up procedures were conducted.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the OSD/JS FOIA Requester Service Center, 1155 Defense Pentagon, Washington, DC 20301–1155.

The request should contain the individual's full name, Social Security Number (SSN), and, if applicable, the name of the medical facility where examinations, tests, bone marrow collection, and follow-up procedures were conducted.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR Part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained from record subjects and attending medical specialists.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–2790 Filed 2–9–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2009–OS–0016]

Privacy Act of 1974; System of Records

AGENCY: Office of the Inspector General, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Office of the Inspector General (OIG) is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on March 12, 2009 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to Chief, FOIA/PA Office, Inspector General, Department of Defense, 400 Army Navy Drive, Room 201, Arlington, VA 22202–4704.

FOR FURTHER INFORMATION CONTACT: Office of the Inspector General Privacy Officer at (703) 604–8723.

SUPPLEMENTARY INFORMATION: The Office of the Inspector General (OIG) systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: February 4, 2009.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

CIG–04

SYSTEM NAME:

Case Control System—Investigative. (October 15, 2008, 73 FR 61084).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with ''Case Reporting and Information Management System Records.''

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Individuals covered include any person or activity which is or has been the subject of an OIG investigation. Additionally, covered individuals will include persons who have been identified as a target or informant as well as personnel employed by the Office of the Inspector General (OIG).''

* * * * *

CATEGORY OF RECORDS:

Delete entry and replace with ''Individual's Name, Social Security Number (SSN), Drivers License, Other ID Numbers, Gender, Race/Ethnicity, Birth Date, Mailing Home Address, Mailing Office Address, Home Phone Number, Office Phone Numbers, Personal Email Address, Business Email Address, Place of Birth, Marital Status, Employment Information, Law Enforcement Data, records of investigations to include Reports of Investigation, Information Reports and Case Summaries, which are being or have been conducted by the OIG.''

* * * * *

SAFEGUARDS:

Delete entry and replace with ''Computerized records maintained in a controlled area are accessible only to authorized personnel. Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, and is accessible only to authorized personnel. Physical and electronic access is restricted to designated individuals having a need therefore in the performance of official duties and who are properly screened and cleared for need-to-know. Electronic data system is password protected and will include data encryption of some fields.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Electronic records are retained indefinitely for statistical purposes. Paper records are archived two years after cases are closed.''

* * * * *

CIG–04

SYSTEM NAME:

Case Reporting and Information Management System Records.

SYSTEM LOCATION:

Primary location: Office of the Inspector General, Department of Defense, Office of the Deputy Inspector General for Investigations, Defense Criminal Investigative Service (DCIS), 400 Army Navy Drive, Arlington, VA 22202–4704.

Decentralized locations: Office of the Deputy Inspector General for Investigations/ Defense Criminal Investigative Service Field Offices, Resident Agencies, and Posts of Duty have temporary control over portions of the records.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered include any person or activity which is or has been the subject of an OIG investigation. Additionally, covered individuals will include persons who have been identified as a target or informant as well as personnel employed by the Office of the Inspector General (OIG).

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's Name, Social Security Number (SSN), Drivers License, Other ID Numbers, Gender, Race/Ethnicity, Birth Date, Mailing Home Address, Mailing Office Address, Home Phone Number, Office Phone Numbers, Personal Email Address, Business Email Address, Place of Birth, Marital Status, Employment Information, Law Enforcement Data, records of investigations to include Reports of Investigation, Information Reports and Case Summaries, which are being or have been conducted by the OIG.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978, (Pub. L. 452), as amended; DoD Directive 5106.1, Inspector General of the Department of Defense; and E.O. 9397 (SSN).

PURPOSE(S):

The file contains open and closed case listings used to manage investigations, to produce statistical reports, and to control various aspects of the investigative process. Users are OIG employees. Used to determine the existence, location, and status of cases, control workload, and to prepare statistical reports. The records in this system are used for the following purposes: Suitability, loyalty, eligibility, and general trustworthiness of individuals for access or continued access to classified information and suitability for access to government facilities or industrial firms engaged in government projects/contracts; contractor responsibility and suspension/debarment determinations; suitability for awards or similar benefits; use in current law enforcement investigation or program of any type; use in judicial or adjudicative proceedings including litigation or in accordance with a court order; to identify offenders, to provide facts and evidence upon which to base prosecution, to provide information to other investigative elements of the Department of Defense having jurisdiction over the substance of the allegations or a related investigative interest in criminal law enforcement investigations including statutory violations, counter-intelligence, counter-espionage and counter-terrorist activities and other security matters; to effect corrective administrative action and to recover money and property which has been wrongfully used or misappropriated; to make statistical evaluations and reports; to make decisions affecting personnel actions concerning members of the Armed Forces and or Federal employees; and to respond to other complaint investigations and congressional inquiries as appropriate.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the U.S. Secret Service in conjunction with the protection of persons under its jurisdiction.

To other Federal, State, or local agencies having jurisdiction over the substance of the allegations or a related investigative interest in criminal law enforcement investigations including statutory violations, counter-intelligence, counter-espionage, and counter-terrorist activities and other security matters.

To other Federal Inspector General offices, the President's Council on Integrity and Efficiency, and/or other Federal law enforcement agencies for the purpose of coordinating and conducting administrative inquiries and civil and criminal investigations, or when responding to such offices, Council, and agencies in connection with the investigation of potential violations of law, rule, and/or regulation.

To other Federal Inspector General offices, the President's Council on Integrity and Efficiency, and/or the Department of Justice for purposes of

conducting external reviews to ensure that adequate internal safeguards and management procedures continue to exist within the Office of the Inspector General of the Department of Defense.

The 'Blanket Routine Uses' set forth at the beginning of the OIG's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

By name or Social Security Number.

SAFEGUARDS:

Computerized records maintained in a controlled area are accessible only to authorized personnel. Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, and is accessible only to authorized personnel. Physical and electronic access is restricted to designated individuals having a need therefore in the performance of official duties and who are properly screened and cleared for need-to-know. Electronic data system is password protected and will include data encryption of some fields.

RETENTION AND DISPOSAL:

Electronic records are retained indefinitely for statistical purposes. Paper records are archived two years after cases are closed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Internal Operations Directorate, Defense Criminal Investigative Service, Office of the Inspector General for Investigations, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Freedom of Information Act Requester Service Center/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

Written requests should contain the individual's full name (including former names and aliases) date and place of birth, Social Security Number (SSN), current home address, telephone number and the request must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Freedom of Information Act Requester Service Center/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

Written requests should contain the individual's full name (including former names and aliases) date and place of birth, Social Security Number (SSN), current home address, telephone number and the request must be signed.

CONTESTING RECORD PROCEDURES:

The OIG's rules for accessing records and for contesting contents and appealing initial agency determinations are published in 32 CFR part 312 or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

OIG System Administrators.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency that performs as its principle function any activity pertaining to the enforcement of criminal laws.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 312. For additional information contact the system manager.

[FR Doc. E9–2794 Filed 2–9–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID USAF–2009–0015]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force.

ACTION: Notice to add a system of records.

SUMMARY: The Department of the Air Force proposes to add a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective on March 12, 2009 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Officer, Office of Warfighting Integration and Chief Information Officer, SAF/XCPPI, 1800 Air Force Pentagon, Washington, DC 20330–1800.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Brodie at (703) 696–7557.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, were submitted on January 22, 2009 to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996, (February 20, 1996, 61 FR 6427).

Dated: February 4, 2009.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F036 AF AETC B

SYSTEM NAME:

Graduate Training Integration Management Records.

SYSTEM LOCATION:

The Air Force headquarters database is located at HQ AETC/A3IS, Hangar 6, Suite 1, 1150 5th Street East, Randolph Air Force Base, TX 78150–4404.

The site training databases are located at:

325th Operational Support Squadron, Bldg. 164, Room 105, 841 Florida Ave, Tyndall Air Force Base, FL 32403–5552.

56th Operations Support Squadron, Room 122, 7324 N. Homer Dr., Luke AFB, AZ 85309–1661.

Doss Aviation, One William White Blvd., Room 120, Pueblo, CO 81001–1120.

23 FT Squadron, 58 Operations Group, Bldg. 6621, Room 1, Andrews Ave., Ft Rucker, AL 36362–3636.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All students and cadre involved in the flight training operations to include: active duty Air Force, Navy and National Guard personnel and Reserves, Department of Defense (DoD) civilians, contractors and foreign national military.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, grade, Social Security Number (SSN), address and telephone number, source of commission, education information to include university, dates

of attendance, graduation degree, major and date and past training unit of assignment. Complete record of flying training including class number, section number, flying and academic courses completed; complete record of evaluations including grades on each phase of flight evaluations and overall flight evaluation performance in each category of training, flying hours; date graduated or eliminated with reasons for elimination and Training Review Board proceedings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; AETCI 36–2205, Formal Aircrew Training administration and management; AETCI 36–2220, Academic Training; AETCI 36–2223, Flying Training Student Information Management and E.O. 9397 (SSN).

PURPOSE:

Manages all aspects of Air Force graduate flight training. Provides scheduling of all resources to include students, instructors, classrooms, classroom equipment and resource files, aircrew training (simulator) devices, aircraft and airspace. Monitors student performance by source of entry, education level and minority status. Maintains data, tracks and provides performance evaluation and deficiency tracking of students; and training and qualifications of instructor pilots and other training cadre. Maintains training information and qualifications of graduates for follow-on training to Air National Guard/Air Force Reserve and other Air Force/Navy training units. Manages syllabi and evaluates training course content. Provides data for and documents proceedings in the event of Training Review Board actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows: the DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic storage media.

RETRIEVABILITY:

By name and Social Security Number (SSN).

SAFEGUARDS:

Computer databases are located in locked servers in locked rooms in flying training classroom/laboratory buildings on Air Force installations. All training facilities with system-accessible workstations are controlled during duty hours and secured after duty hours. Access to record, (database) data, by users (including students, training cadre, flight training managers, and system administrators) is controlled by Common Access Card (CAC) identification. Authorized access to specific data is controlled in accordance with user roles and permissions.

RETENTION AND DISPOSAL:

Air Education and Training Command (AETC) archive policy training records to include GTIMS computer databases are retained as active at least two years. Archiving records from the units' servers that are more than two years old will begin when the data is complete and correct, i.e. final Merit Assignment Selection System (MASS) is run and students are graduated and correctly dispositioned. HQ AETC/A3IS will maintain a complete GTIMS database indefinitely.

GTIMS hardcopy reports such as student grade book and other paper reports generated for instructor, flight commander, etc., are destroyed one year after completion of training.

Training Review Board records are retained for one year. Hardcopy records are destroyed by tearing into pieces, shredding, pulping, macerating or burning.

SYSTEM MANAGER AND ADDRESS:

Department of the Air Force, Deputy Chief of Staff Operations, Headquarters Air Education and Training Command, 1 F Street, suite 2, Randolph Air Force Base, TX 78150–4325.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Department of the Air Force, Deputy Chief of Staff Operations, Headquarters Air Education and Training Command, 1 F Street, suite 2, Randolph Air Force Base, TX 78150–5000.

Individuals should provide full name, Social Security Number (SSN), office or organization where currently assigned, if applicable, and current address and telephone number. The requester's signature should be certified/verified by a notary public as below.

If an unsworn declaration is executed outside the United States, it shall read ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If an unsworn declaration is executed within the United States, its territories, possessions, or commonwealths, it shall read ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to or visit the Department of the Air Force, Deputy Chief of Staff Operations, Headquarters Air Education and Training Command, 1 F Street, suite 2, Randolph Air Force Base, TX 78150–5000.

Individuals should provide full name, Social Security Number (SSN), office or organization where currently assigned, if applicable, and current address and telephone number. The requester's signature should be certified/verified by a notary as below.

If an unsworn declaration is executed outside the United States, it shall read ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If an unsworn declaration is executed within the United States, its territories, possessions, or commonwealths, it shall read ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

CONTESTING RECORDS PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33–332; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; students' grades rendered by Computer Aided Instruction (CAI) tests and instructor grades from observed training events.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–2763 Filed 2–9–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID USAF–2009–0014]

Privacy Act of 1974; System of Records

AGENCY: Department of Air Force.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of Air Force proposes to amend a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The changes will be effective on March 12, 2009 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Officer, Office of Warfighting Integration and Chief Information Officer, SAF/XCPPI, 1800 Air Force Pentagon, Washington, DC 20330–1800.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Brodie at (703) 696–7557.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: February 4, 2009.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F036 AF PC A

SYSTEM NAME:

Effectiveness/Performance Reporting Systems (June 11, 1997, 62 FR 31793).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with ''Effectiveness/Performance Reporting Records.''

SYSTEM LOCATION:

Delete entry and replace with ''Headquarters, Air Force Personnel Center, 550 C Street West, Randolph Air Force Base, TX 78150–4709.

Headquarters, Air Reserve Personnel Center, 6760 E. Irvington Place (6600), Denver, CO 80280–6600.

Headquarters of major commands and field operating agencies; military personnel flights; each State Adjutant General Office and Air Force Reserve and Air National Guard units. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.''

CATEGORIES OF INDIVIDUALS COVERED BY SYSTEM:

Delete entry and replace with ''Military Personnel Only.

Officers: Applies to Regular Active Duty Air Force/Air National Guard/Air Force Reserve personnel serving in grades Warrant Officer (W–1) through Colonel (0–6).

Enlisted: Applies to active duty personnel in the grades Airman Basic (E–1) through Chief Master Sergeant (E–9), and to Air National Guard and Air Force Reserve personnel in the grades Staff Sergeant (E–5) through Chief Master Sergeant (E–9).''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Officer Performance Report; Education/Training Report; Enlisted Performance Report; Promotion Recommendation Forms; Letter of Evaluations; Performance Feedback Worksheets and Retention Recommendation Forms. Description of data contained therein: Name, Social Security Number, address; active and permanent grades; specialty data; organization location and Personnel Accounting Symbol; period of report; number of days of supervision; performance evaluation scales; assessment of potential and comments regarding ratings.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; as implemented by Air Force Instruction 36–2406, Officer and Enlisted Evaluation Systems, and E.O. 9397 (SSN).''

* * * * *

STORAGE:

Delete entry and replace with ''Paper records and electronic storage media.''

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with ''Copies of effectiveness/performance reports are retained until separation or retirement. At separation or retirement, data subject is presented with field and command record copies of his or her reports. The Headquarters, Air Force (HAF) copy is a permanent record that is forwarded to the National Military Personnel Records Center, (NPRC/NRPMF), 9700 Page Boulevard, St. Louis, MO 63132–2001 (if separated/retired on or prior to 30 September 2004) or HQ Air Force Personnel Center, Master Personnel Records Branch, (HQ AFPC/DPSSR), 550 C Street West, Randolph AFB, TX 78150–6001 (if separated/retired on or after 1 October 2004). In the event the member has a Reserve commitment, the HAF copy is sent to Headquarters Air Reserve Personnel Center, 6760 E. Irvington Place (6600), Denver, CO 80280–6600.

The following exceptions apply:

Officers Field Record: Remove and give to individual when promoted to Colonel, when separated or retired, or destroy when voided by action of the Officer Personnel Records Review Board. When voided by action of the Air Force Board for Correction of Military Records, forward all copies of report to Headquarters United States Air Force (HQ USAF) when directed.

Command Record: The command custodian will destroy the reports when voided by action of Officer Personnel Records Review Board. When voided by action of the Air Force Board for Correction of Military Records, forward all copies of report to HQ USAF when directed.

HAF Record: Remove reports voided by action of the Officer Personnel Records Review Board from the selection folder and file in the board recorder's office until destruction. Remove reports voided by action of the Air Force Board for Correction of Military Records from selection folder and submit to Board's Secretariat with duplicate and triplicate copies for custody and disposition.

Promotions Recommendation Forms: Temporary documents maintained only at HQ Air Force level and are destroyed after their purpose has been served. A copy is forwarded to HQ Air Force Personnel Center, Master Personnel Records Branch (HQ AFPC/DPSSR) to file into the Automated Records Management System for historic and appeal purposes only.

ACTIVE DUTY ENLISTED:

Grades E–3 through E–6: On separation or retirement, Enlisted Performance Reports (EPRs) are forwarded to the National Personnel Records Center (NPRC/NRPMF), St. Louis, MO 63132 (if separated/retired on or prior to 30 September 2004) or HQ Air Force Personnel Center, Master Personnel Records Branch (HQ AFPC/DPSSR), (if separated/retired on or after

1 October 2004) unless data subject holds a reserve obligation, in which case they are forwarded to Air Reserve Personnel Center.

Grades E–7 through E–9: On separation or retirement, original copies, those retained in Senior Non-Commissioned Officer (NCO) selection folders and those in field record closing before 1 January 1967, are forwarded to the National Personnel Records Center (NPRC/NRPMF), (if separated/retired on or prior to 30 September 2004) or HQ Air Force Personnel Center, Master Personnel Records Branch (HQ AFPC/DPSSR), (if separated/retired on or after 1 October 2004), or to Air Reserve Personnel Center if data subject holds a reserve obligation. Duplicate copies closing 1 January 1967 or later (field record) are returned to the member at separation or retirement.

Non-Active Duty Reserve Enlisted: Air Force Reserve Forces Non-Commissioned Officers Performance Report; upon separation, retirement or assignment to a non-participating reserve status, are forwarded to Air Reserve Personnel Center for file in the master personnel record and disposed of as a part of that record. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning.''

* * * * *

SYSTEM MANAGER AND ADDRESS:

Delete entry and replace with ''Deputy Chief of Staff for Personnel, Headquarters United States Air Force, 1040 Air Force Pentagon, Washington, DC 20330–1040.

Chief, Headquarters Air Force Personnel Center, (HQ AFPC/DPSID), Career Development Branch, 550 C Street West, Randolph Air Force Base TX, 78150–4709.

Chief of Air Force Reserve, (USAFR/RE), Headquarters United States Air Force, 1150 Air Force Pentagon, Washington, DC 20330–1150.

Director, Air National Guard, (NGB/CF), 2500 Army Pentagon, Washington, DC 20310–2500.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Deputy Chief of Staff/Personnel, Headquarters United States Air Force, (USAF/A1), 1040 Air Force Pentagon, Washington, DC 20330–1040; Headquarters Air Force Personnel Center, (HQ AFPC/DPSID), 550 C Street W, Randolph Air Force Base, TX 78150–4709; Chief of Air Force Reserve, Headquarters United States Air Force, Washington, DC 20330–1000; The Director, Air National Guard, Washington, DC 20310–2500; National Military Personnel Records Center, (NPRC/NRPMF), 9700 Page Boulevard, St. Louis, MO 63132–5100, or directly to agency officials at the respective system location. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

Written request should contain full name, Social Security Number (SSN) and complete mailing address with notarized signature as below.

An unsworn declaration under penalty of perjury in accordance with section 1746 of 28 U.S.C. (Reference (n)) or notarized signatures are acceptable as a means of proving the identity of the individual.

If an unsworn declaration is executed within the United States, its territories, possessions, or commonwealths, it shall read ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

If an unsworn declaration is executed outside the United States, it shall read ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking to access records about themselves contained in this system should address written inquiries to Deputy Chief of Staff/Personnel, Headquarters United States Air Force, (USAF/A1), 1040 Air Force Pentagon, Washington, DC 20330–1040; Headquarters Air Force Personnel Center, (HQ AFPC/DPSID), 550 C Street W, Randolph Air Force Base, TX 78150–4709; Chief of Air Force Reserve, Headquarters United States Air Force, Washington, DC 20330–1000; The Director, Air National Guard, Washington, DC 20310–2500; National Military Personnel Records Center, (NPRC/NRPMF), 9700 Page Boulevard, St. Louis, MO 63132–2001, or directly to agency officials at the respective system location. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

Written request should contain full name, Social Security Number (SSN) and complete mailing address with notarized signature as below.

An unsworn declaration under penalty of perjury in accordance with section 1746 of 28 U.S.C. (Reference (n)) or notarized signatures are acceptable as a means of proving the identity of the individual.

If an unsworn declaration is executed within the United States, its territories, possessions, or commonwealths, it shall read ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

If an unsworn declaration is executed outside the United States, it shall read ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33–332, Privacy Act Program, 32 CFR part 806b; or may be obtained from the system manager.''

RECORD SOURCE CATEGORIES:

Delete entry and replace with: ''Performance evaluations that are maintained on Air Force Active Duty, Reserve, and Air National Guard personnel in the grades of airman basic E–1 through general O–10.''

* * * * *

F036 AF PC A

SYSTEM NAME:

Effectiveness/Performance Reporting Records.

SYSTEM LOCATION:

Headquarters, Air Force Personnel Center, 550 C Street West, Randolph Air Force Base, TX 78150–4709.

Headquarters, Air Reserve Personnel Center, 6760 E. Irvington Place (6600), Denver, CO 80280–6600.

Headquarters of major commands and field operating agencies; military personnel flights; each State Adjutant General Office and Air Force Reserve and Air National Guard units. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military Personnel Only.

Officers: Applies to Regular Active Duty Air Force/Air National Guard/Air Force Reserve personnel serving in grades Warrant Officer (W–1) through Colonel (0–6).

Enlisted: Applies to active duty personnel in the grades Airman Basic (E–1) through Chief Master Sergeant (E–9) and to Air National Guard and Air

Force Reserve personnel in the grades Staff Sergeant (E–5) through Chief Master Sergeant (E–9).

CATEGORIES OF RECORDS IN THE SYSTEM:

Officer Performance Report; Education/Training Report; Enlisted Performance Report; Promotion Recommendation Forms; Letter of Evaluations; Performance Feedback Worksheets and Retention Recommendation Forms. Description of data contained therein: Name, Social Security Number (SSN), address; active and permanent grades; specialty data; organization location and Personnel Accounting Symbol; period of report; number of days of supervision; performance evaluation scales; assessment of potential and comments regarding ratings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; as implemented by Air Force Instruction 36–2406, Officer and Enlisted Evaluation Systems and E.O. 9397 (SSN).

PURPOSE(S):

Used to document effectiveness/duty performance history; promotion selection; school selection; assignment selection; reduction-in-force; control roster; reenlistment; separation; research and statistical analyses and other appropriate personnel actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Non-exempt records from this system may be disclosed to other federal agencies in anticipation of an individual's assignment or upon actual assignment to that agency, to the extent that the information is relevant and necessary to the agency's decision on the matter.

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic storage media.

RETRIEVABILITY:

Retrieved by name or Social Security Number (SSN).

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

RETENTION AND DISPOSAL:

Copies of effectiveness/performance reports are retained until separation or retirement. At separation or retirement, data subject is presented with field and command record copies of his or her reports. The Headquarters, Air Force (HAF) copy is a permanent record that is forwarded to the National Military Personnel Records Center, (NPRC/NRPMF), 9700 Page Boulevard, St. Louis, MO 63132–2001 (if separated/retired on or prior to 30 September 2004) or HQ Air Force Personnel Center, Master Personnel Records Branch, (HQ AFPC/DPSSR), 550 C Street West, Randolph AFB, TX 78150–6001 (if separated/retired on or after 1 October 2004). In the event the member has a Reserve commitment, the HAF copy is sent to Headquarters Air Reserve Personnel Center, 6760 E. Irvington Place (6600), Denver, CO 80280–6600.

THE FOLLOWING EXCEPTIONS APPLY:

Officers Field Record: Remove and give to individual when promoted to Colonel, when separated or retired, or destroy when voided by action of the Officer Personnel Records Review Board. When voided by action of the Air Force Board for Correction of Military Records, forward all copies of report to Headquarters United States Air Force (HQ USAF) when directed.

Command Record: The command custodian will destroy the reports when voided by action of Officer Personnel Records Review Board. When voided by action of the Air Force Board for Correction of Military Records, forward all copies of report to HQ USAF when directed.

HAF Record: Remove reports voided by action of the Officer Personnel Records Review Board from the selection folder and file in the board recorder's office until destruction. Remove reports voided by action of the Air Force Board for Correction of Military Records from selection folder and submit to Board's Secretariat with duplicate and triplicate copies for custody and disposition.

Promotions Recommendation Forms: Temporary documents maintained only at HQ Air Force level and are destroyed after their purpose has been served. A copy is forwarded to HQ Air Force Personnel Center, Master Personnel Records Branch (HQ AFPC/DPSSR) to file into the Automated Records Management System for historic and appeal purposes only.

ACTIVE DUTY ENLISTED:

Grades E–3 through E–6: On separation or retirement, Enlisted Performance Reports (EPRs) are forwarded to the National Personnel Records Center (NPRC/NRPMF), St. Louis, MO 63132 (if separated/retired on or prior to 30 September 2004) or HQ Air Force Personnel Center, Master Personnel Records Branch (HQ AFPC/DPSSR), (if separated/retired on or after 1 October 2004) unless data subject holds a reserve obligation, in which case they are forwarded to Air Reserve Personnel Center.

Grades E–7 through E–9: On separation or retirement, original copies, those retained in Senior Non-Commissioned Officer (NCO) selection folders and those in field record closing before 1 January 1967, are forwarded to the National Personnel Records Center (NPRC/NRPMF), (if separated/retired on or prior to 30 September 2004) or HQ Air Force Personnel Center, Master Personnel Records Branch (HQ AFPC/DPSSR), (if separated/retired on or after 1 October 2004), or to Air Reserve Personnel Center if data subject holds a reserve obligation. Duplicate copies closing 1 January 1967 or later (field record) are returned to the member at separation or retirement.

Non-Active Duty Reserve Enlisted: Air Force Reserve Forces Non-Commissioned Officers Performance Report; upon separation, retirement or assignment to a non-participating reserve status, are forwarded to Air Reserve Personnel Center for file in the master personnel record and disposed of as a part of that record. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Personnel, Headquarters United States Air Force, 1040 Air Force Pentagon, Washington, DC 20330–1040.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Deputy Chief of Staff/Personnel, Headquarters United States Air Force, (USAF/A1), 1040 Air Force Pentagon, Washington, DC 20330–1040; Headquarters Air Force Personnel Center, (HQ AFPC/DPSID),

550 C Street W, Randolph Air Force Base, TX 78150–4709; Chief of Air Force Reserve, Headquarters United States Air Force, Washington, DC 20330–1000; The Director, Air National Guard, Washington, DC 20310–2500; National Military Personnel Records Center, (NPRC/NRPMF), 9700 Page Boulevard, St. Louis, MO 63132–5100, or directly to agency officials at the respective system location. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

Written request should contain full name, Social Security Number (SSN) and complete mailing address with notarized signature as below.

An unsworn declaration under penalty of perjury in accordance with section 1746 of 28 U.S.C. (Reference (n)) or notarized signatures are acceptable as a means of proving the identity of the individual.

If an unsworn declaration is executed within the United States, its territories, possessions, or commonwealths, it shall read ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

If an unsworn declaration is executed outside the United States, it shall read ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written inquiries to Deputy Chief of Staff/Personnel, Headquarters United States Air Force, (USAF/A1), 1040 Air Force Pentagon, Washington, DC 20330–1040; Headquarters Air Force Personnel Center, (HQ AFPC/DPSID), 550 C Street W, Randolph Air Force Base, TX 78150–4709; Chief of Air Force Reserve, Headquarters United States Air Force, Washington, DC 20330–1000; The Director, Air National Guard, Washington, DC 20310–2500; National Military Personnel Records Center, (NPRC/NRPMF), 9700 Page Boulevard, St. Louis, MO 63132–2001, or directly to agency officials at the respective system location. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

Written request should contain full name, Social Security Number (SSN) and complete mailing address with notarized signature as below.

An unsworn declaration under penalty of perjury in accordance with section 1746 of 28 U.S.C. (Reference (n)) or notarized signatures are acceptable as a means of proving the identity of the individual.

If an unsworn declaration is executed within the United States, its territories, possessions, or commonwealths, it shall read ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

If an unsworn declaration is executed outside the United States, it shall read ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33–332, Privacy Act Program, 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Performance evaluations that are maintained on Air Force Active Duty, Reserve, and Air National Guard personnel in the grades of airman basic E–1 through general O–10.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Brigadier General Selectee Effectiveness Reports and Colonel and Lieutenant Colonel Promotion recommendations with close out dates on or before January 31, 1991, may be exempt under the provisions of 5 U.S.C. 552a(k)(7) from subsections of 5 U.S.C. 552a(c)(3); (d); (e)(4)(H); and (f), as applicable, but only to the extent that disclosure would reveal the identity of a confidential source. For additional information contact the system manager.

An exemption rule has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in the 32 CFR part 806b.

[FR Doc. E9–2782 Filed 2–9–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Solicitation Number: TBD, Classification Code: TBD, NAICS Code: TBD]

Synopsis: D—Request for Information for Rapid Delivery of Military Capabilities via Space; Notice Type: Sources Sought.

Closing Date: March 15, 2009.

SUMMARY: The purpose for this Request For Information (RFI) is to identify (1) near-term industry solutions that could provide the Department of Defense (DoD) the capability to rapidly deliver military capabilities via space, and (2) long-term advanced space transport concepts that could evolve from near-term capabilities. Interested sources should provide a white paper describing current space transport technologies and capabilities, and commercial visions for future capabilities that are projected to evolve from those current space transport technologies. The vision in the white paper should be tailored towards the interests of the U.S. Government that are outlined in the questions listed below.

In order to clarify the DoD's need in this area and to develop a technology assessment for these capabilities, the National Security Space Office (NSSO) and Headquarters, Air Force Security Forces Center (HQ AFSFC) are co-hosting a Technology Forum for the Rapid Delivery of Military Capabilities via Space on 24–26 Feb 2009 at Lackland Air Force Base, San Antonio, TX. This Technology Forum is open to all industry, U.S. Government, and military interested in assisting in the development of a technology assessment for this capability. This RFI is being released prior to the Technology Forum in order to help generate thought for discussion at the event. Responses are due 15 Mar 09, after the Technology Forum, so the combination of this solicitation and the events at the Technology Forum will help to refine responses.

The concept of Rapid Delivery of Military Capabilities via Space was based initially on the Marine Corps' Small Unit Space Transport and Insertion (SUSTAIN) concept which would provide the Joint Force Commander (JFC) the capacity to rapidly transport operationally relevant capabilities to any point on the globe, effectively instantaneously. The SUSTAIN capability spans the full spectrum of conflict, from strategic Special Forces employment to a full range of specialized manned and unmanned warfighting payloads. The formal need for a SUSTAIN capability is documented in the Marine Corps SUSTAIN Universal Need Statement dated 22 July 2002, and the USSOCOM Space Enabling Concept dated 25 March 2004.

RFI Requirements

The first section of this RFI seeks to identify information on existing commercial systems or low risk systems in development that could potentially

apply to a DoD capability to rapidly transport militarily relevant capabilities through sub-orbital space to a remote location on short notice. This nearer-term capability could serve as the first phase of a spiral developmental effort. The following specific definitions are applicable to this first section of the RFI:

• The ''transport altitude regime'' is defined by upper and lower sub-orbital space boundaries, namely between an altitude above 50 nautical miles and an altitude below that which requires prior USSTRATCOM coordination.

• ''Rapidly'' is defined as two hours or less of flight time, preceded by a launch preparation period, with the combined total of flight time and preparation time not to exceed four hours.

• ''Militarily relevant payloads'' are defined as an Unmanned Aerial System (UAS) or an Unmanned Ground Vehicle (UGV), either alternative having a mass of 200 kilograms or less, a transport volume of 2 cubic meters or less, and either system must be fully operational upon delivery.

• The ''target destination'' is defined as any point within 5,000 Nautical miles of the launch site, including options to launch a UAS directly into target airspace at high altitude or land a UGV on the ground at a prepared or unprepared site.

• The delivery vehicle, whether a single stage vehicle or the upper stage of a multi-stage vehicle, must be recoverable and reusable.

With respect to the specific definitions above that are related to nearer-term technologies and capabilities, this RFI seeks answers to the following specific questions:

a. What plans would improve sub-orbital and/or orbital space transport capabilities in these areas: (1) Space-based capabilities; (2) Terrestrial capabilities; (3) Enabling capabilities; (4) Non-material aspects including policies, procedures, and operations concepts?

b. What technologies are needed to achieve, maintain, or improve sub-orbital and/or orbital space transport capabilities? What is the practical limit of these technologies?

c. What technologies are considered high payoff for future sub-orbital and/or orbital space transport capabilities, including those without current funding support or U.S. Government sponsorship?

d. To what extent should autonomy or automation be implemented in ground and sub-orbital and/or orbital space systems to support space as a transport medium?

e. What sub-orbital and/or orbital capabilities should the U.S. Government provide? Which commercial capabilities do you believe could enhance U.S. Government-provided sub-orbital and/or orbital space transport capabilities?

f. In order to achieve needed sub-orbital and/or orbital space transportation capabilities through the 2025 time frame, what international cooperation will be required?

g. What interrelationship is planned or desired with the U.S. Government through the 2025 time frame from a sub-orbital and/or orbital space transport perspective? What Position, Navigation, Timing (PNT) capabilities are expected from the U.S. Government?

h. What interest is there in providing selected sub-orbital and/or orbital space transport capabilities?

i. What interest is there in providing a full range of sub-orbital and/or orbital space transport services to the U.S. Government?

j. What analytical tools or simulations are recommend for assessing the performance, cost, and utility associated with sub-orbital and/or orbital space transport capabilities?

k. How do purchasers of sub-orbital and/or orbital space transport end-user equipment make their needs known to the provider?

l. In general, what are the most important attributes of sub-orbital and/or orbital space transport services (or combinations of services) for a consumer?

This second section of the RFI seeks to identify industry concepts that could lead to a future DoD capacity to rapidly transport a full spectrum of militarily relevant capabilities through sub-orbital and/or orbital space to any point globally on short notice. Such concepts could constitute advanced phases of the spiral developmental effort described above. Accordingly, information is solicited on the following advanced capabilities, capabilities that are formulated as questions for RFI responses:

a. Can capabilities be scaled up for the purpose of delivering unmanned payloads of up to 30,000 pounds suborbitally to any point on the globe, including the poles? If so, describe a notional spiral evolution to the future capability?

b. Can capabilities be scaled up for the purpose of delivering militarily relevant payloads to low earth orbit? If so, describe a notional spiral evolution to the future capability?

c. Can capabilities be integrated with Government Furnished Equipment (GFE) launch vehicles such as the Atlas, Delta, and future families of launch vehicles? If so, describe a notional spiral evolution to the future capability?

d. Can individual vehicle capabilities be man-rated to enable the insertion of a squad-sized, combat-equipped team into any global contingency? If so, describe a notional spiral evolution to the future capability?

e. Can capabilities evolve to a family of assault support vehicles capable of launch on demand and refueling-assisted transport and insertion of systems and forces? If so, describe a notional spiral evolution to the future capability?

f. Can capabilities be scaled up to permit the insertion of unmanned capabilities or manned teams that is still capable of self-extraction without refueling? If so, describe a notional spiral evolution to the future capability?

g. Can capabilities allow for a low earth orbit (LEO) loiter-like capability?

h. Can capabilities be increased into an on-orbit support infrastructure for space-based support, allowing for the timed injection of into any contingency from orbit? If so, describe a notional spiral evolution to the future capability?

i. Can capabilities allow for an entire mission cycle from launch, through transit, insertion, terrestrial or space execution, extraction, and finally egress to any global point of origin, without the need for refueling?

RFI Purpose and Limitations

The U.S. Government is aware of and understands the tactical, operational, and strategic opportunities that space can provide the DoD from the perspective of speed of delivery and global reach. The Government's intention is to better understand the current, state-of-the-art capabilities and future technological projections to determine a technological assessment. Industry feedback is vitally important and the Government will be receptive to any and all ideas received from industry. This RFI is an expression of the Government's interest only and does not obligate the Government to pay for the requested information nor respond to any submissions. Responses to this notice are not offers and cannot be accepted by the Government to form a binding contract. Proprietary information is not being solicited; however, if it is submitted, it should be properly marked.

Please limit formal white paper submission to no more than ten (10) pages, not including the cover letter or any attachments. In addition, it may include up to five attachments that consist of briefing slides, suggested contract language, current plans, or standard operating procedures.

Electronic submissions are strongly encouraged. All items must be compatible with Microsoft Office or Adobe PDF format and free of all computer viruses.

Technical questions and industry responses shall be submitted via email to: LtCol Paul Damphousse, *paul.damphousse@osd.mil.*

Responses must be received no later than 2 p.m. Eastern Standard Time, on March 15, 2009.

All material submitted in response to this RFI must be unclassified and, if proprietary, marked appropriately.

Point of Contact: LtCol Paul Damphousse, *paul.damphousse@osd.mil*, or (571) 432–1411.

This Is a Request for Information (RFI) Only

This RFI is issued as Market Research, solely for information and planning purposes. It shall not be considered as an Invitation for Bid (IFB), Request for Quotation (RFQ), Request for Proposal (RFP), or as an obligation on the part of the Government to acquire any products or services. Any response to this synopsis will be treated as information only. No entitlement to payment of direct or indirect costs or charges by the Government will arise as a result of contractor submission of responses to this synopsis or the Government for use of such information. The information provided may be used by the National Security Space Office in developing a strategy and in a Statement of Work/ Statement of Objectives and Performance specifications for any future study. Not responding to this RFI does not preclude participation in any future RFP, if issued. If a solicitation is issued, it will be synopsized on the Federal Business Opportunities (FedBizOpps) Web site. It is the responsibility of any potential offeror to monitor this site for additional information pertaining to this requirement.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E9–2716 Filed 2–9–09; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2009–0001]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice To Alter a System of Records.

SUMMARY: The Department of the Army is proposing to alter a system of records in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective on March 12, 2009 unless comments are received that would result in a contrary determination.

ADDRESSES: Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Dickerson, (703) 428–6513.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on January 30, 2009, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: February 4, 2009.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0381–20b DAMI

SYSTEM NAME:

Counterintelligence/Information Operations/Security Files (December 14, 2001, 66 FR 64811).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with ''Foreign Intelligence/ Counterintelligence/Information Operations/Security Files.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Military personnel of the U.S. Army, including active duty, National Guard, reservists and retirees; civilian employees of the Department of the Army (DA), including contract, temporary, part-time, and advisory, citizen and alien employees located both in the U.S. and in overseas areas; individuals identified in foreign intelligence or counterintelligence reports and supportive material, including individuals involved in matters of foreign intelligence interest; industrial or contractor personnel working in private industry which have contracts involving classified Department of Defense (DoD) information; aliens granted limited access authorization to U.S. Defense information; alien personnel investigated for visa purposes; certain non-DoD affiliated persons whose activities involve them with the DoD, namely, activities involving requests for admission to DoD facilities or requests for certain information regarding DoD personnel, activities, or facilities; persons formerly affiliated with the DoD; persons who applied for or are/ were being considered for employment with or access to DoD such as applicants for military service, pre inductees and prospective contractors; individuals residing on, having authorized official access to, or conducting or operating any business or other function at any DoD installation and facility; and U.S. Army Intelligence sources; and U.S. persons who have been declared missing, prisoners of war (POW), civilian persons who are being detained or held hostage or personnel recovered from hostile control; persons of interest encountered as part of military operations; individuals to include those brought to the attention of DoD by federal, state, local, tribal, foreign, or international organizations/agencies about whom there is a reasonable basis to believe that they are engaged in, or plan to engage in, activities such as (1) sabotage, (2) possible compromise of classified defense information by unauthorized disclosure or by espionage, treason or spying; (3) terrorism; (4) narcotics trafficking; (5) activities that are a direct threat to national or international security, or the conduct of military operations, (6) subversion of loyalty, discipline or morale of DoD military or civilian personnel by actively encouraging violation of lawful orders and regulations or disruption of military activities, and (7) activities that are a direct threat to DoD personnel, facilities and material or classified Defense contractor facilities or those individuals suspected or involved in criminal and intelligence activities directed against or involving DoD Information Systems.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with This system includes intelligence records established to support intelligence, counter-intelligence and counter terrorism analysis and detection, to include biometrics enabled (or capable) records.

Biometrics enabled intelligence related records/reports/data/analytical products in paper and/or automated form. These related support items may include names, Social Security numbers, biometrics templates, biometrics information, biometrics signatures and images, biographical information, and contextual data that is associated with such biometrics. Biometrics signatures, images and templates include modalities such as fingerprints, iris scans, DNA, voice, facial features, writing exemplar, and hand geometry. Biographical information includes information such as date of birth, place of birth, height, weight, eye color, hair color, race, gender, nationality, and other personal descriptive data.

General and technical analytical reports/data.

Requests for and results of investigations or inquiries or analysis conducted and data acquired and maintained by U.S. Army Intelligence or other DoD, Federal, State, local, tribal or foreign intelligence, security or investigative agencies. Record includes: Personal history statements; fingerprint cards; personnel security questionnaire; medical and/or educational records and waivers for release; local agency checks; military records; birth records; employment records; education records; credit records and waivers for release; interviews of education, employment, and credit references; interviews of listed and developed character references; interviews of neighbors; requests for, documentation pertaining to, results of electronic surveillance, intelligence polygraph examinations and technical documents, physical surveillance, and mail cover and or search; polygraph examination summaries; documents which succinctly summarize information in subject's investigative file; case summaries prepared by both investigative control offices and requesters of investigative interrogation reports; temporary documents concerning security, suitability, and criminal incidents lawfully collected by U.S. Army counterintelligence units in the performance of the counterintelligence mission; intelligence requirements, analysis, and reporting; operational records; articles, open source data, and other published information on individuals and events of interest to INSCOM; actual or purported correspondence; correspondence pertaining to the investigation, inquiry, or its adjudication by clearance or investigative authority to include; (1) The chronology of the investigation, inquiry, and adjudication; (2) all recommendations regarding the future status of the subject; (3) actions of security/loyalty review boards; (4) final actions/determinations made regarding the subject; and (5) security clearance, limited access authorization, or security determination; index tracing reference which contains aliases and the names of the subject and names of co-subjects; security termination and inadvertent disclosure statements; notification of denial, suspension, or revocation of clearance; and reports of casualty, biographic data and intelligence/counterintelligence debriefing reports concerning U.S. personnel who are missing, captured, or detained by a hostile entity. Case control and management documents that serve as the basis for conducting the investigation such as documents requesting the investigation and documents used in case management and control such as lead sheets, other field tasking documents, and transfer forms. Administrative records required by the U.S. Army Investigative Records Repository for records management purposes such as form transmitting investigative or operational material to the U.S. Army Investigative Records Repository and providing instructions for indexing the record in the Defense Central Index of Investigations and release of material contained therein, form indicating dossier has been reviewed and all material therein conforms to DoD policy regarding retention criteria, form pertaining to the release of information pertaining to controlled records, form to indicate material has been removed and forwarded to other authorized Federal agencies such as the Defense Investigative Service, cross reference sheet to indicate the removal of investigative documents requiring limited access, form identifying material that has been segregated and/or is exempt from release, and records accounting for the disclosure of intelligence, counterintelligence and security information made outside of the DoD.

Paper and automated indices of personnel investigations/operations which are under controlled access within the U.S. Army Investigative Records Repository, such as key USAINSCOM personnel, general officers, file procurement officers and their agencies, and sensitive spying, treason, espionage, sabotage, sedition, and subversion investigations and foreign intelligence or counterintelligence operations.

Microform and automated indices and catalogue files, which constitute an index to all U.S. Army Investigative Records Repository holdings contained in microfilmed investigative and operational records.

Automated record indices maintained by the U.S. Army Investigative Records Repository to keep a record of all original dossiers charged out of the U.S. Army Investigative Records Repository on loan to user agencies or permanently transferred to National Archives and Records Administration.

Paper, card file, microform and computerized case and incident indices containing name, date/place of birth, address, case or incident title and number, and brief summary of case or incident of current interest to investigative activities.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 3013, Secretary of the Army; E.O. 10450, Security Requirements for Government Employees; E.O. 12333, United States Intelligence Activities; the National Security Act of 1947, as amended; the Defense Authorization Act for FY 1988 and 1989; the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 401); 18 U.S.C. 2511, Interception and Disclosure of Electronic Communications Prohibited; DoD 5240.1–R, DoD Intelligence Activities; Army Regulation 381–10, U.S. Army Intelligence Activities and E.O. 9397 (SSN).''

PURPOSE(S):

Delete entry and replace with ''To provide information to assess an individual's acceptability for assignment to or retention in sensitive positions consistent with the interest of national security; to document U.S. intelligence, counterintelligence and security investigations and operations pertaining to the U.S. Army's responsibilities for foreign intelligence and counterintelligence, and to detect, identify, and neutralize foreign intelligence and international terrorist threats to the DoD; and to temporarily document security, suitability, and criminal incident information not within U.S. Army counterintelligence jurisdiction to investigate, which is lawfully provided to U.S. Army counterintelligence units by cooperating sources of information collected

incidental to the counterintelligence mission.

To maintain records on information operations, foreign intelligence, counterintelligence, counter-terrorism, counter-narcotics, and matters relating to the protection of the national security, DoD personnel, facilities and equipment, including but not limited to, information systems. This information is shared with other DoD components for the purpose of collaborating on production of intelligence products and countering terrorist acts.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

ADD NEW ROUTINE USE:

''To Federal, State, tribal, local, foreign agencies, or international organizations/agencies for the purposes of national and international security, law enforcement, counterterrorism, intelligence, counterintelligence, immigration management and control, and homeland defense and security as authorized by U.S. Law or Executive Order, or for the purposes of protecting the territory, people, and interests of the United States of America against hostile activities.''

* * * * *

RETRIEVABILITY:

Delete entry and replace with ''By name; alias; title, in combination with Social Security Number or regular dossier number; date and/or place of birth; biometric template, other biometric data; or other personal identifier. For subjects identified only by name, the name only index is searched.''

* * * * *

RETENTION AND DISPOSAL:

Add paragraph ''General and technical intelligence records are kept until no longer needed then destroyed.''

* * * * *

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Delete entry and replace with ''Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identity of a confidential source. **Note:** When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

To the extent that copies of exempt records from external systems of records are entered into AO381–10b DAMI, the Army hereby claims the same exemptions for those records as claimed for the original primary system of which they are a part.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c), and (e) and published in 32 CFR part 505. For additional information contact the system manager.

* * * * *

A0381–20b DAMI

SYSTEM NAME:

Foreign Intelligence/Counterintelligence/Information Operations/Security Files.

SYSTEM LOCATION:

U.S. Army Intelligence and Security Command, 8825 Beulah Street, Fort Belvoir, VA 22060–5246.

Decentralized segments are located at U.S. Army Intelligence brigades, groups, battalions, companies, detachments, field offices and resident offices worldwide. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel of the U.S. Army, including active duty, National Guard, reservists and retirees; civilian employees of the Department of the Army (DA), including contract, temporary, part-time, and advisory, citizen and alien employees located both in the U.S. and in overseas areas; individuals identified in foreign intelligence or counterintelligence reports and supportive material, including individuals involved in matters of foreign intelligence interest; industrial or contractor personnel working in private industry which have contracts involving classified Department of Defense (DoD) information; aliens granted limited access authorization to U.S. Defense information; alien personnel investigated for visa purposes; certain non-DoD affiliated persons whose activities involve them with the DoD, namely, activities involving requests for admission to DoD facilities or requests for certain information regarding DoD personnel, activities, or facilities; persons formerly affiliated with the DoD; persons who applied for or are/were being considered for employment with or access to DoD such as applicants for military service, pre inductees and prospective contractors; individuals residing on, having authorized official access to, or conducting or operating any business or other function at any DoD installation and facility; and U.S. Army Intelligence sources; and U.S. persons who have been declared missing, prisoners of war (POW), civilian persons who are being detained or held hostage or personnel recovered from hostile control; persons of interest encountered as part of military operations; individuals to include those brought to the attention of DoD by federal, state, local, tribal, foreign, or international organizations/agencies about whom there is a reasonable basis to believe that they are engaged in, or plan to engage in, activities such as (1) sabotage, (2) possible compromise of classified defense information by unauthorized disclosure or by espionage, treason or spying; (3) terrorism; (4) narcotics trafficking; (5) activities that are a direct threat to national or international security, or the conduct of military operations, (6) subversion of loyalty, discipline or morale of DoD military or civilian personnel by actively encouraging violation of lawful orders and regulations or disruption of military activities, and (7) activities that are a direct threat to DoD personnel, facilities and material or classified Defense contractor facilities or those individuals suspected or involved in criminal and intelligence activities directed against or involving DOD Information Systems.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system includes intelligence records established to support intelligence, counter-intelligence and counter terrorism analysis and detection, to include biometrics enabled (or capable) records.

Biometrics enabled intelligence related records/reports/data/analytical products in paper and/or automated form. These related support items may include names, Social Security

numbers, biometrics templates, biometrics information, biometrics signatures and images, biographical information, and contextual data that is associated with such biometrics. Biometrics signatures, images and templates include modalities such as fingerprints, iris scans, DNA, voice, facial features, writing exemplar, and hand geometry. Biographical information includes information such as date of birth, place of birth, height, weight, eye color, hair color, race, gender, nationality, and other personal descriptive data.

GENERAL AND TECHNICAL ANALYTICAL REPORTS/DATA:

Requests for and results of investigations or inquiries or analysis conducted and data acquired and maintained by U.S. Army Intelligence or other DoD, Federal, State, local, tribal or foreign intelligence, security or investigative agencies. Record includes: Personal history statements; fingerprint cards; personnel security questionnaire; medical and/or educational records and waivers for release; local agency checks; military records; birth records; employment records; education records; credit records and waivers for release; interviews of education, employment, and credit references; interviews of listed and developed character references; interviews of neighbors; requests for, documentation pertaining to, results of electronic surveillance, intelligence polygraph examinations and technical documents, physical surveillance, and mail cover and/or search; polygraph examination summaries; documents which succinctly summarize information in subject's investigative file; case summaries prepared by both investigative control offices and requesters of investigative interrogation reports; temporary documents concerning security, suitability, and criminal incidents lawfully collected by U.S. Army counterintelligence units in the performance of the counterintelligence mission; intelligence requirements, analysis, and reporting; operational records; articles, open source data, and other published information on individuals and events of interest to INSCOM; actual or purported correspondence; correspondence pertaining to the investigation, inquiry, or its adjudication by clearance or investigative authority to include: (1) The chronology of the investigation, inquiry, and adjudication; (2) all recommendations regarding the future status of the subject; (3) actions of security/loyalty review boards (4) final actions/determinations made regarding the subject; and (5) security clearance, limited access authorization, or security determination; index tracing reference which contains aliases and the names of the subject and names of co-subjects; security termination and inadvertent disclosure statements; notification of denial, suspension, or revocation of clearance; and reports of casualty, biographic data and intelligence/counterintelligence debriefing reports concerning U.S. personnel who are missing, captured, or detained by a hostile entity. Case control and management documents that serve as the basis for conducting the investigation such as documents requesting the investigation and documents used in case management and control such as lead sheets, other field tasking documents, and transfer forms. Administrative records required by the U.S. Army Investigative Records Repository for records management purposes such as form transmitting investigative or operational material to the U.S. Army Investigative Records Repository and providing instructions for indexing the record in the Defense Central Index of Investigations and release of material contained therein, form indicating dossier has been reviewed and all material therein conforms to DoD policy regarding retention criteria, form pertaining to the release of information pertaining to controlled records, form to indicate material has been removed and forwarded to other authorized Federal agencies such as the Defense Investigative Service, cross reference sheet to indicate the removal of investigative documents requiring limited access, form identifying material that has been segregated and/or is exempt from release, and records accounting for the disclosure of intelligence, counterintelligence and security information made outside of the DoD.

Paper and automated indices of personnel investigations/operations which are under controlled access within the U.S. Army Investigative Records Repository, such as key USAINSCOM personnel, general officers, file procurement officers and their agencies, and sensitive spying, treason, espionage, sabotage, sedition, and subversion investigations and/or foreign intelligence or counterintelligence operations.

Microform and automated indices and catalogue files, which constitute an index to all U.S. Army Investigative Records Repository holdings contained in microfilmed investigative and operational records.

Automated record indices maintained by the U.S. Army Investigative Records Repository to keep a record of all original dossiers charged out of the U.S. Army Investigative Records Repository on loan to user agencies or permanently transferred to National Archives and Records Administration.

Paper, card file, microform and computerized case and incident indices containing name, date/place of birth, address, case or incident title and number, and brief summary of case or incident of current interest to investigative activities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; E.O. 10450, Security Requirements for Government Employees; E.O. 12333, United States Intelligence Activities; the National Security Act of 1947, as amended; the Defense Authorization Act for FY 1988 and 1989; the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 401); 18 U.S.C. 2511, Interception and Disclosure of Electronic Communications Prohibited; DoD 5240.1–R, DoD Intelligence Activities; Army Regulation 381–10, U.S. Army Intelligence Activities and E.O. 9397 (SSN).

PURPOSE(S):

To provide information to assess an individual's acceptability for assignment to or retention in sensitive positions consistent with the interest of national security; to document U.S. intelligence, counterintelligence and security investigations and operations pertaining to the U.S. Army's responsibilities for foreign intelligence and counterintelligence, and to detect, identify, and neutralize foreign intelligence and international terrorist threats to the DoD; and to temporarily document security, suitability, and criminal incident information not within U.S. Army counterintelligence jurisdiction to investigate, which is lawfully provided to U.S. Army counterintelligence units by cooperating sources of information collected incidental to the counterintelligence mission.

To maintain records on information operations, foreign intelligence, counterintelligence, counterterrorism, counter-narcotics, and matters relating to the protection of the national security, DoD personnel, facilities and equipment, including but not limited to, information systems. This information is shared with other DoD components for the purpose of collaborating on production of intelligence products and countering terrorist acts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as routine uses pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal, State, tribal, local, foreign agencies, or international organizations/agencies for the purposes of national and international security, law enforcement, counterterrorism, intelligence, counterintelligence, immigration management and control, and homeland defense and security as authorized by U.S. Law or Executive Order, or for the purposes of protecting the territory, people, and interests of the United States of America against hostile activities.

To the Immigration and Naturalization Service, Department of Justice for use in alien admission and naturalization inquiries conducted under section 105 of the Immigration and Naturalization Act of 1952, as amended.

To the Department of Veterans Affairs for the purpose of using the information in benefit determinations.

To the Department of State, the Department of Treasury, the Department of Justice, the Federal Bureau of Investigation, the Drug Enforcement Administration, U.S. Customs Service, the Bureau of Alcohol, Tobacco and Firearms, and the Central Intelligence Agency for the purpose of collaborating on production of intelligence product and countering terrorist acts. The distribution of investigative information is based on the Army's evaluation of the requesting agency's needs and the relevance of the information to the use for which it is provided. Information collected for one purpose is not automatically used for other purposes or by the other users indicated in this description.

The DoD 'Blanket Routine Uses' published at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and on electronic storage media.

RETRIEVABILITY:

By name; alias; title, in combination with Social Security Number or regular dossier number; date and/or place of birth; biometric template, other biometric data; or other personal identifier. For subjects identified only by name, the name only index is searched.

SAFEGUARDS:

Buildings employ alarms, security guards, and/or rooms are security-controlled areas accessible only to authorized persons. Paper and microform records are maintained in General Service Administration approved security containers. Paper and microform records in the U.S. Army Investigative Records Repository are stored in security-controlled areas accessible only to authorized persons. Electronically and optically stored records are maintained in 'fail-safe' system software with password-protected access. Records are accessible only to authorized persons with a need-to-know who are properly screened, cleared, and trained.

RETENTION AND DISPOSAL:

General and technical intelligence records are kept until no longer needed then destroyed.

Personnel security/adjudicative records on non-DoD persons who are considered for affiliation with DoD are destroyed after 1 year if affiliation is not completed.

Personnel security investigations and adjudicative records of a routine nature are retained in the active file until no longer needed; retired to the U.S. Army Investigative Records Repository and retained for 15 years after last action reflected in the file, except that files which contain significant derogatory information and or resulted in adverse action(s) against the individual are destroyed after 25 years. However, once affiliation is terminated, acquiring and adding material to the file is prohibited unless affiliation is renewed. Records determined to be of historical value, of wide spread value, or Congressional interest and investigations of treason, spying, espionage, sabotage, sedition, and subversion or other major investigations or operations of a counterintelligence or security nature are permanent. They will be retained in the U.S. Army Investigative Records Repository for 25 years after the date of the last action reflected in the file and then permanently transferred to the National Archives.

Records pertaining to U.S. persons declared POW, missing, or detainees will be maintained in the active file until no longer needed, retired to the U.S. Army Investigative Records Repository and retained for 50 years after the date of the last action reflected in the file or the subject is declared Killed in Action or dead and then permanently transferred to the National Archives.

Records pertaining to counterintelligence polygraph technical files will be maintained in the active file until no longer needed and then disposed of after the final quality control review as follows: (1) For counterintelligence scope cases, 90 days for favorably resolved cases or 15 years for other than favorably resolved cases, (2) for counterintelligence investigative cases, 15 years, and (3) for offensive counterintelligence operations and Human Intelligence cases, material is transferred to the U.S. Army Investigative Records Repository, incorporated into an operational dossier, and disposed of 25 years from the date of last action.

Security, suitability, and criminal incident information that is collected in the performance of the counterintelligence mission and which is not within the U.S. Army counterintelligence jurisdiction to investigate is retained at the location only so long as necessary to transmit it to the appropriate law enforcement or investigative agency having jurisdiction for this incident.

Summarized records pertaining to local intelligence, counterintelligence or incidents of interest to the local military intelligence activity are reviewed annually and destroyed when determined to be of no further operational value.

Destruction of records will be by shredding, burning, or pulping for paper records; magnetic erasing for computerized records. Optical digital data records should not be destroyed pending the development of a satisfactory destruction method.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Intelligence, Headquarters, Department of the Army, 1001 Army Pentagon, Washington, DC 20310–1001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the U.S. Army Intelligence and Security Command, Freedom of Information/Privacy Office, 8825 Beulah Street, Fort Belvoir, VA 22060–5246.

Individuals should provide their full name, aliases, date and place of birth, Social Security Number, service number(s), or other information verifiable from the records in written request.

RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the U.S. Army Intelligence and Security Command, Freedom of Information/ Privacy Office, 8825 Beulah Street, Fort Belvoir, VA 22060–5246.

Individuals should provide their full name, aliases, date and place of birth, Social Security Number, service number(s), current address, and telephone number in written request.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From individuals; DoD records; U.S. agencies and organizations; media, including periodicals, newspapers, broadcast transcripts; intelligence source documents/reports; other relevant Army documents and reports; informants; various Federal, state and local investigative and law enforcement agencies; foreign governments; and other individuals or agencies/ organizations that may supply pertinent information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identity of a confidential source. **Note:** When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

To the extent that copies of exempt records from external systems of records are entered into A0381–10b DAMI, the Army hereby claims the same exemptions for those records as claimed for the original primary system of which they are a part.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c), and (e) and published in 32 CFR part 505. For additional information contact the system manager.

[FR Doc. E9–2791 Filed 2–9–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Availability of the Final 1999 Programmatic Environmental Impact Statement for the Dredged Material Management Plan for the Port of New York and New Jersey

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice; extension of comment period.

SUMMARY: The comment period for the Final 1999 Programmatic Environmental Impact Statement for the Dredged Material Management Plan for the Port of New York and New York published in the **Federal Register** on Monday, December 22, 2008 (73 FR 78338), required comments be submitted by 45 days (February 1, 2009) following publication in the **Federal Register**. The comment period has been extended to 60 days (April 3, 2009).

FOR FURTHER INFORMATION CONTACT: Christopher Ricciardi, Telephone (917) 790–8630.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E9–2806 Filed 2–9–09; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Intent To Prepare a Draft Environmental Impact Statement in Cooperation With the North Carolina Department of Transportation for the Improvement of a 27.3 Mile Segment of US Highway 64 in Tyrrell and Dare Counties, NC

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (COE), Wilmington District, Wilmington Regulatory Division is issuing this notice to advise the public that a State of North Carolina funded Draft Environmental Impact Statement (DEIS) will be prepared for the improvement of US 64 to a multilane facility, and replacement of the Lindsey C. Warren bridge in Tyrrell and Dare Counties, North Carolina (TIP Projects R–2544 and R–2545).

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be directed to Mr. Bill Biddlecome, Regulatory Project Manager, Washington Regulatory Field Office, Post Office Box 1000, Washington, NC 27889–1000; *telephone:* (252) 975–1616, extension 26 or Mr. Ted Devens, PE, Project Engineer, North Carolina Department of Transportation, 1548 Mail Service Center, Raleigh, NC 27699–1548, *telephone:* (919) 733–7844, ext. 360.

SUPPLEMENTARY INFORMATION: The COE in cooperation with the North Carolina Department of Transportation will prepare an Environmental Impact Statement (EIS) on a proposal to improve a 27.3 mile segment of existing US 64 in Tyrrell (TIP No. R–2545) and Dare (TIP No. R–2544) Counties, North Carolina, from a two-lane to a multiple-lane roadway and replace the Lindsey C. Warren Bridge over the Alligator River.

The proposed project is considered necessary to insure consistency with North Carolina's Strategic Highway Corridor Plan (which seeks long-term interconnectivity of consistent transportation corridors in North Carolina) and the Intrastate Highway System, to reduce US 64 hurricane evacuation time to better meet state clearance goals in the project study area, and for maintaining/improving a bridge across the Alligator River that meets the needs of highway users.

In 1989, US 64 was designated as part of the State's Intrastate System under Chapter 136 of the North Carolina

General Statutes. In January 1999, NCDOT initiated a study to improve US 64 to a multi-lane facility from Columbia in Tyrrell County east to US 64/US 264 in Dare County. A series of meetings were held with local officials and residents of East Lake and Manns Harbor. There was general support for the project from local officials and residents.

In 2002 the project was presented to Federal and State Resource and Regulatory Agencies to gain concurrence on the purpose and need for the project. Following the meeting, it was agreed that further work on the US 64 project would be postponed pending completion of a revised Hurricane Evacuation study. The hurricane model revisions were completed in 2005. Model development was accomplished in conjunction with an Oversight Committee consisting of representatives from NCDOT, FHWA, numerous state and federal environmental resource and regulatory agencies, and Emergency Management officials from North Carolina's coastal counties. It was agreed that an 18-hour standard for clearance times would be applied to a Category 3 storm with 75 percent tourist occupancy. The 18-hour goal was adopted by the North Carolina Legislature in 2005. Following the completion of the new Hurricane Evacuation Study, the project was reinitiated as a State funded Environmental Impact Statement.

A scoping meeting was conducted on February 6, 2007 followed by a Public Officials Meeting and Citizens Informational Workshop on March 14, 2007. Public officials from Tyrrell and Dare Counties and the Towns of Columbia and Manteo attended the public officials meeting. There was unanimous support for the project from all local officials. A NEPA/404 Merger 01 Purpose and Need meeting was conducted on June 14, 2007. The Merger Team, which was comprised of Federal and State Resource and Regulatory Agencies, agreed that a suitable Purpose and Need exists for the project.

The US 64 corridor in eastern North Carolina has been improved from two to four lanes west and east of the project corridor. This proposed action would complete intrastate improvements to US 64 between Raleigh and the Outer Banks. The current 2007–2013 North Carolina Transportation Improvement Program (TIP) lists R–2544 and R–2545 for Right-of-Way acquisition in Fiscal Year (FY) 2012. The Lindsey C. Warren Bridge R–2545B is scheduled to be let for construction in FY 2012. Construction for other sections is post year.

Environmental consequences: CEQ regulations (40 CFR 1502.16) state the EIS will include the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. The EIS will assess a reasonable number of alternatives and identify and disclose the direct impacts of the proposed project on the following: Topography, geology, soils, climate, biotic communities, wetlands, fish and wildlife resources, endangered and threatened species, hydrology, water resources and water quality, floodplains, hazardous materials, air quality, noise, aesthetics, recreational resources, historical and cultural resources, socioeconomics, land use, public health and safety, energy requirements and conservation, natural or non-renewable resources, drinking waters, and environmental justice.

Secondary and cumulative environmental impacts: Cumulative impacts result from the incremental impact of the proposed action when added to past, present, and reasonably foreseeable future actions, regardless of what agency or person undertakes the action. Geographic Information System (GIS) data and mapping will be used to evaluate and quantify secondary and cumulative impacts of the proposed project with particular emphasis given to wetlands and surface/groundwater resources.

Mitigation: CEQ regulations (40 CFR 1502.14, 1502.16, and 1508.20) require the EIS to include appropriate mitigation measures. The USACE has adopted, through the CEQ, a mitigation policy which embraces the concepts of ''no net loss of wetlands'' and project sequencing. The purpose of this policy is to restore and maintain the chemical, biological, and physical integrity of ''Waters of the United States,'' specifically wetlands. Mitigation of wetland impacts has been defined by the CEQ to include: avoidance of impacts (to wetlands), minimizing impacts, rectifying impacts, reducing impacts over time, and compensating for impacts (40 CFR 1508.20). Each of these aspects (avoidance, minimization, and compensatory mitigation) must be considered in sequential order. As part of the EIS, the applicant will develop a compensatory mitigation plan detailing the methodology and approach to compensate for unavoidable impacts to waters of the U.S. including streams and wetlands.

NEPA/SEPA Preparation and Permitting: Because the proposed project requires approvals from federal and state agencies under both the National Environmental Policy Act (NEPA) and the State Environmental Policy Act (SEPA), a joint Federal and State Environmental Impact Statement (EIS) will be prepared. The U.S. Army Corps of Engineers will serve as the lead agency for the process. The EIS will serve as the NEPA document for the Corps of Engineers (404 permit) and as the SEPA document for the State of North Carolina (401 permit).

Based on the size, complexity, and potential impacts of the proposed project, the Applicant has been advised by the U.S. Army Corps of Engineers to identify and disclose the environmental impacts of the proposed project in an Environmental Impact Statement (EIS). Within the EIS, the Applicant will conduct a thorough environmental review, including an evaluation of a reasonable number of alternatives. After distribution and review of the Draft EIS and Final EIS, the Applicant understands that the U.S. Army Corps of Engineers in coordination with the North Carolina Department of Transportation will issue a Record of Decision (ROD) for the project. The ROD will document the completion of the EIS process and will serve as a basis for permitting decisions by federal and state agencies.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the U.S. Army Corps of Engineers at the address provided (see **FOR FURTHER INFORMATION CONTACT**). The Wilmington District will periodically issue Public Notices soliciting public and agency comment on the proposed action and alternatives to the proposed action as they are developed.

Jefferson M. Ryscavage,

Colonel, U.S. Army, District Commander.

[FR Doc. E9–2807 Filed 2–9–09; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Draft Comprehensive Plan and Integrated Programmatic Environmental Impact Statement for the Mississippi Coastal Improvement Program, Jackson, Harrison, and Hancock Counties, MS

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: This notice of availability announces the public release of the Draft Comprehensive Plan and Integrated Programmatic Environmental Impact Statement (EIS) for the Mississippi Coastal Improvements Program (MsCIP), Jackson, Harrison, and Hancock Counties, MS. The Mobile District, U.S. Army Corps of Engineers (Corps) published in the **Federal Register**, August 9, 2006, (71 FR 45537) a Notice of Intent to Prepare a Draft EIS to address the potential impacts associated with actions to comprehensively address hurricane and storm damage reduction, prevention of saltwater intrusion, preservation of fish and wildlife, prevention of erosion, and other related water resource purposes in coastal Mississippi. These actions are related to the consequences of hurricanes in the Gulf of Mexico in 2005. The Corps will forward recommendations to Congress as authorized by the Department of Defense Appropriations Act, 2006 (Pub. L. 109–148) dated December 30, 2005. The tentatively selected comprehensive plan elements for construction include ecosystem restoration of the barrier islands, mainland beaches, and sites at Admiral Island, Turkey Creek, Dantzler, Bayou Cumbest, Franklin Creek, Deer Island, and submerged aquatic vegetation in Bayou Cumbest which will restore approximately 3,210 acres of emergent tidal marsh, wet pine savannah, scrub/shrub, submerged aquatic vegetation, and beach and dune habitats. In conjuction with the ecosystem restoration efforts, the Draft Comprehensive Plan/Integrated Programmatic EIS recommends tentatively selected flood damage reduction elements, including Forrest Heights Levee, High Hazard Area Risk Reduction Plan Phase I, Waveland Flood Proofing Pilot Projects, and Moss Point Municipal Facility relocation. The EIS will be used as a basis for ensuring compliance with the National Environmental Policy Act (NEPA).

DATES: The public comment period for the Draft Comprehensive Plan and Integrated Programmatic EIS will extend through March 30, 2009.

ADDRESSES: To receive an electronic copy of the Draft Comprehensive Plan and Integrated Programmatic EIS, or to submit comments, contact U.S. Army Corps of Engineers, Mobile District, MsCIP Team, P.O. Box 2288, Mobile, AL 36628–0001. A copy of the full document may also be viewed at the Pascagoula, Ocean Springs, Biloxi, Gulfport, and Bay Saint Louis libraries in coastal Mississippi.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and the Draft Comprehensive Plan and Integrated Programmatic EIS should be addressed to Dr. Susan I. Rees, Program Manager, MsCIP, phone (251) 694–4141, Mobile District, U.S. Army Corps of Engineers, P.O. Box 2288, Mobile, AL 36628 or *e-mail address: susan.i.rees@usace.army.mil.*

SUPPLEMENTARY INFORMATION: Public comments can be submitted through a variety of methods. Written comments may be submitted to the Corps by mail, facsimile, or electronic methods. Additional comments (written or oral) may be presented at the public hearing to be held in early March 2009 in each of the three coastal counties. Additional information on the public hearings will be mailed in a public notice to the agencies and public and announced in news releases.

Dated: January 22, 2009.

Curtis M. Flakes,

Chief, Planning and Environmental Division.

[FR Doc. E9–2810 Filed 2–9–09; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Hold an Open Meeting of the South Dakota River Task Force Established by the Missouri River Restoration Act of 2000 (Title IX)

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of meeting.

SUMMARY: The duties of the Task Force are to prepare and approve a plan for the use of the funds made available under Title IX to promote conservation practices in the Missouri River watershed, control and remove the sediment from the Missouri River, protect recreation on the Missouri River from sedimentation, and protect Indian and non-Indian historical and cultural sites along the Missouri River from erosion.

DATES: South Dakota Missouri River Task Force established by the Missouri River Restoration Act of 2000 will hold a meeting on March 10, 2009, from 10 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Holiday Inn Express located at 110 East Stanley Road in Fort Pierre, South Dakota 57532.

FOR FURTHER INFORMATION CONTACT: Laura Bentley at (402) 995–2714.

SUPPLEMENTARY INFORMATION: The objectives of the Task Force are to prepare and approve a plan for the use of the funds made available under Title IX, develop and recommend to the Secretary of the Army ways to implement critical restoration projects meeting the goals of the plan, and determine if these projects primarily benefit the Federal Government.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the task force; however, statements and questions should be submitted in advance. For additional information, contact Laura Bentley, U.S. Army Corps of Engineers, 1616 Capitol Avenue, Omaha, Nebraska 68102–4901, 402–995–2714.

Dated: February 3, 2009.

William D. Mulligan,

Chief, Civil Works Branch.

[FR Doc. E9–2809 Filed 2–9–09; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Partially Exclusive License; NextGen Containers LLC

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy gives notice of its intent to grant NextGen Containers LLC a revocable, nonassignable, partially exclusive license, with exclusive field of use in containerization of energetics (systems containing explosives, propellants, ignitors, ammunition, and their ingredients), medical materials and devices, and non-exclusive rights in all other fields of use, in the United States to practice the Government-owned inventions, U.S. Patent 7,156,249 entitled ''Container and related methods''; U.S. Patent Application Serial No. 11/387,084 entitled

''Shipping and Storage System''; U.S. Patent Application Serial No. 11/387,082 entitled ''Interlocking Pallets, and Shipping and Storage Systems Employing the Same''; and U.S. Patent Application Serial No. 11/387,081 entitled ''Automatically Interlocking Pallets, and Shipping and Storage Systems Employing the Same.''

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than February 27, 2009.

ADDRESSES: Written objections are to be filed with Indian Head Division, Naval Surface Warfare Center, Code CAB, Suite 107, 1st floor, 3824 Strauss Avenue, Indian Head, MD 20640–5152.

FOR FURTHER INFORMATION CONTACT: Dr. J. Scott Deiter, Head, Technology Transfer Office, Naval Surface Warfare Center Indian Head Division, Code CAB, 3824 Strauss Avenue, Indian Head, MD 20640–5035, *telephone:* 301–744–6111.

Dated: February 4, 2009.

A.M. Vallandingham,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E9–2723 Filed 2–9–09; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID USN–2009–0001]

Privacy Act of 1974; System of Records

AGENCY: U.S. Marine Corps, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The U.S. Marine Corps is proposing to alter system of records notice to its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on March 12, 2009 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to Headquarters, U.S. Marine Corps, FOIA/PA Section (ARSF), 2 Navy Annex, Room 3134, Washington, DC 20380–1775.

FOR FURTHER INFORMATION CONTACT: Ms. Tracy Ross at (703) 614–4008.

SUPPLEMENTARY INFORMATION: The U.S. Marine Corps system of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r), of the Privacy Act of 1974, as amended, was submitted on February 4, 2009 to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: February 4, 2009.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

MAA00002

SYSTEM NAME:

Marine Corps Aircrew Performance/Qualification Information (May 11, 1999, 64 FR 25299).

CHANGES:

Change System ID to read ''M05420–2.''

* * * * *

SYSTEM NAME:

Delete entry and replace with ''Marine Corps Aircrew Performance Qualification Records.''

SYSTEM LOCATION:

Delete entry and replace with ''The Commandant of the Marine Corps, Headquarters, United States Marine Corps, Aviation Department, Washington, DC 20380–1775.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Marine Corps aeronautically designated personnel (Naval Aviators, Naval Flight Officers and aircrew members).

CATEGORIES OF RECORDS IN SYSTEM:

Delete entry and replace with ''Applicant's full name, Social Security Number (SSN), information on medical qualification, flight pay, Flight Status Selection Board (FSSB)/Field Flight Performance Board (FFPB) correspondence and personal/career information for applicants to various selection boards managed by Headquarters, Marine Corps Aviation Manpower (ASM).''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, U.S. Marine Corps; OPNAVINST 3710.7T NATOPS, General Flight and Operating Instructions and E.O. 9397 (SSN).''

* * * * *

ROUTINE USERS OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Delete entry and replace with ''In addition to the disclosure generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein, may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'DoD Blanket Routine Uses' published at the beginning of the Marine Corps' compilation of systems of records notices apply to this system.''

* * * * *

STORAGE:

Delete entry and replace with ''Paper records and/or electronic storage media.''

RETRIEVABILITY:

Delete entry and replace with ''Alphabetically by last name.''

SAFEGUARDS:

Delete entry and replace with ''Physical entry is restricted by the use of locks, guards, and is accessible by authorized personnel. Access to records is limited to person(s) responsible for servicing the record in the performance of their official duties and who are properly screened and cleared for need-to-know. System software uses Primary Key Infrastructure (PKI)/Common Access Card (CAC) authentication to lock out unauthorized access. System software contains authorization/permission partitioning to limit access to appropriate organization level.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Files are permanent. Five years after any decision or board action, file is retired to the Federal Records Center.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''The Commandant of the Marine Corps, Headquarters, Marine Corps Aviation Support Branch (ASM), United States Marine Corps, 3000 Pentagon, Room 5E527, Washington, DC 20380–3000.''

NOTIFICATION PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to Headquarters, Marine Corps Administrative Support Branch (AAB),

3000 Marine Corps Pentagon, Room 5E518, Washington, DC 20380–3000.

The request should contain the full name, Social Security Number (SSN) and signature.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to Headquarters, Marine Corps Administrative Support Branch (AAB), 3000 Marine Corps Pentagon, Room 5E518, Washington, DC 20380–3000.

The request should contain the full name, Social Security Number (SSN) and signature.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5E; 32 CFR part 701; or may be obtained from the system manager, Headquarters Marine Corps Administrative Support Branch (AAB), 3000 Marine Corps Pentagon, Room 5E518, Washington, DC 20380–3000.''

* * * * *

M05420–2

SYSTEM NAME:

Marine Corps Aircrew Performance Qualification Records.

SYSTEM LOCATION:

The Commandant of the Marine Corps, Headquarters, United States Marine Corps, Aviation Department, Washington, DC 20380–1775.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Marine Corps aeronautically designated personnel (Naval Aviators, Naval Flight Officers, and aircrew members).

CATEGORIES OF RECORDS IN THE SYSTEM:

Applicant's full name, Social Security Number (SSN); information on medical qualification, flight pay, FSSB/FPPB correspondence and personal/career information for applicants to various selection boards managed by Headquarters, Marine Corps Aviation Manpower (ASM).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, U.S. Marine Corps; OPNAVINST 3710.7T NATOPS, General Flight and Operating Instructions and E.O 9397 (SSN).

PURPOSE(S):

To maintain records on Marine Corps aeronautically designated personnel for use by Officials and employees of the Marine Corps in the administration and management of such personnel.

ROUTINE USERS OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to the disclosure generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein, may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'DoD Blanket Routine Uses' published at the beginning of the Marine Corps' compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and/or electronic storage media.

RETRIEVABILITY:

Alphabetically by last name.

SAFEGUARDS:

Physical entry is restricted by the use of locks, guards, and is accessible by authorized personnel. Access to records is limited to person(s) responsible for servicing the record in the performance of their official duties and who are properly screened and cleared for need-to-know. System software uses Primary Key Infrastructure (PKI)/Common Access Card (CAC) authentication to lock out unauthorized access. System software contains authorization/permission partitioning to limit access to appropriate organization level.

RETENTION AND DISPOSAL:

Files are permanent. Five years after any decision or board action, file is retired to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

The Commandant of the Marine Corps, Headquarters, Marine Corps Aviation Support Branch (ASM), United States Marine Corps, 3000 Pentagon, Room 5E527, Washington, DC 20380–3000.

NOTIFICATION PROCEDURE:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Headquarters, Marine Corps Administrative Support Branch (AAB), 3000 Marine Corps Pentagon, Room 5E518, Washington, DC 20380–3000.

The request should contain the full name, Social Security Number (SSN) and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Headquarters, Marine Corps Administrative Support Branch (AAB), 3000 Marine Corps Pentagon, Room 5E518, Washington, DC 20380–3000.

The request should contain the full name, Social Security Number (SSN) and signature.

CONTESTING RECORD PROCEDURES:

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5E; 32 CFR part 701; or may be obtained from the system manager, Headquarters Marine Corps Administrative Support Branch (AAB), 3000 Marine Corps Pentagon, Room 5E518, Washington, DC 20380–3000.

RECORD SOURCE CATEGORIES:

Information is obtained from Official reports, boards, inquiries and requests. Information is also obtained from the review of Naval Aviator/Naval Flight Officer Reporting Management System data.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–2796 Filed 2–9–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 12, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, *Attention:* Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early

opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: February 5, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.

Title: FRSS 96 Follow-up District Survey of Alternative Schools and Programs: 2007–08.

Frequency: Once.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1,699.

Burden Hours: 142.

Abstract: This follow-up, fast response survey will collect information from a sample of 1,699 public school districts on Alternative Schools and Programs for students at risk of educational failure. The initial survey was requested by the Office of Safe and Drug-Free Schools (OSDFS) in the U.S. Department of Education to provide a snapshot of alternative schools and programs for students at risk of educational failure within the nation's public school districts. This follow up survey will provide information on schools and programs that use entities other than the school district to administer the programs and will collect information on the identities of these entities.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3946. 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 the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to AXT at 540–776–7742. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–2795 Filed 2–9–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[OE Docket No. PP–230–4]

Application To Amend Presidential Permit; International Transmission Company, d/b/a ITCTransmission

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: International Transmission Company, d/b/a ITC*Transmission* (ITC) has applied for an amendment of a Presidential permit to construct, operate, maintain and connect electric transmission facilities across the U.S. international border.

DATES: Comments, protests, or requests to intervene must be submitted on or before March 12, 2009.

ADDRESSES: Office of Electricity Delivery and Energy Reliability (OE–20), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) at 202–586–9624, or by e-mail to *Ellen.Russell@hq.doe.gov,* or Michael T. Skinker (Program Attorney) at 202–586–2793.

SUPPLEMENTARY INFORMATION: The construction, operation, maintenance, and connection of facilities at the international border of the United States for the transmission of electric energy between the United States and a foreign country is prohibited in the absence of a Presidential permit issued pursuant to Executive Order (EO) 10485, as amended by EO 12038.

On September 26, 2000, DOE issued a Presidential permit to International Transmission Company (ITC) in Order No. PP–230, authorizing it to construct, operate, maintain, and connect electric transmission facilities at the international border of the United States and Canada. Those facilities are currently authorized by Presidential Permit No. PP–230–3 and include:

(1) One 230,000-volt (230-kV) transmission line, including one 675–MVA phase-shifting transformer connecting the Bunce Creek Station, located in Marysville, Michigan, with Hydro One's Scott Transformer Station, located in Sarnia, Ontario (identified as the B3N facility);

(2) One 230-kV transmission line connecting the Waterman Station, located in Detroit, Michigan, with Hydro One's J. Clark Keith Generating Station, located in Windsor, Ontario (identified as the J5D facility);

(3) One 345-kV transmission line connecting the St. Clair Generating Station, located in East China Township, Michigan, with Hydro One's Lambton Generating Station, located in Moore Township, Ontario (identified as the L4D facility); and

(4) One 230-kV transmission line connecting the St. Clair Generating Station with Hydro One's Lambton Generating Station (identified as the L51D facility).

In March 2003, the phase shifting transformer installed on the B3N facilities failed. On January 5, 2009, ITC applied to DOE to amend Presidential Permit PP–230–3 by authorizing it to replace the failed 675–MVA transformer with two 700–MVA phase shifting transformers connected in series.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Additional copies of such petitions to intervene or protest also should be filed directly with Mr. James Frankowski, ITC Holdings Corp, 27175 Energy Way, Novi, MI 48377 and John R. Staffier, Stuntz, Davis & Staffier, P.C., 555 Twelfth Street, NW., Suite 630, Washington, DC 20004.

Before a Presidential permit may be granted or amended, DOE must determine that the proposed action will

not adversely impact on the reliability of the U.S. electric power supply system. In addition, DOE must consider the environmental impacts of the proposed action (i.e., granting the Presidential permit, with any conditions and limitations, or denying the permit) pursuant to the National Environmental Policy Act of 1969. DOE also must obtain the concurrences of the Secretary of State and the Secretary of Defense before taking final action on a Presidential permit application.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above. In addition, the application may be reviewed or downloaded electronically at *http://www.oe.energy.gov/permits_pending.htm*.

Issued in Washington, DC, on February 4, 2009.

Anthony J. Como,

Director, Siting and Permitting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. E9–2789 Filed 2–9–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–257–C]

Application To Export Electric Energy; Emera Energy Services, Inc.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Emera Energy Services, Inc. (EES) has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or requests to intervene must be submitted on or before March 12, 2009.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–586–8008).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On April 5, 2002, the Department of Energy (DOE) issued Order No. EA–257 authorizing EES to transmit electric energy from the United States to Canada as a power marketer, primarily using international transmission facilities located at the United States border with Canada in the States of Maine and Vermont. That Order was renewed on April 5, 2004, in Order No. EA–257–A, and amended on May 17, 2007, in Order No. EA–257–B, to add additional existing international transmission facilities to the list of authorized export points. The current export authorization will expire on April 5, 2009. On January 28, 2009, EES filed an application with DOE to renew the export authority contained in Order No. EA–257–B for an additional five-year term.

The electric energy which EES proposes to export to Canada would be surplus energy purchased from electric utilities, Federal power marketing agencies, and other entities within the United States.

EES will arrange for the delivery of exports to Canada over the international transmission facilities owned by Bangor Hydro-Electric Company, Basin Electric Power Cooperative, Bonneville Power Administration, Eastern Maine Electric Cooperative, International Transmission Co., Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, Inc., New York Power Authority, Niagara Mohawk Power Corp., Northern States Power Company, Vermont Electric Power Company, and Vermont Electric Transmission Co.

The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by EES has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment, or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the EES application to export electric energy to Canada should be clearly marked with Docket No. EA–257–C. Additional copies are to be filed directly with Rebecca Gasek, Emera Energy Services, Inc., 1894 Barrington Street, Halifax, Nova Scotia, Canada B3J 2A8 and Wendy N. Reed, Deborah C. Brentani, Wright & Talisman, P.C., 1200 G Street, NW., Suite 600, Washington, DC 20005. A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by DOE that the proposed action will not adversely impact the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://www.oe.energy.gov/permits_pending.htm*, or by e-mailing Odessa Hopkins at *Odessa.Hopkins@hq.doe.gov*.

Issued in Washington, DC, on February 4, 2009.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. E9–2792 Filed 2–9–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–287–A]

Application To Export Electric Energy; Emera Energy U.S. Subsidiary No. 1, Inc.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Emera Energy U.S. Subsidiary No. 1, Inc. (ESS#1) has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or requests to intervene must be submitted on or before March 12, 2009.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (Fax 202–586–8008).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section

202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On April 19, 2004, the Department of Energy (DOE) issued Order No. EA–287 authorizing EES#1 to transmit electric energy from the United States to Canada as a power marketer using international transmission facilities located at the United States border with Canada. That authorization will expire on April 19, 2009. On January 28, 2009, EES#1 filed an application with DOE to renew the export authority contained in Order No. EA–287 for an additional five-year term.

The electric energy which EES#1 proposes to export to Canada would be surplus energy purchased from electric utilities, Federal power marketing agencies, and other entities within the United States.

EES#1 will arrange for the delivery of exports to Canada over the international transmission facilities owned by Bangor Hydro-Electric Company, Basin Electric Power Cooperative, Bonneville Power Administration, Eastern Maine Electric Cooperative, International Transmission Co., Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, Inc., New York Power Authority, Niagara Mohawk Power Corp., Northern States Power Company, Vermont Electric Power Company, and Vermont Electric Transmission Co.

The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by EES#1 has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment, or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the EES#1 application to export electric energy to Canada should be clearly marked with Docket No. EA–287–A. Additional copies are to be filed directly with Rebecca Gasek, Emera Energy Services, Inc., 1894 Barrington Street, Halifax, Nova Scotia, Canada B3J 2A8 and Wendy N. Reed, Deborah C. Brentani, Wright & Talisman, P.C., 1200 G Street, NW., Suite 600, Washington, DC 20005. A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://www.oe.energy.gov/permits_pending.htm*, or by e-mailing Odessa Hopkins at *Odessa.Hopkins@hq.doe.gov.*

Issued in Washington, DC, on February 4, 2009.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. E9–2808 Filed 2–9–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

DOE/Advanced Scientific Computing Advisory Committee

AGENCY: Department of Energy, Office of Science.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Advanced Scientific Computing Advisory Committee (ASCAC). Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, March 3, 2009, 9 a.m. to 5:15 p.m.; Wednesday, March 4, 2009, 9 a.m. to 12 p.m.

ADDRESSES: American Geophysical Union (AGU), 2000 Florida Avenue, NW., Washington, DC 20009–1277.

FOR FURTHER INFORMATION CONTACT: Melea Baker, Office of Advanced Scientific Computing Research, SC–21/Germantown Building; U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–1290; Telephone (301) 903–7486, (*E-mail: Melea.Baker@science.doe.gov*).

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of this meeting is to provide advice and guidance with respect to the advanced scientific computing research program.

Tentative Agenda: Agenda will include discussions of the following:

Tuesday, March 3, 2009

View from Washington
ASCR Update
Changes to INCITE Program
Update on Extreme Scale Science Workshops
Cyber Security R&D Planning
Realizing Petascale Computing
ESnet Update
ASCAC Subcommittee Updates
Public Comment

Wednesday, March 4, 2009

Gordon Bell Petascale Application—Superconductors
International Collaboration
INCITE User Perspective
Public Comment

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting.

If you would like to make oral statements regarding any of the items on the agenda, you should contact Melea Baker via FAX at 301–903–4846 or via e-mail (*Melea.Baker@science.doe.gov*). You must make your request for an oral statement at least 5 business days prior to the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585; between 9 a.m. and 4 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, on February 5, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–2786 Filed 2–9–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, March 11, 2009, 5 p.m.

ADDRESSES: Atomic Testing Museum, 755 East Flamingo Road, Las Vegas, Nevada 89119.

FOR FURTHER INFORMATION CONTACT: Denise Rupp, Board Administrator, 232 Energy Way, M/S 505, North Las Vegas, Nevada 89030. *Phone:* (702) 657–9088; Fax (702) 295–5300 or *E-mail: ntscab@nv.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. DOE Presentation: Cultural Resource Update
2. Sub-Committee Reports
   A. Budget Committee
   B. Environmental Management Public Information Review Effort Committee
   C. Outreach Committee
   D. Transportation/Waste Committee
   E. Underground Test Area Committee
3. DOE Nevada Site Office Environmental Management Update

Public Participation: The EM SSAB, Nevada Test Site, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Denise Rupp at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Denise Rupp at the telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing to Denise Rupp at the address listed above or at the following Web site: *http://www.ntscab.com/MeetingMinutes.htm.*

Issued at Washington, DC on February 5, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–2784 Filed 2–9–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Fiscal Year (FY) 2010–2011 Proposed Power and Transmission Rate Adjustments; Public Hearing and Opportunities for Public Review and Comment

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of FY 2010–2011 Proposed Power and Transmission Rate Adjustments.

SUMMARY: BPA is holding a consolidated rate proceeding, BPA–10, that will have separate sub-dockets for power and transmission rates for FY 2010–2011. The rate proceeding will have one hearing officer, one schedule, one record, and one Record of Decision (ROD). The power sub-docket is designated WP–10, and the transmission sub-docket, which includes transmission and ancillary services rates, is designated TR–10. The Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) provides that BPA must establish and periodically review and revise its rates so that they are adequate to recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, including amortization of the Federal investment in the Federal Columbia River Power System (FCRPS) and BPA's other costs and expenses. The Northwest Power Act also requires that BPA's rates be established based on the record of a formal hearing. In addition, for transmission rates only, the Federal Columbia River Transmission System Act requires that transmission costs be equitably allocated between Federal and non-Federal power using the system. By this notice, BPA announces the commencement of a power and transmission rate adjustment proceeding for proposed power, transmission, and ancillary services rates that will be effective on October 1, 2009.

DATES: Anyone wishing to become a party to the proceeding must provide written notice, via U.S. Mail or electronic mail, which is received by BPA no later than 4:30 p.m. on February 17, 2009. Parties need to submit only one notice to request intervention as a party in both the WP–10 and the TR–10 sub-dockets.

The rate adjustment proceeding begins with a prehearing conference at 1:30 pm on February 18, 2009, in Portland, Oregon.

Written comments by non-party participants must be received by April 24, 2009, to be considered in the Administrator's Record of Decision.

ADDRESSES:

1. Petitions to intervene should be directed to Hearing Clerk—L–7, Bonneville Power Administration, 905 NE 11th Ave., Portland, Oregon 97232, or may be e-mailed to *2010HearingClerk@bpa.gov.* In addition, copies of the petition must be served concurrently on BPA's General Counsel and directed to both Mr. Peter J. Burger, LP–7, and Mr. Barry Bennett, LC–7, Office of General Counsel, 905 NE 11th Ave., Portland, Oregon 97232, or via e-mail to *pjburger@bpa.gov* and *bbennett@bpa.gov* (*see* section III.A. for more information regarding interventions).

2. Written comments by participants should be submitted to the Public Engagement Office—DKE–7, Bonneville Power Administration, P.O. Box 14428, Portland, Oregon 97293. You may also e-mail your comments to *comment@bpa.gov.* BPA requests that all comments and documents intended to be part of the Official Record in this rate proceeding contain the designation BPA–10.

3. The prehearing conference will be held in the BPA Rates Hearing Room, 2nd floor, 911 NE 11th Ave., Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Ms. Heidi Helwig—DKE–7, Public Affairs Specialist, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208–3621; by phone at 503–230–3488 or toll free at 1–800–622–4519; or via e-mail to *hyhelwig@bpa.gov.*

Responsible Official: Mr. Raymond D. Bliven, Power Rates Manager, is the official responsible for the development of BPA's power rates, and Mr. Edison Elizeh, Commercial Business Assessment Manager, is the official responsible for the development of BPA's transmission and ancillary services rates.

BPA Attorney Advisors: Mr. Peter J. Burger is the principal BPA attorney assigned to the power rates sub-docket proceeding, and Mr. Barry Bennett is the principal BPA attorney assigned to the transmission and ancillary services rates sub-docket proceeding. Mr. Burger may be contacted as follows: by U.S. Mail at Mr. Peter J. Burger, Office of General Counsel, LP–7, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208–3621; via e-mail at *pjburger@bpa.gov*; or by telephone at 503–230–4148. Mr. Bennett may be contacted as follows: by U.S. Mail at Mr.

Barry Bennett, Office of General Counsel, LC–7, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208–3621; via e-mail at *bbennett@bpa.gov*; or by telephone at 503–230–4053.

SUPPLEMENTARY INFORMATION:

Part I—Introduction and Procedural Background

Section 7(i) of the Northwest Power Act, 16 U.S.C. section 839e(i), requires that BPA's rates be established according to certain procedures, including publication in the **Federal Register** of this notice of the proposed rates; one or more hearings conducted as expeditiously as practicable by a hearing officer; opportunity for both oral presentation and written submission of views, data, questions, and arguments related to the proposed rates; and a decision by the Administrator based on the record. BPA's rate proceedings are further governed by BPA's Procedures Governing Bonneville Power Administration Rate Hearings, 51 FR 7611 (1986), which implement and expand the statutory requirements.

This proceeding is being conducted under the rule for general rate proceedings, section 1010.4 of BPA's Procedures. A proposed schedule for the proceeding is provided below. A final schedule will be established by the Hearing Officer at the prehearing conference.

Parties File Petition to Intervene: February 17, 2009.
Prehearing/BPA Direct Case: February 18, 2009.
Clarification: February 24–27, 2009.
Motions to Strike: March 2, 2009.
Data Request Deadline: March 2, 2009.
Answers to Motions to Strike: March 9, 2009.
Data Response Deadline: March 9, 2009.
Parties file Direct Case: March 20, 2009.
Clarification: March 25–26, 2009.
Motions to Strike: March 30, 2009.
Data Request Deadline: March 30, 2009.
Answers to Motions to Strike: April 6, 2009.
Data Response Deadline: April 6, 2009.
Litigants file Rebuttal: April 17, 2009.
Close of Participant Comments: April 24, 2009.
Clarification: April 24, 2009.
Motions to Strike: April 29, 2009.
Data Request Deadline: April 29, 2009.
Answers to Motions to Strike: May 6, 2009.
Data Response Deadline: May 6, 2009.
Cross Examination: May 11–15, 2009.
Initial Briefs Filed: May 27, 2009.
Oral Argument: June 10, 2009.
Draft ROD issued: June 23, 2009.
Briefs on Exceptions: July 2, 2009.
Final ROD—Final Studies: July 21, 2009.

Section 1010.7 of BPA's Procedures prohibits *ex parte* communications. The *ex parte* rule applies to all BPA and DOE employees and contractors. Except as provided below, any outside communications with BPA and/or DOE personnel regarding the merits of any issue in BPA's rate proceeding by other Executive Branch agencies, Congress, existing or potential BPA customers (including tribes), and nonprofit or public interest groups are considered outside communications and are subject to the *ex parte* rule. The general rule does not apply to communications relating to: (1) Matters of procedure only (the status of the rate proceeding, for example); (2) exchanges of data in the course of business or under the Freedom of Information Act; (3) requests for factual information; (4) matters for which BPA is responsible under statutes other than the ratemaking provisions; or (5) matters which all parties agree may be made on an *ex parte* basis. The *ex parte* rule remains in effect until the Administrator's Final ROD is issued, which is scheduled to occur on or about July 21, 2009.

Part II—Description of Joint Rate Proceeding and Information Applicable to Both Sub-Dockets

A. Joint Rate Proceeding

Since BPA formed the power and transmission business lines in 1997, it has held separate power and transmission rate proceedings. This year, however, BPA is holding one rate proceeding with two sub-dockets, one sub-docket for power rates and one sub-docket for transmission rates, because both sets of rates are expiring on September 30, 2009. The rate proceeding will have one hearing officer, one schedule, one record, and one Record of Decision.

The power rates sub-docket will address all power rates issues, including the calculation and pricing of capacity reserves for ancillary and control area services (regulating reserves, operating reserves, and wind balancing reserves). The power rates sub-docket will also include other generation inputs and inter-business line topics, including synchronous condensing, generation dropping, redispatch expense, energy and generation imbalance revenue, segmentation of U.S. Army Corps of Engineers and U.S. Bureau of Reclamation transmission facilities, and station service. Except for the above generation inputs issues, the transmission rates sub-docket will include all transmission rates issues, including rate design and rate schedules for all ancillary and control area services.

Because BPA has separated its power and transmission functions and is setting its power and transmission rates in separate sub-dockets, it is appropriate that BPA's Power Services be a party to the transmission sub-docket. Accordingly, Power Services will be considered a party to the transmission sub-docket for all purposes under BPA's Procedures. Power Services may file testimony and briefs as a party and will be entitled to all other procedural rights of a party. In particular, Power Services shall be considered a party for purposes of *ex parte* communications.

B. Integrated Program Review

BPA began its first Integrated Program Review (IPR) process in May 2008 in response to customer and stakeholder requests for a consolidated program-level review of BPA's planned expenses. This process replaced prior public involvement efforts, including the Capital Program Review, Power Function Review, and Transmission's Programs in Review. The IPR process is designed to allow persons interested in BPA's program levels an opportunity to review and comment on all of BPA's expense and capital spending level estimates in the same forum prior to the use of those estimates in setting rates.

The recently completed IPR focused on FY 2010 and 2011 program levels for BPA's Power Services and Transmission Services as well as a review of proposed Power Services FY 2009 program levels. Decisions on FY 2009 Power Services costs were announced in a separate document released July 18, 2008. BPA held 17 IPR workshops at which proposed spending levels were presented for each of BPA's programs. BPA carefully reviewed and considered the 18 written comments and numerous oral comments on FY 2010–2011 program levels that were made during this public process.

On November 14, 2008, BPA issued the Close-Out Letter and accompanying report for the IPR, which summarizes the comments and outlines BPA's responses. In the Close-Out Letter and report, BPA established the program level cost estimates that are used in the WP–10 and TR–10 Initial Proposals. In addition, BPA committed to reassessing the program spending levels to determine if further cost changes are appropriate, and conducting an abbreviated public review in the spring of 2009. BPA will conduct this process separately from the rate proceeding to share updated forecasts, define additional policy choices, and solicit

feedback from customers and constituents before the final program levels are incorporated into the final rates.

C. The National Environmental Policy Act

BPA is in the process of assessing the potential environmental effects of its proposed power and transmission rates, consistent with the National Environmental Policy Act (NEPA). The NEPA process is conducted separately from the rate proceeding. As discussed in sections IV.B. and V.A.7. below, all evidence and argument addressing potential environmental impacts of rates being developed in the BPA–10 rate proceeding are excluded from the rate proceeding hearing record. Rather, comments on environmental effects should be directed to the NEPA process.

Because this proposal involves BPA's ongoing business practices related to rates, BPA is reviewing the proposal for consistency with BPA's Business Plan Environmental Impact Statement (Business Plan EIS), completed in June 1995 (BOE/EIS–0183). This policy-level EIS evaluates the environmental impacts of a range of business plan alternatives for BPA that could be varied by applying various policy modules, including one for rates. Any combination of alternative policy modules should allow BPA to balance its costs and revenues. The Business Plan EIS also includes response strategies, such as adjustments to rates, that BPA could implement if BPA's costs exceed its revenues.

In August 1995, the BPA Administrator issued a Record of Decision (Business Plan ROD) that adopted the Market-Driven Alternative from the Business Plan EIS. This alternative was selected because, among other reasons, it allows BPA to: (1) Recover costs through rates; (2) competitively market BPA's products and services; (3) develop rates that meet customer needs for clarity and simplicity; (4) continue to meet BPA's legal mandates; and (5) avoid adverse environmental impacts. BPA also committed to apply as many response strategies as necessary when BPA's costs and revenues do not balance.

In April 2007, BPA completed and issued a Supplement Analysis to the Business Plan EIS. This Supplement Analysis found that the Business Plan EIS's relationship-based and policy-level analysis of potential environmental impacts from BPA's business practices remains valid, and that BPA's current business practices remain consistent with BPA's Market-Driven approach. The Business Plan EIS and ROD thus continue to provide a sound basis for making determinations under NEPA concerning BPA's policy-level decisions, including rates.

Because the proposed rates likely would assist BPA in accomplishing the goals identified in the Business Plan ROD, the proposal appears consistent with these aspects of the Market-Driven Alternative. In addition, this rate proposal is similar to the type of rate designs evaluated in the Business Plan EIS; thus, implementation of this rate proposal would not be expected to result in environmental impacts significantly different from those examined in the Business Plan EIS. Therefore, BPA expects that this rate proposal likely will fall within the scope of the Market-Driven Alternative that was evaluated in the Business Plan EIS and adopted in the Business Plan ROD.

As part of the Administrator's Record of Decision that will be prepared for the BPA–10 rate proceeding, BPA may tier its decision under NEPA to the Business Plan ROD. However, depending upon the ongoing environmental review, BPA may, instead, issue another appropriate NEPA document. Persons may submit comments regarding the potential environmental effects of the proposal to Katherine Pierce, NEPA Compliance Officer, KEC–4, Bonneville Power Administration, 905 NE 11th Avenue, Portland, OR 97232. Any such comments received by the comment deadline for Participant Comments identified in section III.A. below will be considered by BPA's NEPA compliance staff in the NEPA process that will be conducted for this proposal.

D. Power and Transmission Rate Workshops

In preparation for the BPA–10 rate proceeding, BPA held several public rate case workshops with customers and interested parties from May 2008 through January 2009. BPA published notices for all workshops, which were well attended by customers and interested parties. During the workshops, BPA staff presented and discussed information about costs, load and resource forecasting, generation inputs pricing, revenue forecasts, risk analysis and mitigation, products, pricing, and rate design. Customers and interested parties had extensive opportunity to participate, raise issues, and comment on the information BPA staff presented. At the workshops, the customers approached BPA staff about partial settlement of the Transmission rate proposal, excluding generation inputs. Transmission Services met with parties several times to negotiate the partial settlement of the Transmission rate case. See section IV.A.

Part III—Public Participation

A. Distinguishing Between ''Participants'' and ''Parties''

BPA distinguishes between ''participants in'' and ''parties to'' the hearings. Apart from the formal hearing process, BPA will receive written comments, views, opinions, and information from ''participants,'' who are defined in BPA's Procedures as persons who may submit comments without being subject to the duties of, or having the privileges of, parties. Participants' written comments will be made part of the official record and considered by the Administrator. Participants are not entitled to participate in the prehearing conference; may not cross-examine parties' witnesses, seek discovery, or serve or be served with documents; and are not subject to the same procedural requirements as parties. BPA customers whose rates are subject to this proceeding, or their affiliated customer groups, may not submit participant comments. Persons who are members or employees of organizations that have intervened in the rate proceeding may submit general comments as participants but may not use the comment procedures to address specific issues raised by their intervenor organization.

Written comments by participants will be included in the record if they are received by April 24, 2009. Written views, supporting information, questions, and arguments should be submitted to the address listed in the **ADDRESSES** section of this Notice.

Entities or persons become parties to the proceeding by filing petitions to intervene, which must state the name and address of the entity or person requesting party status and their interest in the hearing. BPA customers and affiliated customer groups will be granted intervention based on a petition filed in conformance with BPA's Procedures. Other petitioners must explain their interests in sufficient detail to permit the hearing officer to determine whether such petitioners have a relevant interest in the hearing. Pursuant to Rule 1010.1(d) of BPA's Procedures, BPA waives the requirement in Rule 1010.4(d) that an opposition to an intervention petition be filed and served 24 hours before the prehearing conference. Any opposition to an intervention petition must instead be made at the prehearing conference. Any party, including BPA, may oppose a petition for intervention. All timely

petitions will be ruled on by the hearing officer. Late interventions are strongly disfavored. Opposition to an untimely petition to intervene must be filed and received by BPA within two days after service of the petition.

B. Developing the Record

The hearing record will include, among other things, the transcripts of the hearing, written evidence and argument entered into the record by BPA and the parties, written comments from participants, and other material accepted into the record by the hearing officer in either sub-docket. The hearing officer then will review the record and certify the record to the Administrator for final decision.

The Administrator will develop final rates based on the record, information from the program level workshops, documents prepared pursuant to the National Environmental Policy Act and other environmental statutes, Average System Cost determinations, and such other material or information as may have been submitted to or developed by the Administrator. The Administrator will serve copies of the Final Record of Decision on all parties. BPA will file its rates with the Federal Energy Regulatory Commission (Commission) for confirmation and approval after issuance of the Final Record of Decision.

Part IV—Transmission Sub-Docket TR–10

A. Partial Settlement of the Transmission Sub-Docket

Transmission Services and most of its customers, including Power Services, are parties to a Partial Settlement Agreement that provides for Transmission Services to submit a Settlement Proposal that incorporates the provisions of the agreement. The Partial Settlement Agreement provides for Transmission Services to propose maintaining current FY 2008–2009 rates, with no rate increase for the FY 2010–2011 period, for all transmission services and for two ancillary services: Scheduling, System Control and Dispatch Service and Reactive Supply and Voltage Control from Generation Sources Service. The remaining ancillary services and all control area services are not covered by the partial settlement.

The Partial Settlement Agreement also includes changes to the Failure to Comply Penalty Charge, the Unauthorized Increase Charge, and the Network Integration Rate. In addition, it includes BPA's commitments to hold discussions with all interested parties regarding various ratemaking issues and to develop a business practice for implementing the revised Failure to Comply Penalty Charge. The Partial Settlement Agreement also provides that BPA will file with the Commission revised Attachment M to BPA's Open Access Transmission Tariff (OATT) and that the signatories to the Partial Settlement Agreement will not challenge the filing. The Attachment M filing will not be part of this rate proceeding.

The Partial Settlement Agreement recognizes the possibility that parties to the TR–10 Transmission rate proceeding that have not signed the Partial Settlement Agreement may object to Transmission Services' Settlement Proposal. If any party objects to the Settlement Proposal, Transmission Services has the right to submit a revised proposal. If Transmission Services submits a revised proposal, signatories to the Partial Settlement Agreement may contest any aspect of the revised proposal. If Transmission Services does not revise the Settlement Proposal, and the Administrator establishes transmission rates consistent with the Settlement Proposal, the signatories may not challenge approval of the rates by the Commission or in any judicial forum.

B. Scope of the Transmission Rate Proceeding

Some of the decisions that determine Transmission Services' costs have been or will be made in the IPR public review process outside the transmission rate proceeding. See section II.B. This section provides guidance to the hearing officer as to those matters that are within the scope of the TR–10 Transmission rate proceeding and those that are outside the scope.

BPA's spending levels for transmission investments and expenses are not determined or subject to review in rate proceedings. Pursuant to section 1010.3(f) of BPA's Procedures, the Administrator directs the hearing officer to exclude from the record all argument and testimony or other evidence that challenges the appropriateness or reasonableness of the Administrator's decisions on transmission spending levels. If, and to the extent that, any re-examination of spending levels is necessary, such re-examination will occur outside of the rate proceeding. Excluded from this direction are revenue requirements related to interest rate forecasts, interest expense and credit, Treasury repayment schedules, forecasts of depreciation, forecasts of system replacements used in repayment studies, minimum required net revenue, and risk mitigation resulting from expense and revenue uncertainties and risks included in the risk analysis. The Administrator also directs the Hearing Officer to exclude argument and evidence regarding BPA's debt management practices and policies (see section V.A.6.).

The Administrator also directs the Hearing Officer to exclude from the record all argument and testimony or other evidence that seek in any way to address the potential environmental impacts of the rates being developed in the TR–10 Transmission rate proceeding.

C. Summary of Transmission Rate Proposal

1. Transmission rates. Transmission Services is proposing four different rates for the use of its Integrated Network segment, four different rates for use of intertie segments, and several other rates for various purposes.

The four rates for use of the Integrated Network segment are:

Formula Power Transmission (FPT–10) rate—The FPT rate is based on the cost of using specific types of facilities, including a distance component for the use of transmission lines, and is charged on a contract demand basis. FPT customers are not subject to charges for the two required ancillary services, Reactive Supply and Voltage Control from Generation Sources, and Scheduling, System Control and Dispatch, because those services are included in the FPT rate. Transmission Services is not offering new FPT contracts, but a number of FPT contracts continue in place during the rate period.

Integration of Resources (IR–10) rate—The IR rate is a postage stamp, contract demand rate for the use of the Integrated Network, similar to Point-to-Point (PTP) service. It includes a Short Distance Discount. IR customers are not subject to charges for the two required ancillary services, Reactive Supply and Voltage Control from Generation Sources, and Scheduling, System Control and Dispatch, because they are included in the IR rate. Transmission Services is not offering new IR contracts, but a number of IR contracts remain in place during the rate period.

Network Integration Transmission (NT–10) rate—The NT rate applies to customers taking network integration service under the OATT and allows customers to flexibly serve their retail load. It includes a Load Shaping Charge applied to the customer's total load, and a Base Charge applied to the total load less Customer Served Load, if any. Customer Served Load is the amount of

load that the customer agrees to serve without using its NT service.

Point-to-Point (PTP–10) rate—The PTP rate is a contract demand rate that applies to customers taking point-to-point service on BPA's network facilities under the OATT. It provides customers with flexible service from identified Points of Receipt to identified Points of Delivery. There are separate PTP rates for long-term firm service; daily firm and non-firm service; and hourly firm and non-firm service. The rate for long-term firm service contains a Short Distance Discount. All short-term PTP rates are downwardly flexible.

In addition to the four rates for network use, other proposed transmission rates include:

The Southern Intertie (IS–10) and the Montana Intertie (IM–10) rates are contract demand rates that apply to customers taking point-to-point service under the OATT on the Southern Intertie and Montana Intertie. These rates are structured similarly to the rate for point-to-point service on network facilities.

The Townsend-Garrison Transmission (TGT–10) and the Eastern Intertie (IE–10) rates are developed pursuant to the Montana Intertie agreement.

The Use-of-Facilities (UFT–10) rate establishes a formula for charging for the use of a specific facility based on the annual cost of that facility.

The Advance Funding (AF–10) rate allows Transmission Services to collect the capital and related costs of specific facilities through an advance-funding mechanism. Other charges that may apply include a Delivery Charge for the use of low-voltage delivery substations; a Power Factor Penalty Charge; a Reservation Fee for customers that postpone their service commencement dates; incremental rates for transmission requests that require new facilities; a penalty charge for failure to comply with curtailment, redispatch, or load shedding orders; and an Unauthorized Increase Charge for customers that exceed their contracted amounts.

2. Ancillary Services rates. Transmission Services is proposing rates for six ancillary services:

Scheduling, System Control, and Dispatch Service is required to schedule and secure the movement of power through, out of, within, or into the BPA Balancing Authority Area. All transmission contract holders except FPT and IR customers are required to purchase this service from BPA. The billing factor is the same as the billing factor for the underlying transmission service. For NT customers, the billing factor is the same as that for the NT Base charge.

Reactive Supply and Voltage Control from Generation Sources Service provides reactive support to the transmission system and is necessary to maintain transmission system voltages within acceptable limits. All transmission contract holders, except FPT and IR customers, must purchase this service from BPA. The billing factor is the same as the underlying billing factor for the transmission service. For NT customers, the billing factor is the same as that for the NT Base charge.

Regulation and Frequency Response Service provides the continuous balancing of resources (generation and interchange) with load and maintains frequency at 60 Hz. This service is accomplished by committing on-line generation (predominantly through the use of automatic generation control equipment) whose output is raised or lowered to follow the moment-to-moment changes in load. Transmission customers serving load in the BPA Balancing Authority Area must take this service.

Energy Imbalance Service is taken when a difference occurs between the scheduled and actual delivery of energy during a schedule hour to a load located within BPA's Balancing Authority Area.

Operating Reserve-Spinning Reserve Service is used to serve load immediately in the event of a system contingency. The billing factor for this service is the customer's share of the reserve obligation of the balancing authority, as defined by the Western Electricity Coordinating Council (WECC) and the Northwest Power Pool.

Operating Reserve-Supplemental Reserve Service is available to serve load within a short period of time in the event of a system contingency. This service may be provided by units that are on-line but unloaded, by quick-start generation, or by interruptible load. The billing factor for this service is the customer's share of the reserve obligation of the control area, as defined by the WECC and the Northwest Power Pool.

In addition to the rates for Ancillary Services, Transmission Services is proposing rates for five Control Area services: Regulation and Frequency Response Service; Generation Imbalance Service; Operating Reserve-Spinning Reserve Service; Operating Reserve-Supplemental Reserve Service; and Wind Integration-Within-Hour Balancing Service.

3. Changes to Transmission Rates and Rate Schedules

a. Failure To Comply Penalty Charge

The Failure to Comply Penalty Charge provides for a penalty if a party fails to comply with a curtailment, redispatch, or load shedding order issued by Transmission Services. Transmission Services is proposing to increase the penalty from 100 mills per kilowatthour to 1000 mills per kilowatthour plus costs incurred by Transmission Services to manage the reliability of the Federal Columbia River Transmission System due to the failure to comply. In addition, Transmission Services is proposing to add dispatch orders to the list of orders to which the Failure to Comply Penalty Charge applies.

b. Unauthorized Increase Charge

Transmission Services is proposing to modify the Unauthorized Increase Charge (UIC) for point-to-point transmission service and to clarify the waiver provisions of the rate schedule. The UIC applies when a customer's transmission demand exceeds the customer's transmission reservation. Under the current rate schedule, the UIC for PTP service is based on the length of the customer's reservation. Under Transmission Services' proposed rate schedule, the UIC is the lower of (1) 100 mills per kilowatthour plus the Commission's price cap for spot market sales of energy in the WECC (currently 400 mills per kilowatthour), or (2) 1000 mills per kilowatthour. In addition, Transmission Services is proposing to clarify the criteria under which BPA will waive the UIC and to specify the rate that applies to the excess transmission demand if BPA grants a waiver.

c. Energy and Generation Imbalance Service

Transmission Services proposes to increase the rate that applies to positive deviations that BPA determines to be Intentional Deviations from 125 percent to 150 percent of incremental cost. Transmission Services also proposes to modify the incremental cost provisions so that the customer does not receive a credit for positive deviations if the deviation occurs in an hour in which the energy index used to determine incremental cost is negative.

Transmission Services also is proposing to delete credit for negative deviations if the Federal System is in a spill condition, the energy index is negative, and the deviation remains within Deviation Band 1. If the negative deviation is in Deviation Band 2 or 3, Transmission Services proposes to charge the index price for the deviation.

d. Intentional Deviation

Transmission Services is proposing to modify the definition of Intentional Deviation to include the situation in which the generation schedule (*i.e.*,

generation estimate) submitted does not match the sum of the transmission schedules, including transmission schedules for the return of energy (*i.e.*, payback schedules), before the start of that scheduling hour. In addition, Transmission Services proposes to include as an Intentional Deviation the situation in which a customer fails to submit a generation estimate or corresponding transmission schedule for the hour, but transmits energy during such hour under the definition of Intentional Deviation.

BPA also proposes to classify as Intentional Deviations schedule deviations that occur for three or more consecutive hours at an amount greater than 15 percent of the schedule or 20 megawatts.

For hours in which the energy index is negative, BPA proposes to charge the energy index price for negative deviations that BPA determines to be Intentional Deviations.

e. Incremental Rate

BPA's Point-to-Point and Network Integration rate schedules provide that customers requesting new or increased firm service that would require BPA to construct Network Upgrades may be subject to incremental cost rates that would be developed in a rate proceeding. In this TR–10 Transmission rate proceeding, Transmission Services is proposing a formula for allocating costs of Network Upgrades under incremental cost rates, with the cost allocation itself to take place in a separate public process to be held each time BPA offers service at an incremental rate. The proposed rate schedule includes the formula and describes the public process Transmission Services proposes to use to allocate costs under the incremental rate formula to derive the specific rate for a customer.

f. Conditional Firm Service for Network Integration Customers

Transmission Services proposes to add conditional firm service to the availability section of the NT rate schedule to price the conditional firm service that has been added to the network integration section of the OATT.

g. Load Forecast for Network Integration and Utility Delivery Services

Transmission Services is proposing to use a new methodology to forecast loads for Network Integration customers and Utility Delivery customers. Like the old methodology, the new methodology begins with each customer's historical metering data and adjusts the forecast based on known changes. Under the new methodology, however, additional adjustments would be based on statistical forecasting models, which allow for more sophisticated analysis, such as analyzing the impact of different weather assumptions on the forecast.

Part V—Wholesale Power Sub-Docket WP–10

A. Scope of the Wholesale Power Rate Adjustment Proceeding

Many of the decisions that guide BPA's power marketing policies have been made, or will be made, in other public processes. This section provides guidance to the Hearing Officer as to those matters that are within the scope of the WP–10 sub-docket and those that are outside the scope.

1. Program Level Expenses Decided in the IPR

As discussed in section IV.B. for the TR–10 proceeding, BPA's spending levels for generation investments and power expenses are not determined or subject to review in rate proceedings. Pursuant to § 1010.3(f) of BPA's Procedures, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that challenges the appropriateness or reasonableness of the Administrator's decisions on power spending levels. If, and to the extent that, any re-examination of spending levels is necessary, that re-examination will occur outside the rate proceeding. Excluded from this direction are revenue requirements related to interest rate forecasts, interest expense and credit, Treasury repayment schedules, forecasts of depreciation, forecasts of system replacements used in repayment studies, augmentation and balancing power purchases, residential exchange expense, revenue credits, minimum required net revenue, and risk mitigation resulting from expense and revenue uncertainties and risks included in the risk analysis.

2. Regional Dialogue Policy Decisions

BPA's Subscription contracts expire September 30, 2011, the end of the WP–10 rate period. BPA has engaged customers and interested stakeholders in an extensive process to develop new power sales contracts. BPA issued its Policy for Power Supply Role for FY 2007–2011 (Near-Term Policy) on February 4, 2005; its Long-Term Regional Dialogue Final Policy on July 19, 2007; its Long-Term Regional Dialogue Contract Policy on October 31, 2008; and the Tiered Rate Methodology Record of Decision on November 10, 2008. On or about December 1, 2008, BPA and its customers signed new power sales contracts under which the customers will purchase Federal power for the FY 2012–2028 period. Several aspects of the Regional Dialogue process are still ongoing, and these processes and decisions are outside the scope of this rate proceeding. Pursuant to § 1010.3(f) of BPA's Procedures, the Administrator hereby directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to revisit the appropriateness or reasonableness of BPA's decisions made in the Near-Term Policy ROD, Long-Term Regional Dialogue Final Policy ROD, Long-Term Regional Dialogue Contract Policy ROD, or Tiered Rate Methodology ROD, except for those issues, such as General Transfer Service Direct Assignment Guidelines, that were specified in these policies as being within the scope of the WP–10 proceeding.

3. Service to the Direct Service Industries (DSIs)

The manner and method by which BPA could provide service or financial payments to its DSI customers is being reevaluated in light of the recent decision in Pacific *Northwest Generating Cooperative, et al.,* v. *Bonneville Power Administration,* No. 05–75638, slip op. at 16513 (9th Cir. Dec. 17, 2008). Power Services will forecast, solely for purpose of the Initial Proposal, that BPA will continue to serve the aluminum smelter DSIs, as well as Port Townsend Paper, under new or amended contracts that are consistent with the Court's opinion. BPA's decisions to serve the DSIs, along with the method and level of service to be provided DSIs in the FY 2010–2011 rate period, will be determined in the offering of these contracts or amendments and not in this proceeding. Pursuant to § 1010.3(f) of BPA's Procedures, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to revisit the appropriateness or reasonableness of BPA's decisions regarding the service to the DSIs, including the method or level of such service.

4. Generation Inputs

Power Services provides a portion of the FCRPS available generation to enable Transmission Services to meet its various requirements. Transmission Services uses these generation inputs to provide ancillary and control area services. To recover the costs associated with providing generation inputs, Power Services assigns a portion of the FCRPS

costs to the transmission function. The cost allocations Power Services is proposing to use to determine the generation input costs and associated unit costs to Transmission Services are matters that are included within the scope of the WP–10 sub-docket. The forecast amount of generation inputs is also included within the scope of the WP–10 sub-docket.

Pursuant to § 1010.3(f) of BPA's Procedures, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to revisit the appropriateness or reasonableness of any other issues related to the generation inputs. This includes, but is not limited to, issues regarding reliability of the transmission system and any existing or proposed Transmission Services dispatcher standing orders. These non-rates issues are generally addressed by Transmission Services in accordance with industry, reliability, and other compliance standards and criteria and are not matters appropriate for the rate case.

5. Post-2006 Conservation Program Structure Proposal

Through the post-2006 workgroup collaboration, customers and constituents provided input on the development of BPA's post-2006 conservation approach. Pursuant to § 1010.3(f) of BPA's Procedures, the Administrator hereby directs the Hearing Officer to exclude from the record any material attempted to be submitted or arguments attempted to be made in the hearing that seek in any way to revisit the appropriateness or reasonableness of BPA's conservation program levels established through the Post-2006 Conservation Program Structure Proposal dated June 28, 2005.

6. Federal and Non-Federal Debt Service and Debt Management

During the IPR and in other forums, BPA provided the public background information on BPA's internal Federal and non-Federal debt management policies and practices. While these policies and practices are not decided in the IPR forum, these discussions were intended to inform interested parties about these matters so that they would better understand BPA's debt structure. Although the IPR Close-Out Letter did not make any decisions regarding BPA's debt management policies and practices, these remain outside the scope of the rate proceeding. Pursuant to § 1010.3(f) of BPA's Procedures, the Administrator hereby directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to address the appropriateness or reasonableness of BPA's debt management policies and practices, except to the extent that BPA is required to make certain demonstrations under BPA's Slice Settlement Agreement, Agreement No. 07PB–12273, exhibit D. BPA's debt management policies and practices are subjects that will be discussed in an abbreviated IPR process in March 2009 and an Access to Capital public process that will occur in FY 2009.

7. Potential Environmental Impacts

Environmental impacts are addressed in a concurrent NEPA process. See section II.C. Pursuant to § 1010.3(f) of BPA's Procedures, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to address the potential environmental impacts of the rates being developed in this WP–10 Power rate proceeding.

8. Average System Cost Methodology

Section 5(c) of the Northwest Power Act established the Residential Exchange Program (REP), which provides benefits to residential consumers of Pacific Northwest utilities based, in part, on a utility's ''average system cost'' (ASC) of resources. Section 5(c)(7) of the Act requires the Administrator to consult with regional interests to develop an ASC Methodology. The ASC Methodology prescribes the methodology that the Administrator will use to calculate a utility's ASC. Once BPA completes its regional consultation on the ASC Methodology, the methodology is filed with the Commission for the Commission's review and approval. On February 7, 2008, BPA initiated an ASC consultation process with regional parties to consider adjustments to the then-existing ASC Methodology. At the conclusion of the consultation process, on July 7, 2008, BPA submitted a revised ASC Methodology (2008 ASCM) to the Commission. The Commission granted interim approval of the 2008 ASCM on September 30, 2008. The Commission requested comments on the 2008 ASCM by November 10, 2008, and reply comments by December 15, 2008. The Commission is now considering the parties' comments on the 2008 ASCM. The ASCM is not subject to determination or review in a section 7(i) proceeding. Pursuant to § 1010.3(f) of BPA's Procedures, the Administrator hereby directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seek to in any way visit or revisit the appropriateness or reasonableness of the 2008 ASCM.

9. Average System Cost Review Processes

In order to receive Residential Exchange Program benefits for FY 2010–2011, utilities must file a proposed ASC with BPA pursuant to the terms and conditions of the 2008 ASCM. These filings are reviewed by BPA staff and other interested parties in an ASC review process. The ASC review process is a separate administrative proceeding conducted by BPA under the terms of the 2008 ASCM. In this process, BPA staff and other parties evaluate the ASCs filed by participating utilities to determine whether the filings conform to the requirements of the 2008 ASCM. At the conclusion of the process, BPA issues an ASC Report, which formally establishes the utility's ASC for the Exchange Period, which coincides with BPA's rate period.

On October 15, 2008, eight utilities filed proposed ASCs with BPA for FY 2010–2011. BPA staff and other parties are currently reviewing these filings in eight ASC review processes. Once these ASC review processes are complete and BPA has issued final ASC Reports, BPA will incorporate into the administrative record of this proceeding the final ASCs. Although these ASC determinations provide important information for setting BPA's rates, they are not rate proceeding matters. Parties wishing to challenge a utility's proposed ASC or BPA staff's draft ASC determinations for FY 2010–2011 must raise such issues in the respective utility's ASC review process according to the procedures established in the 2008 ASCM.

Pursuant to § 1010.3(f) of BPA's Procedures, the Administrator hereby directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks to in any way visit or revisit a utility's proposed ASC, or BPA staff's draft or BPA's final ASC determinations for FY 2010–2011.

B. Major Studies for Wholesale Power Rate Case

1. Loads and Resources Study

Explains and documents the compilation of the load and resource data and forecasts necessary for developing BPA's wholesale power rates. The Study has three major interrelated components: (a) The Federal system load forecast; (b) the Federal system resource forecast; and (c) the Federal system loads and resources balance.

2. Revenue Requirement Study

Explains and documents the level of revenues from wholesale power rates necessary to recover, in accordance with sound business principles, the FCRPS costs associated with the production, acquisition, marketing, and conservation of electric power. The generation revenue requirements include recovery of the Federal investments in hydro generation; recovery of fish and wildlife costs and costs of energy conservation; Federal agencies' operations and maintenance expenses allocated to power; capitalized contract expenses associated with such non-Federal power suppliers as Energy Northwest; other purchase power expenses, such as short-term power purchases; power marketing expenses; cost of transmission services necessary for the sale and delivery of FCRPS power; and all other power-related costs incurred by the Administrator pursuant to law.

Cost estimates in the Revenue Requirement Study are based on the results of the Integrated Program Review, as presented in the Close-Out Letter of November 14, 2008. The repayment studies reflect updates of actual and projected repayment obligations and accommodate the ongoing implementation of BPA's Debt Optimization program. All new capital investments are assumed to be financed from debt or appropriations. The adequacy of projected revenues to recover rate test period revenue requirements and to recover the Federal investment over the prescribed repayment period is tested and demonstrated for the generation function.

3. Market Price Forecast Study

Explains and documents forecasts of the variable hourly cost of the marginal resource for transactions in the wholesale energy market. The specific market used in this analysis is the Mid-Columbia trading hub in the State of Washington, although this price is influenced by conditions in other regions within the Western Interconnection. The Market Price Forecast Study also explains and documents the natural gas price forecast used in the ratesetting processes.

4. Risk Analysis and Mitigation Study

Explains and documents two categories of risks and their impacts on Power Services' revenues and expenses. The first type of risk is comprised of operating risks such as variations in economic conditions, loads, and generation resource capability. These operating risks include the impacts of water supply variations and market price volatility on net revenues. The second type of risks comprises non-operating risks—those risks included in the rate case risk modeling other than operating risks. Non-operating risks also include uncertainty in meeting cost levels identified in the Integrated Program Review.

The Risk Analysis and Mitigation Study also evaluates the impact that different risk mitigation measures have on reducing net revenue risk by calculating the Treasury Payment Probability (TPP). The TPP is a measure of the probability that BPA will make each Treasury payment on time and in full. If the TPP is below BPA's two-year 95 percent standard, the combination of risk mitigation tools (*e.g.* , Cost Recovery Adjustment Clause, Biological Opinion (NFB) Adjustment, Emergency NFB Surcharge, Dividend Distribution Clause, Planned Net Revenues for Risk (PNRR)) is modified to meet the TPP standard.

Power Services is proposing no changes in the form or methodology of the risk analysis as presented in the WP–07 Supplemental Final Proposal. The WP–10 Initial Proposal risk analysis contains updates for changes to input data that account for changes in BPA's loads, resources, costs, and financial position.

5. Wholesale Power Rate Development Study (WPRDS)

Explains and documents details concerning the development of power rates. It reflects the results of all of the other studies and calculates the rates for wholesale power products and services. The WPRDS explains and documents the allocation and recovery of Federal power costs; development of the Slice cost table; the development of diurnal and monthly energy rates; the development of rates for demand, load variance, unauthorized increase usage, and excess load factoring; and other rate provisions (*e.g.* , the Low Density Discount, Conservation Rate Credit, and irrigation rate mitigation). The results of the WPRDS are reflected in the proposed wholesale power rate schedules.

6. Section 7(b)(2) Rate Test Study

Section 7(b)(2) of the Northwest Power Act, 16 U.S.C. § 839e(b)(2), requires BPA to perform a test of the projected amounts to be charged for firm power to preference customers against an alternative power cost developed according to the statute. BPA has interpreted and described how this rate test is to be performed in the *Section 7(b)(2) Legal Interpretation (Legal Interpretation) and Section 7(b)(2) Implementation Methodology (Implementation Methodology*) published in August 2008. WP–07–A–05 and WP–07–A–06. The Section 7(b)(2) Rate Test Study explains and documents the results of the rate test.

The 7(b)(2) rate test triggers in this proposal, creating rate protection for preference customers and causing costs to be reallocated to others in the test period. The Priority Firm Power (PF) Preference rate applied to the general requirements of the 7(b)(2) Customers has been reduced by the rate protection amount, which has been reallocated to other rates pursuant to section 7(b)(3). Other rates—the PF Exchange, New Resource Firm Power (NR), and Industrial Firm Power (IP) rates—have been increased by an allocation of the rate protection amount.

Power Services is proposing minor modifications to the *Implementation Methodology* in this Initial Proposal. The proposed changes are included in the Section 7(b)(2) Rate Test Study. Although Power Services is proposing no changes to the *Legal Interpretation*, issues raised by parties in the course of the proceeding may result in the need to change the *Legal Interpretation* at the conclusion of the proceeding. Any such changes would be addressed in the Record of Decision.

7. Lookback Recovery and Return Study

Explains and documents Power Service's proposed modifications to the amounts to be recovered from BPA's investor-owned utility customers (IOUs) and applied to their Lookback Amounts that were determined in the WP–07 Supplemental Final Proposal. Minor changes are proposed in this proceeding to correct for errors and new information discovered after the conclusion of the WP–07 Supplemental rate proceeding. The study sets forth the accounting of the portion of the Lookback Amounts expected to be recovered from the IOUs, and repaid to preference customers, prior to the FY 2010–2011 rate period. The study also proposes the portion of Lookback Amount, an average of $71.8 million per year that will be recovered from IOUs and returned to preference customers during the FY 2010–2011 rate period.

8. Generation Inputs Study

Past Power rate proceedings have included the study and documentation for generation inputs and other inter-business line cost allocations in the WPRDS. In the WP–10 Initial Proposal, these issues are addressed in a separate Generation Inputs Study. The

Generation Inputs Study explains and documents the forecast of within-hour balancing reserves needed by Transmission Services for regulation, wind balancing, and load following; the embedded cost methodology for regulating reserves and wind balancing reserves; the variable cost model for regulating reserves, wind balancing reserves, and operating reserves; the forecast of operating reserves and the embedded cost methodology for operating reserves; the cost allocation for synchronous condensing, generation dropping, segmentation of U.S. Corps of Engineers and U.S. Bureau of Reclamation facilities, and station service; and the revenue forecast for redispatch service. The results of the Generation Inputs Study are reflected as revenue credits in the Power ratesetting process.

C. Summary of Wholesale Power Rate Proposal

1. Power rates. Based on the evidence set forth in the studies, Power Services is proposing five rates.

Priority Firm Power Rate (PF–10)—The PF rate schedule is comprised of two rates: The PF Preference rate and the PF Exchange rate. The PF Preference rate applies to BPA's firm power sales to public bodies, cooperatives, and Federal agencies for resale to their regional consumers. The proposed average PF Preference rate is $29.43/MWh, which represents an increase of 9.4 percent over the FY 2009 average power rate.

The Base PF Exchange rate and its associated supplemental rate charges apply to the sale of power to regional utilities that participate in the Residential Exchange Program (REP) established under section 5(c) of the Northwest Power Act. 16 U.S.C. 839c(c). The proposed PF Exchange rates are used in determining REP benefits in FY 2010 and FY 2011. The proposed Base PF Exchange rate is $49.44/MWh. Utility-specific Supplemental 7(b)(3) Rate Charges are detailed in the proposed rate schedules. The proposed PF Exchange rates result in estimated REP benefits that average $264.1 million per year, of which $254.4 million is for participating IOUs. The REP benefits for the IOUs would be reduced by $71.8 million each year to continue the recovery of each IOU's Lookback Amount during the rate period resulting in a proposed average annual REP benefit paid to the IOUs of $182.6 million. The $71.8 million not paid to IOUs would be returned through credits on power bills to preference customers as partial repayment for past overcharges. The $254.4 million represents a 4.2 percent decrease from the REP benefits calculated in the WP–07 Supplemental Final Proposal for FY 2009.

In this WP–10 Initial Proposal, Power Services is not materially changing the existing rate design for its FY 2010–2011 rates. Power Services proposes to add a load adjustment to the calculation of the Supplemental 7(b)(3) Rate Charges. This adjustment is specified in the proposed General Rate Schedule Provisions, Section S.

New Resource Firm Power Rate (NR–10)—The NR rate applies to net requirements power sales to IOUs for resale to ultimate consumers for direct consumption, construction, test and start-up, and station service. Firm power at the NR–10 rate is also available to public utility customers for serving New Large Single Loads. Power Services is forecasting no sales at the NR rate in the Initial Proposal. The proposed NR–10 rate is $69.72/MWh, an increase of 1.9 percent over the NR–07R rate.

Industrial Firm Power Rate (IP–10)—The IP rate is available for discretionary firm power sales to DSI customers authorized by section (5)(d)(1)(A) of the Northwest Power Act. 16 U.S.C. 839c(d)(1)(A). Power Services is forecasting sales to DSIs at the IP rate in the WP–10 Initial Proposal. See section V.C.2.c. The proposed IP–10 rate is $36.37/MWh, an increase of 4.5 percent over the IP–07R rate.

Firm Power Products and Services Rate (FPS–10)—The FPS rate schedule is available for the purchase of Firm Power, Capacity Without Energy, Supplemental Control Area Services, Shaping Services, and Reservation and Rights to Change Services for use inside and outside the Pacific Northwest. The rates for these products are either posted or negotiated. Power Services is proposing only minor changes to this rate schedule for FY 2010–2011.

General Transfer Agreement Delivery Charge (GTA–10) and Other Transfer Items—The GTA Delivery Charge applies to customers who purchase Federal power that is delivered over non-Federal low voltage transmission facilities. For FY 2010–2011, Power Services is proposing to continue to set the GTA Delivery Charge at the same level as the Transmission Services Utility Delivery rate that is being established in the TR–10 proceeding. In addition, Power Services is proposing to add Transfer Service Supplemental Direct Assignment Guidelines to the General Rate Schedule Provisions (GRSPs) and develop an Operating Reserves rate for Transfer Service customers that will become effective if proposed changes to WECC Operating Reserve Requirements are approved by the Commission.

2. Significant Changes in the WP–10 Initial Rate Proposal

a. Generation Inputs and Other Inter-Function Costs and Credits

A forecast of revenues from generation input cost allocations and provision of redispatch services and other power costs that are allocated to Transmission Services is described in the Generation Inputs Study. The allocation of generation input costs is similar to the generation input cost allocations in previous power rate proceedings, with a few significant differences. In the WI–09 Wind Integration rate proceeding, BPA first allocated capacity costs to wind generators for regulating reserves and load following. In this WP–10 proceeding, Power Services is proposing to expand the cost allocation for capacity needed to support wind generators to include capacity associated with generation imbalance. In addition, Power Services is proposing a much more detailed analysis of the variable costs associated with providing capacity reserves that Transmission Services uses to provide ancillary and control area services.

b. Generation Inputs Revenue Credit Adjustment

Power Services is including a generation inputs revenue credit adjustment in the WP–10 Initial Proposal to account for expected changes in the cost allocation for certain generation inputs. These expected changes are based on foreseeable changes to some of the assumptions used in the Initial Proposal. In order to prepare the Initial Proposal, Power Services had to start some of the studies in October 2008. Those studies relied on forecasts of certain generation input amounts that, for the sake of consistency, have been used throughout the Initial Proposal. One of the assumptions used in these forecasts involves the ability of wind generators to accurately schedule their generation. For the Initial Proposal, a two-hour persistence model was assumed for determining the amount of capacity needed for generation imbalance caused by the wind generators. After the Initial Proposal rate studies were started, extensive work has been done to establish operational solutions that will reduce the amount of capacity needed to provide generation imbalance to wind generators. Given the evolving status of this work, the WP–10 Initial Proposal also includes estimates of the amount of

reserves required, and the resulting cost associated with these reserve levels, assuming 30-minute, 45-minute and 60-minute persistence models.

In order to account for these potential operational solutions, Power Services is including an *ad hoc* revenue credit adjustment in the WP–10 Initial Proposal that averages the changed revenue forecast associated with the 45-minute and 30-minute persistence models as compared to the two-hour persistence model. All cost allocation issues will be decided in the WP–10 rate proceeding, but Power Services believes that the ad hoc generation inputs revenue credit adjustment allows rate proceeding parties to understand the impact that these changes in the generation inputs proposal may have on BPA's other rates as they are presented in the Initial Proposal. BPA's final rate proposal will not have this ad hoc revenue credit adjustment. Instead, it will fully reflect the Administrator's decisions on these issues.

c. DSI Service for FY 2010–2011

In light of the recent decision in *Pacific Northwest Generating Cooperative, et al.,* v. *Bonneville Power Administration,* No. 05–75638, slip op. at 16513 (9th Cir. Dec. 17, 2008), BPA is in the process of reviewing its FY 2007–2011 contracts with its DSI customers—two aluminum smelters and Port Townsend Paper Company—and will be undertaking appropriate actions to conform the contracts with the Court's decision. The decision whether necessary modifications take the form of a new contract or amendment to existing contracts has yet to be determined, so there is some uncertainty regarding the ultimate cost of DSI service. Given this uncertainty, for purposes of the Initial Proposal, Power Services will forecast sales under the IP rate to its DSI customers for the FY 2010–2011 rate period. For the Initial Proposal, Power Services believes that it is prudent to adopt conservative assumptions with regard to the cost of providing that service. Therefore, Power Services is using the originally projected cost of $59 million per year for FY 2010–2011 for service to the aluminum company DSIs, based on the assumption that necessary modifications could create a cost that is equal to, but will not exceed, that amount. In addition, Power Services will forecast a 17 aMW power sale to Port Townsend Paper Company at the IP rate. To the extent that circumstances warrant changes to these assumptions, such changes will be reflected in the final studies.

d. Value of Reserves

Section 7(c)(3) of the Northwest Power Act, 16 U.S.C. 839e(c)(3), provides that the Administrator shall adjust rates to the DSI customers ''to take into account the value of power system reserves made available to the Administrator through his rights to interrupt or curtail service to such direct service industrial customers.'' Power Services is proposing in the WP–10 Initial Proposal that the value of any reserves provided by DSIs be determined by comparing the availability of these reserves to Operating Reserves provided by the FCRPS and that the amount of reserves provided by the DSIs for purposes of setting rates is approximately 38 MW.

e. Risk Mitigation Tools

There are three major components to BPA's risk mitigation tools: start-of-period financial reserves, planned net revenue for risk (PNRR), and defined within-period rate adjustments such as the Cost Recovery Adjustment Clause (CRAC) and Dividend Distribution Clause (DDC). Start-of-period financial reserves are a function of BPA's revenues and expenses in FY 2009, whose levels are not subject to modification in this proceeding, although the forecast of the start-of-period financial reserves is a subject of this proceeding. The rates for FY 2010–2011 are influenced by choices between the relative levels of PNRR or the CRAC and DDC. In the Initial Proposal, Power Services proposes to include $48 million per year of PNRR and to cap the maximum revenue recoverable through the CRAC at $300 million. Power Services is proposing only minor other changes to the risk mitigation tools in the WP–10 Initial Proposal.

Power Services also proposes to continue the National Marine Fisheries Service FCRPS Biological Opinion Adjustment (NFB Adjustment) and the Emergency NFB Surcharge. The Initial Proposal includes the forecast cost of implementing the final 2008 Biological Opinion for the FCRPS and the costs of the Columbia Basin Fish Accords. However, litigation regarding the Biological Opinion continues, and other litigation is possible, so the Emergency NFB Surcharge and the NFB Adjustment remain appropriate risk mitigation measures.

Part VI—Proposed 2010 Rate Schedules

BPA's proposed 2010 Wholesale Power Rate Schedules and General Rate Schedule Provisions and proposed 2010 Transmission and Ancillary Service Rate Schedules and General Rate Schedule Provisions are a part of this notice and are available for viewing and downloading on BPA's Web site at *http://www.bpa.gov/corporate/ratecase/2008/2010_BPA_Rate_Case/* . Copies of the proposed rate schedules also are available for viewing in BPA's Public Reference Room at the BPA Headquarters, 1st Floor, 905 NE., 11th Avenue, Portland, OR 97232.

Issued this 4th day of February, 2009.

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. E9–2750 Filed 2–9–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13328–000]

Cordova Electric Cooperative, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

February 3, 2009.

Cordova Electric Cooperative, Inc. filed an application on November 10, 2008, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Snyder Falls Creek Hydroelectric Project, which would be located near the town of Cordova on Snyder Falls Creek in Section 16, T14S, R3W of the Copper River Meridian, Alaska. The project would be located on Chugach National Forest Lands administered by the U.S Forest Service.

The proposed Snyder Falls Creek Hydroelectric Project would connect with the transmission facilities of the existing Humpback Creek Project, FERC No. 8889, and would consist of: (1) A proposed concrete gravity dam ranging from 100-foot-high to 150-foot-high impounding a reservoir at an elevation between 1414 and 1464 m.s.l. with a surface area ranging from 12.4 to 25.1 acres and a spillway, (2) a proposed intake structure, (3) a proposed 3,600 foot-long, two-foot diameter penstock, (4) a proposed powerhouse which will contain one generating unit with a total installed capacity of 3 MW, (5) a new 4.5-mile-long, 12.5 kV transmission line connecting to existing power lines, and (6) appurtenant facilities. The project would have an annual generation of between 10 and 13 gigawatts-hours, which would be sold to a local utility.

Applicant Contact: Mr. Clay Koplin, CEO, Cordova Electric Cooperative, Inc., Post Office Box 20, Cordova, AK 99574;

phone: (907) 424–5555. FERC Contact: Tom Papsidero, (202) 502–6002.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13328) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–2687 Filed 2–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1267–085]

Greenwood County, SC; Notice of Application and Soliciting Comments, Motions To Intervene, and Protests

February 3, 2009.

a. *Type of Application:* Non-Project Use of Project Lands and Waters.

b. *Project Number:* Project No. 1267–085.

c. *Date Filed:* December 3, 2008.

d. *Applicant:* Greenwood County, South Carolina.

e. *Name of Project:* Buzzard's Roost Hydroelectric Project (FERC No. 1267).

f. *Location:* The project is located on the Saluda River in Greenwood, Laurens and Newberry Counties, South Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) 825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Charles M. Watson Jr., County Attorney, County of Greenwood, 600 Monument St., Suite 102, Greenwood, SC 29646, phone (864) 942–3140.

i. *FERC Contact:* Any questions on this notice should be addressed to Brian Romanek at (202) 502–6175.

j. *Deadline for filing comments and or motions:* March 2, 2009.

k. *Description of Application:* Greenwood County, licensee for the Buzzard's Roost Project, has filed an application seeking authorization from the Federal Energy Regulatory Commission to issue a permit to Crystal Bay II Homeowners Association to construct additional boat docking facilities at an existing marina. The marina has boat docking facilities that accommodate 11 boats and would be expanded to accommodate 26 boats. Also, a courtesy dock would be constructed adjacent to the existing boat launching ramp. This marina would service the residential community known as ''Crystal Bay'' on Lake Greenwood in Laurens County, South Carolina.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field (P–1267) to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov;* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers (P–1267–085). All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–2693 Filed 2–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1267–086]

Greenwood County, SC; Notice of Application and Soliciting Comments, Motions to Intervene, and Protests

February 3, 2009.

a. *Type of Application:* Non-Project Use of Project Lands and Waters.

b. *Project Number:* Project No. 1267–086.

c. *Date Filed:* December 3, 2008.

d. *Applicant:* Greenwood County, South Carolina.

e. *Name of Project:* Buzzard's Roost Hydroelectric Project (FERC No. 1267).

f. *Location:* The project is located on the Saluda River in Greenwood, Laurens and Newberry Counties, South Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) 825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Charles M. Watson Jr., County Attorney, County of Greenwood, 600 Monument St., Suite 102, Greenwood, SC 29646, phone (864)–942–3140.

i. *FERC Contact:* Any questions on this notice should be addressed to Brian Romanek at (202) 502–6175.

j. *Deadline for filing comments and or motions:* March 2, 2009.

k. *Description of Application:* Greenwood County, licensee for the Buzzard's Roost Project, has filed an application seeking authorization from the Federal Energy Regulatory Commission to issue a permit to Cane Creek Motorcoach Resort to construct additional boat docking facilities at an existing marina. The marina has boat docking facilities that accommodate 20 boats and would be expanded to accommodate 60 boats. There would be two cluster-docks with 30 boat slips each. This marina would service the campground community, known as ''Cane Creek Campground'' on Lake Greenwood in Laurens County, South Carolina.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field (P–1267) to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers (P–1267–086). All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–2694 Filed 2–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13292–000]

Whitman River Dam, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

February 3, 2009.

Whitman River Dam, Inc. (WRD) filed an application on September 26, 2008, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Round Meadows Pond Dam Hydroelectric Project, which would be located in the town of Westminster on the Whitman River in Worchester County, Massachusetts.

The proposed Round Meadows Pond Dam Hydroelectric Project would utilize WRD's Round Meadows Pond Dam and would consist of: (1) An existing 250-foot-long, 5-foot-high earthen embankment and masonry dam and spillway, (2) an existing intake structure, (3) a proposed 1,400-foot-long, 16-inch-diameter metal penstock; (4) a proposed powerhouse which would contain one generating unit with a total installed capacity of 120 kW, (5) a proposed 100-foot-long, 4.1 kV transmission line connecting to existing power lines, and (6) appurtenant facilities. The project would have an annual generation of 0.6 gigawatts-hours, which would be sold to a local utility.

Applicant Contact: Mr. Stephen C. Doret, P.E., 23 Mill Road, Westborough, MA 01581; *phone:* (508) 366–5833. *FERC Contact:* Tom Papsidero, (202) 502–6002.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13292) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–2695 Filed 2–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL09–32–000]

Integrys Energy Services, Inc., Complainant, v. New Brunswick Power Generation Corporation, Respondent; Notice of Complaint

February 3, 2009.

Take notice that on February 2, 2009, pursuant to section 206 of the Federal Power Act and section 206 of the Rules and Practice and Procedure, 18 CFR 385.206, Integrys Energy Services, Inc. (Complainant) filed a formal complaint against New Brunswick Power Generation Corporation (Respondent) alleging that the Respondent's participation in the Northern Maine Independent System Administrator, Inc. (NMISA) market to serve certain retail loads, without submission of information showing that it does not possess market power in the relevant market, is inappropriate and requests that the Commission direct the Respondent to cease any market-based sales in the NMISA region.

The Complainant has requested fast track processing of the complaint.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 23, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–2689 Filed 2–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER08–375–003]

Southern California Edison Company; Notice of Filing

February 3, 2009.

Take notice that on January 21, 2009, Southern California Edison Company filed additional information regarding the costs included as Construction Work in Progress in its rate base as of February 29, 2008, pursuant to the Commission's Order on Compliance Filing, *Southern California Edison Co.,* 125 FERC ¶ 61,337 (December 19th 2008) (December Order).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 20, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–2691 Filed 2–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL09–31–000]

Notice of Filing

February 3, 2009.

Sun Edison LLC. Take notice that on February 2, 2009, Sun Edison LLC, pursuant to 18 CFR 385.207(a), filed a Petition for Declaratory Order seeking confirmation from the Commission that certain of its subsidiaries' electricity sales to end use customers do not constitute the sale or transmission of electric energy at wholesale in interstate commerce for purposes of the Federal Power Act and regulations promulgated thereunder, nor jurisdictional rates for purposes of the Public Utility Holding Company Act of 2005 and regulations promulgated thereunder.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on March 4, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–2688 Filed 2–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–554–000]

EcoGrove Wind, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

February 3, 2009.

This is a supplemental notice in the above-referenced proceeding of EcoGrove Wind, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is February 23, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–2692 Filed 2–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–50–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Request Under Blanket Authorization

February 3, 2009.

Take notice that on January 21, 2009, Southern Star Central Gas Pipeline, Inc. (Southern Star), 4700 State Highway 56, Owensboro, Kentucky 42301, filed in Docket No. CP09–50–000, a prior notice request pursuant to sections 157.205 and 157.210 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act for authorization to replace a two mile section of the 12-inch diameter XT pipeline by constructing two miles of 20-inch diameter pipeline, located in Johnson County, Missouri, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the 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, (866) 208–3676 or TTY, (202) 502–8659.

Specifically, Southern Star proposes to replace a two mile section of the 12-inch diameter XT pipeline with two miles of 20-inch diameter XM pipeline, near Warrensburg, Missouri, a continuation of its multi-year plan to replace the remaining miles of 12-inch diameter XT pipeline. Southern Star estimates the cost of construction to be $5,096,685. Southern Star asserts that after the proposed pipeline construction is completed, approximately two miles of the 12-inch XT pipeline will be abandoned either in place or by reclaim. Southern Star states that the replacement pipeline will improve reliability and offer flexibility on its system but does not provide any additional firm capacity upstream and will continue to be operated at its current Maximum Allowable Operating Pressure of 570 psi.

Any questions regarding the application should be directed to David N. Roberts, Manager, Regulatory Affairs, Southern Star Central Gas Pipeline, Inc., 4700 State Highway 56, Owensboro, Kentucky 42301, or call (270) 852–4654.

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–2696 Filed 2–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06–615–000; ER07–1257–000; ER08–1113–000]

California Independent System Operator Corporation; Notice of FERC Staff Attendance

February 3, 2009.

The Federal Energy Regulatory Commission (Commission) hereby gives notice that on the following dates members of its staff will participate in teleconferences and meetings to be conducted by the California Independent System Operator (CAISO). The agenda and other documents for the teleconferences and meetings are available on the CAISO's Web site, *http://www.caiso.com*.

February 10, 2009

Teleconference on MRTU Parallel Operations

Teleconference on Systems Interface Users

Board of Governors Meeting

February 11, 2009

Teleconference on Settlements

February 17, 2009

Teleconference on MRTU Parallel Operations

Teleconference on Systems Interface Users

February 18, 2009

Teleconference on Settlements

MRTU Implementation Workshop

February 19, 2009

MRTU Quality of Solution Meeting

Sponsored by the CAISO, the teleconferences and meetings are open to all market participants, and Commission staff's attendance is part of the Commission's ongoing outreach efforts. The teleconferences and meetings may discuss matters at issue in the above captioned dockets.

For further information, contact Saeed Farrokhpay at *saeed.farrokhpay@ferc.gov*; (916) 294–0233 or Maury Kruth at *maury.kruth@ferc.gov*, (916) 294–0275.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–2690 Filed 2–9–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8772–2]

Science Advisory Board Staff Office; Notification of a Public Teleconference of the Science Advisory Board; Integrated Nitrogen Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public teleconference of the SAB Integrated Nitrogen Committee (INC) to discuss the committee's draft report.

DATES: The SAB INC will conduct a public teleconference on March 4, 2009. The call will begin at 1 p.m. and end at 3 p.m. (Eastern Time).

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to obtain general information concerning the public teleconference may contact Dr. Angela Nugent, Designated Federal Officer (DFO), via telephone at: (202) 343–9981 or e-mail at *nugent.angela@epa.gov*. General information concerning the EPA Science Advisory Board can be found on the EPA Web Site at *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION: The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background: The SAB INC is studying the need for integrated research and strategies to reduce reactive nitrogen in the environment. At the global scale, reactive nitrogen from human activities now exceeds that produced by natural terrestrial ecosystems. Reactive nitrogen both benefits and impacts the health and welfare of people and ecosystems. Scientific information suggests that reactive nitrogen is accumulating in the environment and that nitrogen cycling through biogeochemical pathways has a variety of consequences.

Information on the committee's previous meetings was published on January 17, 2007 (72 FR 1989), March 22, 2007 (72 FR 3492), August 14, 2007 (72 FR 4542), November 20, 2007 (72 FR 65340), March 19, 2008 (73 FR 4802), and September 23, 2008 (73 FR 54803–54804). The information is also available on the SAB Web site at *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/Nitrogen%20Project*.

The purpose of the teleconference is for the SAB INC to discuss the committee's draft report addressing the environmental problems presented by reactive nitrogen and providing recommendations related to an integrated nitrogen management strategy. This report relates to the committee's charge to: (1) Identify and analyze, from a scientific perspective, the problems nitrogen presents in the environment and the links among them; (2) evaluate the contribution an integrated nitrogen management strategy could make to environmental protection; (3) identify additional risk management options for EPA's consideration; and (4) make recommendations to EPA concerning improvements in nitrogen research to support risk reduction.

Availability of Meeting Materials: Agendas and materials in support of the teleconferences will be placed on the SAB Web site at *http://www.epa.gov/sab/* in advance of each teleconference.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the SAB to consider during the public teleconference. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a public SAB teleconference will be limited to three minutes per speaker, with no more than a total of one-half hour for all speakers. To be placed on the public speaker list, interested parties should contact Dr. Angela Nugent, DFO, in writing (preferably via e-mail) five business days in advance of each teleconference. *Written Statements:* Written statements should be received in the SAB Staff Office five business days in advance of each teleconference above so that the information may be made available to the SAB for their consideration prior to each teleconference. Written statements should be supplied to the DFO in the following formats: One hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM-PC/Windows 98/2000/XP format). Submitters are asked to provide versions of each document submitted with and without signatures, because the SAB Staff Office does not publish documents with signatures on its Web sites.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Angela Nugent at (202) 343–9981 or *nugent.angela@epa.gov*. To request accommodation of a disability, please contact Dr. Nugent preferably at least ten days prior to the teleconferences to give EPA as much time as possible to process your request.

Dated: February 2, 2009.

Anthony Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. E9–2798 Filed 2–9–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

February 4, 2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Pursuant to the PRA, no person shall be subject to any penalty for failing to comply with a collection of information that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written PRA comments should be submitted on or before April 13, 2009. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Interested parties may submit all PRA comments by e-mail or U.S. mail. To submit your comments by e-mail, send them to *PRA@fcc.gov*. To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at 202–418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0568.

Title: Sections 76.970, 76.971 and 76.975, Commercial Leased Access Rates, Terms and Conditions.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit; State, Local or Tribal Government.

Number of Respondents and Responses: 4,030 respondents; 11,940 responses.

Estimated Time per Response: 2 minutes–10 hours.

Frequency of Response: Recordkeeping requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 154(i) and 612 of the Communications Act of 1934, as amended.

Total Annual Burden: 59,671 hours.

Total Annual Cost: $74,000.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 76.970(h) requires cable operators to provide the following information within 15 calendar days of a request regarding leased access (for systems subject to small system relief, cable operators are required to provide the following information within 30 days of a request regarding leased access):

(a) A complete schedule of the operator's full-time and part-time leased access rates;

(b) How much of the cable operator's leased access set-aside capacity is available;

(c) Rates associated with technical and studio costs;

(d) If specifically requested, a sample leased access contract; and

(e) Operators must maintain supporting documentation to justify scheduled rates in their files.

47 CFR 76.971 requires cable operators to provide billing and collection services to leased access programmers unless they can demonstrate the existence of third party billing and collection services which, in terms of cost and accessibility, offer leased access programmers an alternative substantially equivalent to that offered to comparable non-leased access programmers.

47 CFR 76.975(b) requires that persons alleging that a cable operator's leased access rate is unreasonable must receive a determination of the cable operator's maximum permitted rate from an independent accountant prior to filing a petition for relief with the Commission.

47 CFR 76.975(c) requires that petitioners attach a copy of the final accountant's report to their petition where the petition is based on allegations that a cable operator's leased access rates are unreasonable.

OMB Control Number: 3060–0716.

Title: Sections 73.88, 73.318, 73.685 and 73.1630, Blanketing Interference.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents and Responses: 21,000 respondents/21,000 responses.

Estimated Time per Response: 1 to 2 hours.

Frequency of Response: Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Section 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 41,000 hours.

Total Annual Costs: None.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: 47 CFR 73.88(AM) states that the licensee of each broadcast station is required to satisfy all reasonable complaints of blanketing interference within the 1 V/m contour.

47 CFR 73.318(b)(FM) states that after January 1, 1985, permittees or licensees who either (1) commence program tests, (2) replace the antennas, or (3) request facilities modifications and are issued a new construction permit must satisfy all complaints of blanketing interference which are received by the station during a one year period.

47 CFR 73.318(c)(FM) states that a permittee collocating with one or more

existing stations and beginning program tests on or after January 1, 1985, must assume full financial responsibility for remedying new complaints of blanketing interference for a period of one year.

Under 47 CFR 73.88(AM), 73.318(FM), and 73.685(d)(TV), the license is financially responsible for resolving complaints of interference within one year of program test authority when certain conditions are met. After the first year, a license is only required to provide technical assistance to determine the cause of interference.

The FCC has an outstanding Notice of Proposed Rulemaking (NPRM) in MM Docket No. 96–62, In the Matter of Amendment of Part 73 of the Commission's Rules to More Effectively Resolve Broadcast Blanketing Interference, Including Interference to Consumer Electronics and Other Communications Devices. The NPRM has proposed to provide detailed clarification of the AM, FM, and TV licensee's responsibilities in resolving/eliminating blanketing interference caused by their individual stations. The NPRM has also proposed to consolidate all blanketing interference rules under a new section 47 CFR 73.1630, ''Blanketing Interference.'' This new rule has been designed to facilitate the resolution of broadcast interference problems and set forth all responsibilities of the licensee/permittee of a broadcast station. To date, final rules have not been adopted.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–2804 Filed 2–9–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No. 08–214; FCC 09–4]

Herring Broadcasting, Inc. v. Time Warner Cable Inc., et al.; MB Docket No. 08–214

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document rescinds three previous Media Bureau Orders regarding six program carriage complaints, reinstates the presiding Administrative Law Judge's delegated authority over these complaints, and directs the presiding Administrative Law Judge to issue a Further Revised Procedural and Hearing Order and to proceed expeditiously to issue recommended decisions and recommended remedies, if necessary.

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

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Steven Broeckaert, *Steven.Broeckaert@fcc.gov*, or David Konczal, *David.Konczal@fcc.gov*, of the Media Bureau, Policy Division, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Order, FCC 09–4, adopted and released on January 27, 2009. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis of the Order

1. On October 10, 2008, the Media Bureau issued a *Memorandum Opinion and Hearing Designation Order* (''*HDO*'') referring the above-captioned matters to an Administrative Law Judge for recommended decisions. 73 FR 65312, November 3, 2008. The Media Bureau has since issued *Orders* stating that the Administrative Law Judge's delegated authority over these hearing matters expired under the terms of the *HDO*, providing that the Media Bureau will proceed to resolve these disputes without the benefit of recommended decisions from the Administrative Law Judge, and providing an abbreviated schedule for the parties to file additional and/or updated arguments and evidence responsive to certain questions and requests. *In the Matter of Herring Broadcasting Inc., d/b/a WealthTV, et al.*, 74 FR 3037, January 16, 2009 (''*December 24th Order*''); *In the Matter of NFL Enterprises LLC*, 74 FR 4035, January 22, 2009 (''*December 31st Order*''); *In the Matter of Herring Broadcasting Inc., d/b/a WealthTV, et al.*, Order, DA 09–55, MB Docket 08–214 (rel. Jan. 16, 2009) (''*January 16th Order*'').

2. On our own motion, we conclude that the factual determinations required to fairly adjudicate these matters are best resolved through hearings before an Administrative Law Judge, rather than solely through pleadings and exhibits as contemplated by the Media Bureau. Accordingly, we rescind in full the *December 24th Order*, the *December 31st Order* and the *January 16th Order*. As discussed above, we believe that these proceedings are best resolved by hearings before an Administrative Law Judge. Therefore, notwithstanding the Media Bureau's previous determination that the presiding Administrative Law Judge's delegated authority over these matters has expired, we hereby reinstate the presiding Administrative Law Judge's delegated authority and direct him to proceed pursuant to the *HDO*. We instruct the presiding Administrative Law Judge to issue a Further Revised Procedural and Hearing Order that updates the schedule announced in the *December 15th ALJ Order* to account for any delays caused by the Bureau's recent actions. *Herring Broadcasting, Inc.* v. *Time Warner Cable Inc. et al.*, Order, MB Docket No. 08–214, FCC 08M–50 (rel. Dec. 2, 2008); *Herring Broadcasting, Inc.* v. *Time Warner Cable Inc. et al.*, Revised Procedural and Hearing Order, MB Docket No. 08–214, FCC 08M–53 (rel. Dec. 15, 2008) (''*December 15th ALJ Order*''). Further, as instructed in the *HDO*, the presiding Administrative Law Judge shall issue recommended decisions and remedies, if any, to the Commission as expeditiously as possible, consistent with the mandates of fairness and due process. In light of our decision, the Emergency Application for Review and Emergency Motion for Stay, and related pleadings, regarding the *December 24th Order* and the *December 31st Order* are dismissed as moot. *See* Comcast Corporation, Emergency Application for Review, MB Docket No. 08–214 (Dec. 30, 2008); Comcast Corporation, Emergency Motion for Stay, MB Docket No. 08–214 (Dec. 30, 2008); Joinder of Time Warner Cable et al., MB Docket No. 08–214 (Dec. 31, 2008); Comcast Corporation, Supplement to Emergency Application for Review, MB Docket No. 08–214 (Jan. 2, 2009); Comcast Corporation, Supplement to Emergency Motion for Stay, MB Docket No. 08–214 (Jan. 2, 2009).

3. Accordingly, *It is ordered*, pursuant to Section 1.117 of the Commission's rules, 47 CFR 1.117, that the *December 24th Order*, the *December 31st Order*

and the *January 16th Order Are Hereby Rescinded*.

4. *It is further ordered* that the presiding Administrative Law Judge will issue a Further Revised Procedural and Hearing Order and proceed expeditiously to issue recommended decisions and recommended remedies, if necessary, as discussed herein.

5. *It is further ordered* that all parties to the above-captioned proceedings will be served with a copy of this *Order* by e-mail and by certified mail, return receipt requested.

6. *It is further ordered* that a copy of this *Order*, or a summary thereof, *Shall Be Published* in the **Federal Register**.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–2801 Filed 2–9–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewals (0134; 0135); 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 proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning the following continuing collections of information titled: (1) Customer Assistance (3064–0134); and (2) Asset Purchaser Eligibility Certification (3064–0135).

DATES: Comments must be submitted on or before April 13, 2009.

ADDRESSES: Interested parties are invited to submit written comments by any of the following methods. *All comments should refer to the name and number of the collection:*

- *Web site: http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *E-mail: comments@fdic.gov.* Include the name of the collection in the subject line of the message.
- *Mail:* Herbert J. Messite, Counsel (202.898.6834), (Room F–1062, 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 a.m. and 5 p.m.

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: Herbert J. Messite at the address identified above.

SUPPLEMENTARY INFORMATION:

Proposal To Renew the Following Currently Approved Collections of Information

1. *Title:* Customer Assistance.
OMB Number: 3064–0134.
Form Number: FDIC 6422/04.
Frequency of Response: On occasion.
Affected Public: Individuals, Households, Business or other financial institutions.
Estimated Number of Respondents: 15,000.
Estimated Time per Response: 0.5 hours.
Total Annual Burden: 7500 hours.
General Description of Collection: This collection permits the FDIC to collect information from customers of financial institutions who have inquiries or complaints about service. Customers may document their complaints or inquiries to the FDIC using a letter or an optional form (6422/04).

2. *Title:* Asset Purchaser Eligibility Certification.
OMB Number: 3064–0135.
Form Number: FDIC 7300/06.
Frequency of Response: On occasion.
Affected Public: Business or other financial institutions.
Estimated Number of Respondents: 2,500.
Estimated Time per Response: 0.5 hours.
Total Annual Burden: 1,250 hours.
General Description of Collection: The FDIC will use the Asset Purchaser Eligibility Certification to assure compliance with statutory restrictions on who may purchase assets held by the FDIC.

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.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of these collections. All comments will become a matter of public record.

Dated at Washington, DC, this 4th day of February 2009.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E9–2669 Filed 2–9–09; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

DATE AND TIME: Tuesday, February 10, 2009, and Wednesday, February 11, 2009, At 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, *Telephone:* (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. E9–2594 Filed 2–9–09; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices, Acquisition of Shares of Bank or Bank Holding Companies; Correction

This notice corrects a notice FR Doc. E8–2459 published on page 6155 of the issue for Thursday, February 5, 2009.

Under the Federal Reserve Bank of Atlanta heading, the entry for Redemptus Group, LLC, Atlanta, Georgia, is revised to read as follows:

A. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Redemptus Group LLC, Dunwoody, Georgia, to acquire voting shares of McIntosh Bancshares, Inc., and thereby indirectly acquire voting shares of McIntosh State Bank, both of Jackson, Georgia.

Comments on this application must be received by February 20, 2009.

Board of Governors of the Federal Reserve System, February 5, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–2718 Filed 2–9–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 25, 2009.

A. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. Koh–Wilshire LP, Los Angeles, California, to retain voting shares of Wilshire Bancorp, Inc., and thereby indirectly retain voting shares of Wilshire State Bank, both of Los Angeles, California.

2. Daniel Day, Yakima, Washington, to acquire additional voting shares of YNB Financial Services Corporation, and thereby indirectly acquire additional voting shares of Yakima National Bank, both of Yakima, Washington.

Board of Governors of the Federal Reserve System, February 5, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–2719 Filed 2–9–09; 8:45 am]

BILLING CODE 6210–01–S

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 also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 6, 2009.

A. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Intercontinental Bankshares, LLC, Coral Gables, Florida, to become a bank holding company by acquiring 81 percent of the voting shares of Intercontinental Bank, West Miami, Florida.

Board of Governors of the Federal Reserve System, February 5, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–2717 Filed 2–9–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 082 3113]

Genica Corporation and Compgeeks.com; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before March 9, 2009.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Genica Corporation, File No. 082 3113,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/ Office of the Secretary, Room 135–H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form by

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

following the instructions on the web-based form at (*http://secure.commentworks.com/ftc-Genica*). To ensure that the Commission considers an electronic comment, you must file it on that web-based form.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC website, to the extent practicable, at *www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

FOR FURTHER INFORMATION CONTACT: Molly Crawford, Bureau of Coonsumer Protection, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, (202) 326–2252.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for February 5, 2009), on the World Wide Web, at (*http://www.ftc.gov/os/2009/02/index.htm*). A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, a consent agreement from Genica Corporation (''Genica'') and Compgeeks.com, also doing business as Computer Geeks Discount Outlet and Geeks.com (''Compgeeks.com'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

Genica and its wholly-owned subsidiary, Compgeeks.com, (collectively ''respondents'') sell computer systems, peripherals, and consumer electronics to consumers over the internet, including through a website (*www.geeks.com*) operated by Compgeeks.com. Respondents operate a computer network that consumers use, in conjunction with the *www.geeks.com* website and web application, to obtain information and to buy their products. In selling products through the *www.geeks.com* website, respondents routinely collect sensitive information from consumers to obtain authorization for credit card purchases, including a first and last name, address, e-mail address, telephone number, credit card number, credit card expiration date, and credit card security code (hereinafter ''personal information''). This information is particularly sensitive, because it can be used to facilitate payment card fraud and other consumer harm. This matter concerns alleged false or misleading representations respondents made about the security they provided for this information.

The Commission's complaint alleges that respondents represented that they implemented reasonable and appropriate security measures to protect the privacy and confidentiality of personal information. The complaint alleges that this representation was false because respondents engaged in a number of practices that, taken together, failed to provide reasonable and appropriate security for sensitive personal information stored on their network. Among other things, respondents allegedly: (1) stored personal information in clear, readable text; (2) did not adequately assess the vulnerability of their web application and network to commonly known or reasonably foreseeable attacks, such as ''Structured Query Language'' (''SQL'') injection attacks; (3) did not implement simple, free or low-cost, and readily available defenses to such attacks; (4) did not use readily available security measures to monitor and control connections between computers on the network and from the network to the internet; and (5) failed to employ reasonable measures to detect and prevent unauthorized access to personal information, such as by logging or employing an intrusion detection system.

The complaint further alleges that since at least January 2007 and continuing through at least June 2007, hackers repeatedly exploited these vulnerabilities by using SQL injection attacks on the *www.geeks.com* website and web application. Through these attacks, the hackers allegedly found personal information stored on respondents' network and exported the information of hundreds of customers, including credit card numbers, expiration dates, and security codes, over the internet to outside computers.

The proposed order applies to personal information respondents collect from or about consumers. It contains provisions designed to prevent respondents from engaging in the future in practices similar to those alleged in the complaint.

Part I of the proposed order prohibits respondents, in connection with the advertising, marketing, promotion, offering for sale, or sale of any product or service, from misrepresenting the extent to which respondents maintain and protect the privacy, confidentiality, or integrity of any personal information collected from or about consumers.

Part II of the proposed order requires respondents to establish and maintain a comprehensive information security program that is reasonably designed to protect the security, confidentiality, and integrity of personal information collected from or about consumers. The written security program must contain administrative, technical, and physical safeguards appropriate to respondents' size and complexity, the nature and scope of respondents' activities, and the sensitivity of the personal information collected from or about consumers. Specifically the order requires respondents to:

1. Designate an employee or employees to coordinate and be accountable for the information security program;

2. Identify material internal and external risks to the security, confidentiality, and integrity of personal information that could result in the

unauthorized disclosure, misuse, loss, alteration, destruction, or other compromise of such information, and assess the sufficiency of any safeguards in place to control these risks;

3. Design and implement reasonable safeguards to control the risks identified through risk assessment, and regularly test or monitor the effectiveness of the safeguards' key controls, systems, and procedures;

4. Develop and use reasonable steps to retain service providers capable of appropriately safeguarding personal information they receive from respondents and requiring service providers by contract to implement and maintain appropriate safeguards; and

5. Evaluate and adjust respondents' information security program in light of the results of the testing and monitoring, any material changes to respondents' operations or business arrangements, or any other circumstances that respondents know or have reason to know may have a material impact on the effectiveness of their information security program.

Part III of the proposed order requires that respondents, in connection with the online advertising, marketing, promotion, offering for sale, or sale of any product or service to consumers, obtain within 180 days, and on a biennial bases thereafter for a period of ten (10) years, an assessment and report from a qualified, objective, independent third-party professional, certifying, among other things, that respondents have in place a security program that provides protections that meet or exceed the protections required by Part II of the proposed order; and (2) respondents' security program is operating with sufficient effectiveness to provide reasonable assurance that the security, confidentiality, and integrity of consumers' personal information is protected.

Parts IV through VIII of the proposed order are reporting and compliance provisions. Part IV requires respondents to retain documents relating to their compliance with the order. For most records, the order requires that the documents be retained for a five-year period. For the third-party assessments and supporting documents, respondents must retain the documents for a period of three years after the date that each assessment is prepared. Part V requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part VI ensures notification to the FTC of changes in corporate status. Part VII mandates that respondents submit an initial compliance report to the FTC, and make available to the FTC subsequent reports. Part VIII is a provision ''sunsetting'' the order after twenty (20) years, with certain exceptions.

The purpose of the analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark

Secretary

[FR Doc. E9–2764 Filed 2–9–09: 8:45 am]

BILLING CODE 6750–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) and the Assistant Secretary for Health have taken final action in the following case:

Kazuhiro Tanaka, M.D., Ph.D., National Institute of Dental and Craniofacial Research, National Institutes of Health: Based on the report of an investigation conducted by the National Institutes of Health (NIH) and additional analysis conducted by the Office of Research Integrity (ORI) in its oversight review, the U.S. Public Health Service (PHS) found that Dr. Kazuhiro Tanaka, former Visiting Postdoctoral Fellow, Molecular Biology Section, Craniofacial Developmental and Biology and Regeneration Branch (CDBRB), National Institute of Dental and Craniofacial Research (NIDCR), NIH, engaged in scientific misconduct in research supported by PHS funds from the NIDCR, NIH Intramural Program.

PHS found that Respondent engaged in scientific misconduct by falsifying data that were included in three published papers: Kazuhiro Tanaka, Yoshihiro Matsumoto, Fumihiko Nakatani, Yukihide Iwamoto, and Yoshihiko Yamada, ''A zinc finger transcription αA-crystallin binding protein 1, is a negative regulator of the chondrocyte-specific enhancer of the α1(II) collagen gene,'' *Molecular and Cellular Biology* (*MCB*) 20:4428–4435, 2000; Kazuhiro Tanaka, Noriyuki Tsumaki, Christine A. Kozak, Yoshihiro Matsumoto, Fumihiko Nakatani, Yukihide Iwamoto, and Yoshihiko Yamada, ''A Krüppel-associated box-zinc finger protein, NT2, represses cell-type-specific promoter activity of the α2(XI) collagen gene,''*Molecular and Cellular Biology* 22:4256–4267, 2002; and Ying Liu, Haochuan Li, Kazuhiro Tanaka, Noriyuki Tsumaki, and Yoshihiko Yamada, ''Identification of an enhancer sequence with the first intron required for cartilage-specific transcription of the α2(XI) collagen gene,'' *Journal of Biological Chemistry* (*JBC*) 275:12712–12718, 2000.

Specifically, PHS found that Respondent:

- Falsified the results for CRYBP1 or Sox9 binding to the Col2a1 DNA sequence in electrophoretic mobility shift assays in Figure 1D and Figure 7 in *MCB* 20:4428–4435, 2000. He used duplicate copies of bands or duplicate copies of parts of lanes to falsely represent results from reportedly different experimental conditions;
- Falsified the results for NT2 binding to the Col11a2 DNA sequence in electrophoretic mobility shift assays in Figures 2D and 6B, and falsified the Western blot for NT2 mutant proteins in Figure 8B in *MCB* 22:4256–4267, 2002. He used duplicate copies of bands, parts of bands, or duplicate copies of parts of lanes to falsely represent results from reportedly different experimental conditions in Figures 2D and 6B; and falsely represented results for the Figure 8B Western blot by using duplicate copies of bands to represent NT2Δ1 (lane 2) and NT2Δ4 (lane 5) mutant proteins;
- Falsified the Western blot for Sox9 protein expression in Figure 4B, *JBC* 275:12712–12718, 2000, by using duplicate copies of lanes 1 and 2 to represent the Sox9 expression in cell extracts from both Balb 3T3 and undifferentiated ATDC5 cells; and
- Falsified the Northern blots in multiple panels of Figure 3, *MCB* 20:4428–4435, 2000. He used duplicate copies of bands for CRYBP1, for Type II collagen, for Type X collagen, and for GAPDH and 18S EtBr stained control bands to falsely represent results of RNA expression from these different genes in ATDC5 cells. He also used duplicate copies of bands to falsely represent the RNA expression in ATDC5 cells grown under different conditions for either collagen Type II in Figure 3, *MCB* 2000 or collagen α1(X) in Figure 5 in *MCB* 22:4256–4267, 2002. Similarly, duplicate copies of 18S EtBr stained control bands were used in both figures with reportedly different experimental conditions.

Both Respondent and PHS are desirous of concluding this matter without further expense of time and other resources, and the parties have entered into a Voluntary Exclusion Agreement (Agreement). The settlement

is not an admission of liability on the part of the Respondent. Respondent neither admits nor denies ORI's finding of scientific misconduct. Respondent acknowledges that original data relating to the above referenced falsified figures are missing.

Dr. Tanaka has voluntarily agreed, for a period of three (3) years, beginning on January 14, 2009:

(1) To exclude himself from any contracting or subcontracting with any agency of the United States Government and from eligibility or involvement in nonprocurement programs of the United States Government referred to as ''covered transactions'' pursuant to HHS' Implementation (2 CFR Part 376 *et seq.*) of OMB Guidelines to Agencies on Government wide Debarment and Suspension (2 CFR, Part 180); and

(2) To exclude himself from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453–8800.

Chris B. Pascal,

Director, Office of Research Integrity.

[FR Doc. E9–2720 Filed 2–9–09; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''Evaluation of Phase I Demonstrations of the Pharmacy Quality Alliance.'' In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by April 13, 2009.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by e-mail at *doris.lefkowitz@ahrq.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Evaluation of Phase I Demonstrations of the Pharmacy Quality Alliance

AHRQ proposes to conduct an independent evaluation of five Phase I demonstrations undertaken by the Pharmacy Quality Alliance (PQA). The PQA launched the five demonstration projects to test the feasibility of implementing a pharmacy provider report card system, which will be used to provide feedback to pharmacies on their performance. The goals of the demonstrations are to obtain feedback from pharmacists on the credibility of the performance reports and their utility in performance improvement, and to identify the most efficient and useful ways to implement a performance-based quality reporting system. The evaluation will be conducted for AHRQ by its contractor, the CNA Corporation and Thomas Jefferson Medical College.

The purpose of this evaluation is to identify problems associated with the implementation of a performance-based quality reporting system. The evaluation of the Phase I demonstrations will:

- Test the feasibility and utility of (1) using 15 PQA claims-based measures on pharmacy performance and (2) a survey of consumers about their experience with pharmacy services, which was developed by the PQA;
- Determine the resource (time and cost) requirements for collecting the data and generating the pharmacy performance reports; and
- Provide a base of knowledge that enables the PQA to improve the implementation process, increase operational efficiency, reduce operational costs, and enhance the utility and validity of the performance measures.

This project is being conducted pursuant to AHRQ's statutory authority to conduct and support research and evaluations on health care and on systems for the delivery of such care, including activities with respect to (1) the quality, effectiveness, efficiency, appropriateness and value of health care services and (2) quality measurement and improvement. 42 U.S.C. 299a(a)(1) and (2).

Method of Collection

The project will include the following three data collections: (1) On-site interviews with key personnel involved in the demonstration; (2) a pre-interview questionnaire for the on site interview participants; and (3) a survey of pharmacy staff. The data will be collected to obtain the following types of information necessary for the evaluation:

- Organizational background related to quality measurement, organizational resources for quality measurement;
- Measurement methodology;
- Opinions on the performance measures;
- The process for disseminating the performance measures;
- Incentives and penalties for participation in pharmacy quality improvement;
- Usability of the performance reports;
- Future directions for quality measurement in the organization; and
- Respondent characteristics.

Onsite Interviews With Key Demonstration Participants

On-site interviews will be conducted with up to six persons at each of the five demonstration sites. The study will try to interview representatives from the following job functions: (1) Pharmacy operations management; (2) clinical pharmacy staff; (3) quality-improvement; (4) utilization management; (5) analytics management responsible for oversight of performance report analyses; (6) analytics staff assigned to complete the performance reports; (7) information technology (IT) staff responsible for developing and/or coordinating Internet components of the project; and (8) senior management (executive leadership, *i.e.*, Vice President level and above).

Pre-Interview Questionnaire

In addition to the on-site interview, a brief written questionnaire will be used to collect information from interview participants prior to the interview. There will be two different versions of this questionnaire, one for the demonstration project leaders and one for all on-site interview participants.

Survey of Pharmacy Staff

A pharmacy staff survey will be developed to yield additional quantitative data about the demonstration projects. The sample will consist of practicing pharmacists who are participating in the demonstration sites and who received one or more of the performance reports. It will also include field managers and supervisors.

At each of the five sites, up to 100 pharmacy staff members will be sampled, with an expected response rate of 75 percent, yielding 75 respondents per site.

Estimated Annual Respondent Burden

Exhibit 1 show the estimated annualized burden hours for the respondents' time to participate in this evaluation. The on-site interviews will require about 1 hour to complete for a total of 30 burden hours. The pre-interview questionnaire is expected to take 15 minutes to complete for a total of 9 burden hours. The phannacy staff survey will take about 30 minutes to complete for a total of 188 burden hours. The total burden hours for all data collections is estimated to be 227 hours.

Exhibit 2 shows the estimated annualized cost burden associated with the respondents' time to participate in this project. The cost burden is estimated to be $10,800.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of sites	Number of responses per site	Hours per response	Total burden hours
On-Site Interviews	5	6	1.00	30
Pre-Interview Questionnaire for Demonstration Project Leaders	5	1	15/60	1
Pre-Interview Questionnaire for All Interview Participants	5	6	15/60	8
Survey of Pharmacy Staff	5	75	30/60	188
Total	20			227

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of sites	Total burden hours	Average hourly wage rate*	Total cost burden
On-Site Interviews	5	30	$47.58	$1,427
Pre-Interview Questionnaire for Demonstration Project Leaders	5	1	47.58	48
Pre-Interview Questionnaire for All Interview Participants	5	8	47.58	380
Survey of Pharmacy Staff	5	188	47.58	8,945
Total	20	227		$10,800

*Based on the national average wage for pharmacists (29–1051), National Compensation Survey: Occupational wages in the United States May 2007, U.S. Department of Labor, Bureau of Labor Statistics.

Estimated Annual Costs to the Federal Government

The estimated total cost to the Federal government for this one year evaluation is $208,874. Exhibit 3 shows a breakdown of the costs.

EXHIBIT 3—ESTIMATED ANNUAL COSTS TO THE FEDERAL GOVERNMENT

Component	Total
Developing the interview guide and survey instrument	$33,905
Preparing OMB clearance submission	6,704
Site visits to each demonstration	73,368
Analyzing the data from each demonstration site	54,835
Preparing a final report	40,062
Total	208,874

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: February 2, 2009.

Carolyn M. Clancy,

Director.

[FR Doc. E9–2679 Filed 2–9–09; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''Reducing Waste and Inefficiency through Process Redesign: Lean/Toyota Production System (TPS) Implementation.'' In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on November 21, 2008 and allowed 60 days for public comment. No comments were received. The purpose

of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by March 12, 2009.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (*attention:* AHRQ's desk officer) or by e-mail at *OIRA_submission@omb.eop.gov* (*attention:* AHRQ's desk officer).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

''*Reducing Waste and Inefficiency through Process Redesign:* Lean/Toyota Production System (TPS) Implementation''

AHRQ proposes to investigate the contribution of Lean/TPS to reducing waste in health care delivery systems. Lean/TPS is a process-redesign methodology adopted from Toyota Production Systems. The goal of Lean/TPS is to empower front-line staff to apply continuous quality improvement methods to reduce waste and enhance value in workflows and operations (Spear, S., Fixing healthcare from the inside, today. Harvard Business Rev., 2005 83(9), 78–91).

AHRQ is interested in assessing and disseminating promising techniques and methodologies for redesigning health care processes to reduce waste and enhance efficiency. Using a purposive sample of health care organizations and projects, AHRQ will describe and assess the ways in which Lean/TPS has been implemented and the related challenges and solutions experienced. The sampled organizations will vary in community and market characteristics, type of service (*e.g.*, inpatient/outpatient), and delivery system characteristics (*e.g.*, relationship between physicians and hospitals, ownership). AHRQ plans to disseminate the lessons learned from this project on the implementation of Lean/TPS to health care delivery systems. AHRQ will work with a contractor to complete this work, including all activities mentioned above. This project is being performed pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on healthcare delivery systems, including activities with respect to: The quality, effectiveness, efficiency, appropriateness and value of health care services; quality measurement and improvement; and health care costs, productivity, organization, and market forces. 42 U.S.C. 299a(a)(1), (2), and (6).

Method of Collection

Four or five research locations (*i.e.*, hospitals or other heath settings) will be selected to create nine case study reports. Four of the studies will employ a retrospective analytics perspective, while five will employ a prospective analytics perspective, including one study focused on the construction of a hospital. For the other eight case studies, the department will be unit of analysis for the case study. At each research location, implementation of Lean/TPS in two departments will be studied: One department with an essentially linear process (clinical laboratory, radiology, or ED) and one department with an essentially non-linear process (cardiology, GI, or med/surg unit). A linear department is one in which the process is essentially uniform and predictable for most or all services delivered. A non-linear department is one in which the process is much less uniform and predictable.

Qualitative data will be collected directly from the departments selected for this study. The collection will be accomplished using interviews (telephone and in-person), collection of documentation, and digital diaries for the five prospective case studies. The ''digital diary'' is a data collection method using a diary entry guide and a digital recorder to describe key aspects of the implementation process. The number of digital diary submissions will depend on the number and duration of the Lean/TPS projects within in each department. The in-person interviews will be conducted through a multi-day visit to each site. Only the in-person interviews and collection of documentation methods will be employed for the retrospective case studies.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours. The table includes burden for both the retrospective and prospective case studies in separate sections. As this project will collect data from establishments, we have defined each establishment as the medical or administrative department that is implementing the Lean/TPS project to be studied.

In Exhibit 1, the total burden hours in each row (Column F) is calculated as the product of the values in the other colunms (Columns B–E). Thus, for each of the 5 prospective case studies, we will conduct in-person interviews with 15 administrative and clinical personnel. Each person will be interviewed twice during the 36 week data collection period. The estimated time per response is 1.0 hour for a total of 150 burden hours for in-person interviews. Using the same calculation approach, we project 23 burden hours for telephone interviews, 53 burden hours for digital diaries, and 20 burden hours for assembling documents for a subtotal of 246 burden hours for the 5 prospective case studies. For each retrospective case study, we have defined establishment as the department from which we will collect data. A total of 15 in-person interviews will be conducted with the administrative and clinical personnel during a site visit. The estimated time per response is 1.0 hour. For all 4 retrospective case studies, we estimate a total of 60 burden hours. Similar to the prospective case studies, administrative staff from each site will be asked to provide training materials, reports on Lean/TPS implementation, and/or any other documentation or existing data from previous or current Lean/TPS projects implemented and will take 4 hours. The total estimated burden for the retrospective case studies is 76 hours. The total burden hours for all 9 case studies is 322 hours.

Exhibit 2 shows the estimated annualized cost burden for the respondents' time to provide the requested data. The hourly rate of $35.07 is an average of the administrative personnel hourly wage of $14.53 and the clinical personnel hourly wage of $62.52 for physicians and $28.15 for registered nurses. The average hourly wage of administrative and clinical personnel is used to estimate the cost of in-person interviews, telephone interviews, and digital diaries, because all kinds of staff may be asked to participate in these three activities. The average hourly wage for administrative personnel—$14.53—is used to estimate the cost of assembling documentation, because administrative support staff will perform this task. The total estimated cost burden is about $10,554.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Data collection	Number of establishments	Number of respondents per establishment	Number of responses per respondent	Hours per response	Total burden hours
A	B	C	D	E	F
Prospective Case Studies & Hospital Case Study					
In-person interviews	5	15	2	1	150
Telephone interviews	5	3	3	30/60	23
Digital Diaries	5	2	32	10/60	53
Collection of documentation	5	1	1	4	20
Prospective Subtotal	20	n/a	n/a	n/a	246
Retrospective Case Studies					
In-person interviews	4	15	1	1	60
Collection of documentation	4	1	1	4	60
Retrospective Subtotal	8	n/a	n/a	n/a	76
Grand Total	28	n/a	n/a	n/a	322

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Data collection	Number of establishments	Total burden hours	Average hourly wage rate*	Total cost burden
Prospective, Retrospective, & Hospital Case Studies				
In-person interviews	9	210	$35.07	$7,365
Telephone interviews	5	23	35.07	807
Digital Diaries	5	53	35.07	1,859
Collection of documentation	9	36	14.53	523
Total	28	322	n/a	10,554

*Based upon the average hourly wages of administrative support personnel, physicians, and registered nurses, National Compensation Survey: Occupational Wages in the United States 2005, U.S. Department of Labor, Bureau of Labor Statistics.

Estimated Annual Costs to the Federal Government

The total cost to the Federal Government for this project is $494,999, with an average annual cost of $247,500. This figure includes the cost of data collection, data analysis, reporting, and contract oversight by the government. Exhibit 3 shows the individual cost components.

EXHIBIT 3—ESTIMATED COST

Cost component	Total cost	Annualized cost
Project Development	$19,885	$9,942
Data Collection Activities	231,339	115,670
Data Processing and Analysis	62,621	31,310
Publication of Results	67,087	33,544
Project Management	21,349	10,675
Overhead	77,532	38,766
Government Oversight	15,186	7,593
Total	494,999	247,500

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQs information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ's health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: February 2, 2009.

Carolyn M. Clancy,

Director.

[FR Doc. E9–2680 Filed 2–9–09; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director, Centers for Disease Control and Prevention (ACD, CDC)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the CDC announces the following meeting of the aforementioned committee:

Time and Date: 3 p.m.–4:30 p.m., February 24, 2009.

Place: The teleconference call will originate at the CDC. For details on accessing the teleconference is located in the supplementary information.

Status: Open to the public, teleconference access limited only by availability of telephone ports.

Purpose: The committee will provide advice to the CDC Director on strategic and other broad issues facing CDC.

Matters to be Discussed: The Advisory Committee to the Director will discuss and decide on recommendations from its Ethics Subcommittee, National Biosurveillance Advisory Subcommittee, and Budget Workgroup. The Ethics Subcommittee will make recommendations on using travel restrictions for individuals with infectious illnesses. The Ethics Subcommittee will also discuss a draft charge that clearly articulates the ethical foundation for focusing on health protection activities and examining the social determinants of health. The National Biosurveillance Advisory Subcommittee will seek approval on recommendations for latitude to share specific points with key members of the new administration. The Budget Workgroup will provide recommendations around principles for change, in terms of the budget and the budget structure and process for the CDC.

Agenda items are subject to change as priorities dictate.

Supplementary Information: This conference call is scheduled to begin at 3 p.m. Eastern Standard Time. To participate in the teleconference, please dial 1 (888) 323–9787 and enter conference code 4735949.

Contact Person for More Information: Brad Perkins, M.D., M.B.A., Executive Officer, ACD, CDC, 1600 Clifton Road, NE., M/S D–14, Atlanta, Georgia 30333. *Telephone:* (404) 639–7000.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the CDC and the Agency for Toxic Substances and Disease Registry.

Dated: February 3, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. E9–2805 Filed 2–9–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Assessing the Accuracy of Self-Report of HIV Testing Behavior, Program Announcement Number (PA) 09–002

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

Time and Date: 8 a.m.–5 p.m., March 20, 2009 (Closed).

Place: Sheraton Gateway Hotel, Atlanta Airport, 1900 Sullivan Road, Atlanta, GA 30337, Telephone (770) 997–1100.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of ''Assessing the Accuracy of Self-Report of HIV Testing Behavior, Program Announcement Number (PA) 09–002.''

Contact Person for More Information: Gregory Anderson, M.P.H., M.S., Scientific Review Administrator, Strategic Science and Program Unit, Office of the Director, Coordinating Center for Infectious Diseases, CDC, 1600 Clifton Road, Mailstop E–60, Atlanta, GA 30333, *Telephone:* (404) 498–2275.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: February 3, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–2803 Filed 2–9–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0339]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry on Updating Labeling for Susceptibility Test Information in Systemic Antibacterial Drug Products and Antimicrobial Susceptibility Testing Devices

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.

DATES: Fax written comments on the collection of information by March 12, 2009.

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: 202–395–6974, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–NEW and title ''Guidance for Industry on Updating Labeling for Susceptibility Test Information in Systemic Antibacterial Drug Products and Antimicrobial Susceptibility Testing Devices.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3792.

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.

Guidance for Industry on Updating Labeling for Susceptibility Test Information in Systemic Antibacterial Drug Products and Antimicrobial Susceptibility Testing Devices

In the **Federal Register** of June 12, 2008 (73 FR 33438), FDA announced the availability of a draft guidance for

industry entitled ''Updating Labeling for Susceptibility Test Information in Systemic Antibacterial Drug Products and Antimicrobial Susceptibility Testing Devices.'' FDA is now in the process of finalizing this guidance.

The Food and Drug Administration Amendments Act of 2007 (FDAAA) includes a requirement that FDA identify and periodically update susceptibility test interpretive criteria for antibacterial drug products and make those findings publicly available. The guidance informs industry of how FDA intends to comply with the FDAAA requirement. Specifically, the guidance describes procedures and responsibilities for updating information on susceptibility test interpretive criteria, susceptibility test methods, and quality control parameters in the labeling for systemic antibacterial drug products for human use. The guidance also describes procedures for making corresponding changes to susceptibility test interpretive criteria for antimicrobial susceptibility testing devices.

Description of Respondents: Respondents to this collection of information are holders of new drug applications and abbreviated new drug applications.

Burden Estimate: Application holders can use one of the following approaches to meet their responsibilities to update their product labeling under the guidance and FDA regulations: (1) Submit a labeling supplement that relies upon a standard recognized by FDA in a **Federal Register** notice or (2) submit a labeling supplement that includes data supporting a proposed change to the microbiology information in the labeling. In addition, application holders should include in their annual report an assessment of whether the information in the *Microbiology* subsection of their product labeling is current or changes are needed. For human drugs, this information collection is already approved by OMB under control number 0910–0572 (the requirement in 21 CFR 201.56(a)(2) to update labeling when new information becomes available that causes the labeling to become inaccurate, false, or misleading) and OMB control number 0910–0001 (the requirement in 21 CFR 314.70(b)(2)(v) to submit labeling supplements for certain changes in the product's labeling and the requirement in 21 CFR 314.81(b)(2)(i) to include in the annual report a brief summary of significant new information from the previous year that might affect the labeling of the drug product).

In addition, under the guidance, if the information in the applicant's product labeling differs from the standards recognized by FDA in the **Federal Register** notice, and the applicant believes that changes to the labeling are not needed, the applicant should provide written justification to FDA explainimg why the recognized standard does not apply to its drug product and why changes are not needed to the *Microbiology* subsection of the product's labeling. This justification should be submitted as general correspondence to the product's application, and a statement indicating that no change is currently needed and the supporting justification should be included in the annual report. Based on our knowledge of the need to update information on susceptibility test interpretive criteria, susceptibility test methods, and quality control parameters in the labeling for systemic antibacterial drug products for human use, we estimate that, annually, only two applicants will submit the written justification described on the previous sentences and in the guidance. FDA also estimates that each justification will take approximately 16 hours to prepare and submit to FDA as general correspondence and as part of the annual report.

No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]

Reporting Burden	No. of Respondents	No. of Responses per Respondent	Total Responses	Hours per Response	Total Hours
Justification submitted as general correspondence and in the annual report	2	1	2	16	32

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: January 26, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–2682 Filed 2–9–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2008–E–0103, FDA–2008–E–0110, FDA–2008–E–0113, and FDA–2008–E–0114]

Determination of Regulatory Review Period for Purposes of Patent Extension; LETAIRIS

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for LETAIRIS and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of Patents and Trademarks, Department of Commerce, for the extension of patents which claim that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6222, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the human drug product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product LETAIRIS (ambrisentan). LETAIRIS is indicated for the treatment of pulmonary arterial hypertension (WHO Group 1) in patients with WHO class II or III symptoms to improve exercise capacity and delay clinical worsening. Subsequent to this approval, the Patent and Trademark Office received four patent term restoration applications for LETAIRIS (U.S. Patent Nos. 5,703,017; 5,840,722; 5,932,730; and 7,109,205) from Abbott Gmbh & Co., KG, and the Patent and Trademark Office requested FDA's assistance in determining these patents' eligibility for patent term restoration. In a letter dated April 22, 2008, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of LETAIRIS represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for LETAIRIS is 1,871 days. Of this time, 1,691 days occurred during the testing phase of the regulatory review period, while 180 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: May 3, 2002. The applicant claims July 4, 2002, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was May 3, 2002, the date a previous IND was removed from full clinical hold.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: December 18, 2006. FDA has verified the applicant's claim that the new drug application (NDA) for LETAIRIS (NDA 22–081) was initially submitted on December 18, 2006.

3. *The date the application was approved*: June 15, 2007. FDA has verified the applicant's claim that NDA 22–081 was approved on June 15, 2007.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 995 days of patent term extension for U.S. Patent Nos. 5,703,017; 5,840,722; and 5,932,730, and 225 days of patent term extension for U.S. Patent No. 7,109,205.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by April 13, 2009. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 10, 2009. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 2, 2009.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E9–2683 Filed 2–9–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2005–E–0423] (formerly Docket No. 2005E–0255)

Determination of Regulatory Review Period for Purposes of Patent Extension; LUNESTA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for LUNESTA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6222, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the human drug product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market

the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product, LUNESTA (eszopiclone). LUNESTA is indicated for the treatment of insomnia. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for LUNESTA (U.S. Patent No. 6,444,673) from Sepracor, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated July 8, 2005, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of LUNESTA represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for LUNESTA is 1,941 days. Of this time, 1,256 days occurred during the testing phase of the regulatory review period, while 685 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective: August 25, 1999. The applicant claims August 21, 1999, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was August 25, 1999, which was 30 days after FDA receipt of the IND.

2. The date the application was initially submitted with respect to the human drug product under section 505(b) of the act: January 31, 2003. The applicant claims January 30, 2003, as the date the new drug application (NDA) for LUNESTA (NDA 21–476) was initially submitted. However, FDA records indicate that NDA 21–476 was submitted on January 31, 2003.

3. The date the application was approved: December 15, 2004. FDA has verified the applicant's claim that NDA 21–476 was approved on December 15, 2004.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 760 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by April 13, 2009. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 11, 2009. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

Dated: January 16, 2009.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E9–2681 Filed 2–9–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–E–0107]

Determination of Regulatory Review Period for Purposes of Patent Extension; MIRCERA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for MIRCERA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human biological product.

ADDRESSES: Submit written or electronic comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6222, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and

approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human biologic product MIRCERA (methoxy polyethylene glycol-epoetin beta). MIRCERA is indicated for the treatment of anemia associated with chronic renal failure, including patients on dialysis and patients not on dialysis. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for MIRCERA (U.S. Patent No. 6,583,272) from Hoffmann-La Roche Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated April 22, 2008, FDA advised the Patent and Trademark Office that this human biological product had undergone a regulatory review period and that the approval of MIRCERA represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for MIRCERA is 2,140 days. Of this time, 1,565 days occurred during the testing phase of the regulatory review period, while 575 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: January 6, 2002. The applicant claims January 3, 2002, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was January 6, 2002, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262)*: April 19, 2006. The applicant claims April 18, 2006, as the date the biologics license application (BLA) for MIRCERA (BLA B125164/0) was initially submitted. However, FDA records indicate that BLA B125164/0 was submitted on April 19, 2006.

3. *The date the application was approved*: November 14, 2007. FDA has verified the applicant's claim that BLA B125164/0 was approved on November 14, 2007.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 5 years of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by April 13, 2009. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 10, 2009. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 2, 2009.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E9–2812 Filed 2–9–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–E–0194]

Determination of Regulatory Review Period for Purposes of Patent Extension; SELZENTRY

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for SELZENTRY and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6222, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product SELZENTRY (maraviroc). SELZENTRY is indicated for combination antiretroviral treatment of adults infected with only CCR5-tropic HIV–1 detectable, who have evidence of viral replication and HIV–1 strains resistant to multiple antiretroviral agents. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for SELZENTRY (U.S. Patent No. 6,667,314) from Pfizer Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's

eligibility for patent term restoration. In a letter dated April 22, 2008, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of SELZENTRY represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for SELZENTRY is 1,524 days. Of this time, 1,294 days occurred during the testing phase of the regulatory review period, while 230 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: June 6, 2003. The applicant claims June 10, 2003, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was June 6, 2003, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: December 20, 2006. The applicant claims December 19, 2006, as the date the new drug application (NDA) for SELZENTRY (NDA 22–128) was initially submitted. However, FDA records indicate that NDA 22–128 was submitted on December 20, 2006.

3. *The date the application was approved*: August 6, 2007. FDA has verified the applicant's claim that NDA 22–128 was approved on August 6, 2007.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 73 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by April 13, 2009. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 10, 2009. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 2, 2009.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E9–2813 Filed 2–9–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–E–0112]

Determination of Regulatory Review Period for Purposes of Patent Extension; VETMEDIN

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for VETMEDIN and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that animal drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6222, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For animal drug products, the testing phase begins on the earlier date when either a major environmental effects test was initiated for the drug or when an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(j)) became effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the animal drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for an animal drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(4)(B).

FDA recently approved for marketing the animal drug product VETMEDIN (pimobendan). VETMEDIN is indicated for the management of the signs of mild, moderate, or severe (modified NYHA Class II, III, or IV) congestive heart failure in dogs due to atrioventricular valvular insufficiency or dilated cardiomyopathy. VETMEDIN is indicated for use with concurrent therapy for congestive heart failure (e.g., furosemide, etc.) as appropriate on a case-by-case basis. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for VETMEDIN (U.S. Patent No. 5,364,646) from Dr. Karl Thomae GmbH, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 6, 2008, FDA advised the Patent and Trademark Office that this animal drug product had undergone a regulatory review period and that the approval of VETMEDIN represented the first permitted commercial marketing or use of the product. Shortly thereafter,

the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for VETMEDIN is 2,751 days. Of this time, 2,715 days occurred during the testing phase of the regulatory review period, while 36 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 512(j) of the act (21 U.S.C. 360b(j)) became effective*: October 20, 1999. The applicant claims April 8, 1999, as the date the investigational new animal drug application (INAD) became effective. However, the date that a major health or environmental effects test is begun or the date on which the agency acknowledges the filing of a notice of claimed investigational exemption for a new animal drug, whichever is earlier, is the effective date for the INAD. According to FDA records, October 20, 1999, is the effective date for the INAD.

2. *The date the application was initially submitted with respect to the animal drug product under section 512 of the act*: March 26, 2007. FDA has verified the applicant's claim that the new animal drug application (NADA) for VETMEDIN (NADA 141–273) was initially submitted on March 26, 2007.

3. *The date the application was approved*: April 30, 2007. FDA has verified the applicant's claim that NADA 141–273 was approved on April 30, 2007.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,492 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by April 13, 2009. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 10, 2009. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30. Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 2, 2009.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E9–2684 Filed 2–9–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0626]

Draft Guidance for Industry on Bioequivalence Recommendation for Vancomycin HCl; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to March 19, 2009, the comment period for the draft guidance for industry entitled ''Bioequivalence Recommendation for Vancomycin HCl'' that published in the **Federal Register** of December 16, 2008 (73 FR 76362). The draft guidance provides specific guidance on the design of bioequivalence (BE) studies to support abbreviated new drug applications (ANDAs) for vancomycin HCl capsules. FDA is taking this action in response to requests for an extension of the comment period to allow interested persons additional time to submit comments.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by March 19, 2009.

ADDRESSES: Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Doan T. Nguyen, Center for Drug Evaluation and Research (HFD–600), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9314.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of December 16, 2008 (73 FR 76362), FDA published a notice announcing the availability of a draft guidance for industry entitled ''Bioequivalence Recommendation for Vancomycin HCl.'' As described in the notice, the draft guidance further clarifies FDA's recommendations on the design of BE studies to support ANDAs for vancomycin HCl capsules. As also described in the notice, FDA will consider comments on the draft guidance as it finalizes its BE recommendations and addresses the complicated issues raised in ViroPharma Inc.'s (ViroPharma's) petitions for stay of action challenging FDA's revised BE recommendations (Docket No. FDA–2006–P–0007).

By letter dated December 19, 2008, ViroPharma requested that FDA extend the comment period for the draft guidance by 60 days. In support of its request, ViroPharma provided several reasons that explained why it believes an extension is appropriate, including that the issues involved with the draft guidance are complex and that the current 60-day comment period for the notice includes the months of December and early January when many interested persons are on holiday vacation. While ViroPharma acknowledges that the **Federal Register** notice announcing the availability of this draft guidance indicates that comments to guidance documents may be submitted at any time, ViroPharma states that it is essential that FDA be able to review and consider comprehensive comments from all stakeholders before finalizing the guidance. In addition, by letter dated January 23, 2009, the Biotechnology Industry Organization (BIO) requested that FDA extend the comment period for the draft guidance to provide interested persons additional time to submit comments, and by letter dated February 2, 2009, Akorn Inc. objected to BIO's extension request.

FDA has considered ViroPharma's and BIO's requests and Akorn's objection. FDA does not believe that a 60-day extension as requested by ViroPharma is warranted, but in response to ViroPharma's and BIO's requests, FDA is extending the comment period for the draft guidance for 30 days, until March 19, 2009. This extension will provide interested

persons with a total of 90 days to submit comments before FDA begins work on the final version of the guidance. The agency believes that this 30-day extension allows adequate time for interested persons to submit comments without significantly delaying FDA consideration of these important issues.

II. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.regulations.gov*.

Dated: February 4, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–2800 Filed 2–9–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Food Labeling Workshop; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA), Office of Regulatory Affairs, Southwest Regional Small Business Representative (SWR SBR) Program, in collaboration with The University of Arkansas, is announcing a public workshop entitled ''Food Labeling Workshop.'' This public workshop is intended to provide information about FDA food labeling regulations and other related subjects to the regulated industry, particularly small businesses and startups.

Date and Time: This public workshop will be held on April 21, 2009, from 8 a.m. to 5 p.m., and on April 22, 2009, from 8 a.m. to 4 p.m.

Location: The public workshop will be held at the Continuing Education Center, Two East Center St., Fayetteville, AR (located downtown).

Contact: David Arvelo, Small Business Representative, Food and Drug Administration, Southwest Regional Office, 4040 North Central Expressway, suite 900, Dallas, TX 75204, 214–253–4952, FAX: 214–253–4970, or e–mail: *david.arvelo@fda.hhs.gov*.

For information on accommodation options, contact Steven C. Seideman, 2650 North Young Ave., Institute of Food Science & Engineering, University of Arkansas, Fayetteville, AR 72704, 479–575–4221, FAX: 479–575–2165, or e–mail: *seideman@uark.edu*.

Registration: You are encouraged to register by April 10, 2009. The University of Arkansas has a $250 registration fee to cover the cost of facilities, materials, and breaks. Seats are limited; please submit your registration as soon as possible. Course space will be filled in order of receipt of registration. Those accepted into the course will receive confirmation. Registration will close after the course is filled. Registration at the site is not guaranteed but may be possible on a space available basis on the day of the public workshop beginning at 8 a.m. The cost of registration at the site is $350 payable to: ''The University of Arkansas.'' If you need special accommodations due to a disability, please contact Steven C. Seideman (see *Contact*) at least 14 days in advance.

Registration Instructions: To register, please submit your name, affiliation, mailing address, phone/fax number, and e–mail, along with a check or money order for $250 payable to the ''The University of Arkansas.'' Mail to: Institute of Food Science & Engineering, University of Arkansas, 2650 North Young Ave., Fayetteville, AR 72704.

Transcripts: Transcripts of the public workshop will not be available due to the format of this workshop. Course handouts may be requested at cost through the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857, approximately 15 working days after the public workshop at a cost of 10 cents per page.

SUPPLEMENTARY INFORMATION: This public workshop is being held in response to the large volume of food labeling inquiries from small food manufacturers and startups originating from the area covered by the FDA Dallas District Office. The SWR SBR presents these workshops to help achieve objectives set forth in section 406 of the Food and Drug Administration Modernization Act of 1997 (21 U.S.C. 393), which include working closely with stakeholders and maximizing the availability and clarity of information to stakeholders and the public. This is consistent with the purposes of the SBR Program, which are in part to respond to industry inquiries, develop educational materials, sponsor workshops and conferences to provide firms, particularly small businesses, with firsthand working knowledge of FDA's requirements and compliance policies. This workshop is also consistent with the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), as outreach activities by government agencies to small businesses.

The goal of this public workshop is to present information that will enable manufacturers and regulated industry to better comply with labeling requirements, especially in light of growing concerns about obesity and food allergens. Information presented will be based on agency position as articulated through regulation, compliance policy guides, and information previously made available to the public. Topics to be discussed at the workshop include: (1) Mandatory label elements, (2) nutrition labeling requirements, (3) health and nutrition claims, (4) the Food Allergen Labeling and Consumer Protection Act of 2004, and (5) special labeling issues such as exemptions. FDA expects that participation in this public workshop will provide regulated industry with greater understanding of the regulatory and policy perspectives on food labeling and increase voluntary compliance.

Dated: January 26, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–2811 Filed 2–9–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Food Protection; Public Workshop

AGENCY: Food and Drug Administration, HHS

ACTION: Notice of public workshop

The Food and Drug Administration (FDA), Office of Regulatory Affairs (ORA), Southwest Regional Office (SWRO), in co-sponsorship with the University of Arkansas Institute of Food

Science and Engineering (IFSE), is announcing a public workshop entitled ''Food Protection Workshop.'' This public workshop is intended to provide information about food safety, food defense, the regulations authorized by the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act), and other subjects related to the Food Protection Plan as it relates to food facilities such as farms, manufacturers, processors, distributors, retailers, and restaurants.

Date and Time: This public workshop will be held on May 19 and 20, 2009, from 8 a.m. to 5 p.m.

Location: The public workshop will be held at the Continuing Education Center, Two East Center St., Fayetteville, AR (located downtown).

Contact Person: Regarding information on accommodation options: Steven C. Seideman, 2650 North Young Ave., Institute of Food Science and Engineering, University of Arkansas, Fayetteville, AR 72704, 479–575–4221, FAX: 479–575–2165, or email: *seideman@uark.edu.*

Regarding this document and all other information: David Arvelo, Food and Drug Administration, Southwest Regional Office, 4040 North Central Expressway, suite 900, Dallas, TX 75204, 214–253–4952, FAX: 214–253–4970, or e-mail: *david.arvelo@fda.hhs.gov.*

Registration: You are encouraged to register by May 8, 2009. The University of Arkansas has a $250 registration fee to cover the cost of facilities, materials, speakers, and breaks. Seats are limited; please submit your registration as soon as possible. Course space will be filled in order of receipt of registration. Those accepted into the course will receive confirmation. Registration will close after the course is filled. Registration at the site is not guaranteed, but it may be possible on a space available basis on the day of the public workshop beginning at 8 a.m. The cost of registration at the site is $350 payable to: The University of Arkansas. If you need special accommodations due to a disability, please contact Steven C. Seideman (see *Contact Person*) at least 14 days in advance.

To register, please submit your name, affiliation, mailing address, phone/fax number, and e-mail, along with a check or money order for $250 payable to: The University of Arkansas. Mail to: Institute of Food Science and Engineering, University of Arkansas, 2650 North Young Ave., Fayetteville, AR 72704.

Transcripts: Transcripts of the public workshop will not be available due to the format of this workshop. Workshop handouts may be requested at cost through the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the public workshop at a cost of 10 cents per page.

SUPPLEMENTARY INFORMATION: This public workshop is being held in response to the large volume of food protection concerns from food facilities, such as farms, manufacturers, processors, distributors, retailers, and restaurants, originating from the area covered by the FDA Dallas District Office. The Southwest Regional Office presents this workshop to help achieve objectives set forth in section 406 of the Food and Drug Administration Modernization Act of 1997 (21 U.S.C. 393), which include working closely with stakeholders and maximizing the availability and clarity of information to stakeholders and the public. This is consistent with the purposes of the Small Business Representative Program, which are in part to respond to industry inquiries, develop educational materials, sponsor workshops and conferences to provide firms, particularly small businesses, with firsthand working knowledge of FDA's guidance, requirements, and compliance policies. This workshop is also consistent with the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), as outreach activities by Government agencies to small businesses.

The goal of this public workshop is to present information that will enable food facilities (such as farms, manufacturers, processors, distributors, retailers, and restaurants) to better comply with the regulations authorized by the Bioterrorism Act, and with food protection guidance, especially in light of growing concerns about food safety and defense. Information presented will be based on agency position as articulated through regulation, guidance, and information previously made available to the public. Topics to be discussed at the workshop include: (1) Food Defense Awareness, (2) ALERT: The Basics, (3) Employees FIRST, (4) FDA Actions on Bioterrorism Legislation (Food Supply), (5) CARVER+Shock Software Tool, (6) Food Recalls, (7) Crisis Management, (8) Food Protection Technologies and Methodologies, and other related topics. FDA expects that participation in this public workshop will provide regulated industry with greater understanding of the regulatory and guidance perspectives on food protection and increase voluntary compliance and food defense awareness.

Dated: January 26, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–2814 Filed 2–9–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2008–M–0522, FDA–2008–M–0425, FDA–2008–M–0426, FDA–2008–M–0478, FDA–2008–M–0402, FDA–2008–M–0437, FDA–2008–M–0477, FDA–2008–M–0467, FDA–2008–M–0501, FDA–2008–M–0515]

Medical Devices; Availability of Safety and Effectiveness Summaries for Premarket Approval Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of premarket approval applications (PMAs) that have been approved. This list is intended to inform the public of the availability of safety and effectiveness summaries of approved PMAs through the Internet and the agency's Division of Dockets Management.

ADDRESSES: Submit written requests for copies of summaries of safety and effectiveness data to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please cite the appropriate docket number as listed in Table 1 of this document when submitting a written request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the summaries of safety and effectiveness.

FOR FURTHER INFORMATION CONTACT: Nicole Wolanski, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–4010.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 30, 1998 (63 FR 4571), FDA published a final rule that revised 21 CFR 814.44(d) and 814.45(d) to discontinue individual publication of PMA approvals and denials in the **Federal Register**. Instead,

the agency now posts this information on the Internet on FDA's home page at *http://www.fda.gov*. FDA believes that this procedure expedites public notification of these actions because announcements can be placed on the Internet more quickly than they can be published in the **Federal Register**, and FDA believes that the Internet is accessible to more people than the **Federal Register**.

In accordance with section 515(d)(4) and (e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(4) and (e)(2)), notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the act. The 30-day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the Internet. Section 10.33(b) provides that FDA may, for good cause, extend this 30-day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant; in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

The regulations provide that FDA publish a quarterly list of available safety and effectiveness summaries of PMA approvals and denials that were announced during that quarter. The following is a list of approved PMAs for which summaries of safety and effectiveness were placed on the Internet from July 1, 2008, through September 30, 2008. There were no denial actions during this period. The list provides the manufacturer's name, the product's generic name or the trade name, and the approval date.

TABLE 1—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE FROM JULY 1, 2008, THROUGH SEPTEMBER 30, 2008.

PMA No. Docket No.	Applicant	TRADE NAME	Approval Date
P060037 FDA–2008–M–0522	Zimmer, Inc.	NEXGEN LPS–FLEX MOBILE & LPS MOBILE BEARING KNEE SYSTEM	December 10, 2007
P850048 (S021) FDA–2008–M–0425	Beckman Coulter, Inc.	ACCESS HYBRITECH PSA REAGENTS	May 9, 2008
P060027 FDA–2008–M–0426	ELA Medical, Inc.	OVATIO CRT–D SYSTEM	May 15, 2008
P060039 FDA–2008–M–0478	Medtronic Cardiac Rhythm Disease Management	ATTAIN STARFIX MODEL 4195 LEAD	June 13, 2008
P070013 FDA–2008–M–0402	Colbar Lifescience Ltd.	EVOLENCE COLLAGEN FILLER	June 27, 2008
P050040 FDA–2008–M–0437	Invitrogen Corporation	SPOT–LIGHT HER2 CISH KIT	July 1, 2008
P070006 FDA–2008–M–0477	Oxford Immunotec, Ltd.	T SPOT–TB TEST	July 30, 2008
P040037 (S007) FDA–2008–M–0467	W.L. Gore & Associates, Inc.	VIABAHN ENDOPROSTHESIS	August 14, 2008
P050028 FDA–2008–M–0501	Roche Molecular Systems, Inc.	COBAS TAQMAN HBV TEST	September 4, 2008
P060022 FDA–2008–M–0515	Bausch & Lomb, Inc.	AKREOS POSTERIOR CHAMBER INTRAOCULAR LENS	September 5, 2008

II. Electronic Access

Persons with access to the Internet may obtain the documents at *http://www.fda.gov/cdrh/pmapage.html*.

Dated: January 15, 2009.

Daniel G. Schultz,

Director, Center for Devices and Radiological Health.

[FR Doc. E9–2685 Filed 2–9–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Science Board to the Food and Drug Administration; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Science Board to the Food and Drug Administration (Science Board).

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on Tuesday, February 24, 2009, from 8 a.m. to 3 p.m.

Addresses: Hilton Washington DC North/Gaithersburg, 620 Perry Pkwy., Gaithersburg, MD 20877.

Contact Person: Carlos Peña, Office of the Commissioner, Food and Drug Administration (HF–33), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6687, or

FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512603. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The Science Board will hear about and discuss updates from the agency on the continued assessment of Bisphenol A (BPA) in FDA-regulated products. The Science Board will hear about the plans for the following: (1) The review of FDA Center's science programs, (2) the review of each Center's projects within scientific priority areas, and (3) the handling of biospecimens used for genomic and proteomic analyses. The Science Board will also hear updates from two working groups on economically motivated adulteration of FDA-regulated products and rapid detection of Salmonella in foods.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before February 17, 2009. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before February 11, 2009. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by February 12, 2009.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Dr. Carlos Peña at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 30, 2009.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E9–2797 Filed 2–9–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Vaccines and Related Biological Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on February 18, 2009, from 8:30 a.m. to approximately 5:30 p.m. and on February 19, 2009, from 8:30 a.m. to approximately 4 p.m.

Location: Hilton Washington DC/Silver Spring, 8727 Colesville Rd., Silver Spring, MD 20910.

Contact Person: Christine Walsh or Denise Royster, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512391. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On February 18, 2009, in the morning, the committee will discuss and make recommendations on the selection of strains to be included in the influenza virus vaccine for the 2009—2010 influenza season and in the afternoon will discuss the utility of adding a second B strain to current seasonal influenza vaccines. On February 19, 2009, the committee will discuss the conducting of clinical studies of pandemic influenza vaccine in the pediatric population in the absence of an influenza pandemic.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2009 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before February 12, 2009. Oral presentations from the public will be scheduled between approximately 1:15 p.m. and 1:45 p.m. on February 18, 2009, and between approximately 1:30 p.m. and 2 p.m. on February 19, 2009. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or

arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before February 9, 2009. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by February 10, 2009.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Christine Walsh or Denise Royster at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

FDA regrets that it was unable to publish this notice 15 days prior to the February 18 and 19, 2009, Vaccines and Related Biological Products Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Vaccines and Related Biological Products Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 30, 2009.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E9–2726 Filed 2–5–09; 4:15 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, February 12, 2009, 3 p.m. to February 12, 2009, 5 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on January 30, 2009, 74 FR 5661.

The meeting will be held February 23, 2009, from 4 p.m. to 5:30 p.m. The meeting location remains the same.

The meeting is closed to the public.

Dated: February 2, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–2599 Filed 2–9–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended.The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: Cognition and Hearing.

Date: February 25–26, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Christine L. Melchior, PhD, Scientific Review Officer, Center for Scientific, Review National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435–1713, *melchioc@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Ion Channels.

Date: February 26, 2009.

Time: 10 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Mary Custer, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892–7850, (301) 435–1164, *custerm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: Synaptic Plasticity.

Date: February 26, 2009.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1255, *kenshalod@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Small Business: Medical Imaging

Date: March 3–4, 2009.

Time: 8 a.m.to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bahia Resort Hotel, 998 W. Mission Bay Drive, San Diego, CA 92109.

Contact Person: Leonid V. Tsap, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7854, Bethesda, MD 20892, (301) 435–2507, *tsapl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Technological Innovations for Interdisciplinary Research on Behavioral Sciences.

Date: March 6, 2009.

Time: 2 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.

Contact Person: Biao Tian, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3089B, MSC 7848, Bethesda,

MD 20892, (301) 402–4411, *tianbi@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS Molecular and Cellular Biology Study Section.
Date: March 9, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Bahia Resort Hotel, 998 W. Mission Bay Drive, San Diego, CA 92109.
Contact Person: Kenneth A. Roebuck, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Respiratory Sciences.
Date: March 9, 2009.
Time: 8 a.m. to 5 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: Ghenima Dirami, PhD, Scientific Review Officer, Center for Scientific, Review National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7814, Bethesda, MD 20892, 301–594–1321, *diramig@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group Behavioral and Social Consequences of HIV/AIDS Study Section.
Date: March 9–10, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Bahia Resort Hotel, 998 W. Mission Bay Drive, San Diego, CA 92109.
Contact Person: Mark P. Rubert, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1775, *rubertm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR–08–105: Optimizing Technologies for the Preservation of Fertility (R21s).
Date: March 9, 2009.
Time: 8:30 a.m. to 5 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: Stuart B. Moss, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, 301–435–1044, *mossstua@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflicts: Schizophrenia, Cognitive Impairment and Intervention.
Date: March 10, 2009.
Time: 7 a.m. to 9 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)
Contact Person: Melissa Gerald, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–0692, *geraldmel@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Diabetes, Obesity and Metabolic Diseases.
Date: March 10–11, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)
Contact Person: Nancy Sheard, SCD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6046–E, MSC 7892, Bethesda, MD 20892, 301–435–1154, *sheardn@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cellular and Molecular Immunology Special Emphasis Panel.
Date: March 10–11, 2009.
Time: 8 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)
Contact Person: Patrick K. Lai, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2215, MSC 7812, Bethesda, MD 20892, 301–435–1052, *laip@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Metabolic Endocrinology 2.
Date: March 10–11, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)
Contact Person: Reed A. Graves, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892, (301) 402–6297, *gravesr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Topics in Bacterial Pathogenesis.
Date: March 12–13, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.
Contact Person: Rolf Menzel, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3196, MSC 7808, Bethesda, MD 20892, 301–435–0952, *menzelro@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, F05 Fellowship—Cell Biology.
Date: March 12–13, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Georgetown Suites, 1000 29th Street, NW., Washington, DC 20007.
Contact Person: Alessandra M. Bini, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, 301–435–1024, *binia@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Brain Disorders and Related Neuroscience.
Date: March 12–13, 2009.
Time: 8 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.
Contact Person: George Ann McKie, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1124, MSC 7846, Bethesda, MD 20892, 301–435–1049, *mckiegeo@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group, NeuroAIDS and other End-Organ Diseases Study Section.
Date: March 12, 2009.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.
Contact Person: Ranga V. Srinivas, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Bethesda, MD 20892, (301) 435–1167, *srinivar@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Non-HIV Anti-Infective Therapeutics.
Date: March 12–13, 2009.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Pier 5 Hotel, 711 Eastern Avenue, Baltimore, MD 21202.
Contact Person: Rossana Berti, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3191, MSC 7846, Bethesda, MD 20892, 301–402–6411, *bertiros@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Health Literacy.
Date: March 12–13, 2009.
Time: 6 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Sheraton Delfina Santa Monica, 530 West Pico Boulevard, Santa Monica, CA 90405.
Contact Person: Karen Lechter, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3128, MSC 7759, Bethesda, MD 20892, 301–496–0726, *lechterk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cell Biology SBIR/STTR.

Date: March 13, 2009.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Alexandra M. Ainsztein, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, 301–451–3848, *ainsztea@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 2, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–2600 Filed 2–9–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Research on Women's Health; Notice of Meeting; Moving Into the Future—New Dimensions and Strategies for Women's Health Research for the National Institutes of Health

Notice is hereby given that the Office of Research on Women's Health (ORWH), Office of the Director, National Institutes of Health, Department of Health and Human Services, in collaboration with the Center for Women's Infectious Disease Research, Washington University School of Medicine, will convene a public hearing and scientific workshop on March 4–6, 2009, at Washington University, Edward P. Newman Education Center, St. Louis, Missouri.

Purpose of the Meeting

With rapid advances in science and wider global understanding of women's health and sex/gender contributions to well-being and disease, the purpose of the meeting is to ensure that NIH continues to support cutting edge women's health research that is based upon the most advanced techniques and methodologies. The conference format will promote an interactive discussion involving leading scientists, advocacy groups, public policy experts, health care providers, and the general public. The St. Louis conference is the first in a series that will be convened throughout the Nation to assist the ORWH and the NIH to move into the next decade of women's health research.

As science and technology advance and fields such as computational biology demonstrate the power of interdisciplinary research, it remains critical for sex and gender factors to be integrated into broad experimental methodologies and scientific approaches, such as genomics and the Human Microbiome Project, to maximize the value of these comprehensive and powerful approaches. Biomedical and behavioral research are also necessary to understand how cultural, ethnic, and racial differences influence the cause, diagnosis, progression, treatment, and outcome of disease among different populations, including women of diverse geographic locations and socioeconomic backgrounds. Furthermore, health disparities among diverse populations of women remain a critical area in need of continued focus and attention.

The ORWH challenges all conference attendees to assist it and the NIH in defining the women's health research agenda of the future and to think beyond traditional women's health issues. The attendees need to identify creative strategies that are best poised for advancement, address innovative ways to approach persistent issues of health and disease, and explore new scientific concepts and investigative approaches. The attendees need to pay attention to new areas of science application, new technologies, or continuing basic science investigations. The attendees should also consider clinical questions that are not currently the focus of research priorities to ensure that women's health research is optimally served and that the ORWH can continue to provide leadership for the benefit of women's health, nationally and internationally.

Conference Format

The Conference will consist of public testimony followed by scientific panels and six concurrent workshops. Specifically, on March 4, individuals representing the full spectrum of organizations interested in biomedical and behavioral research on women's health issues will have an opportunity to provide public testimony from 2–6 p.m. On March 5, the intersection of health care, public policy, and biomedical research will be addressed in a keynote speech designed to stimulate discussion by subsequent panels. The panels will focus on emerging issues and trends in health care that will be facing the Nation and on research paradigms of the future. The six concurrent afternoon sessions will focus on a range of research areas, including metagenomics/microbiome, chronic pain, urogenital disorders, the brain and neuropsychiatric disorders, urogenital infection, and obesity and eating disorders. On March 6, the morning session will be devoted to reports from the workshop co-chairs on the deliberations of the workshops.

Throughout the sessions, conference attendees will be encouraged to assist the ORWH and NIH in shaping the future of women's health research and, by extension, informing health care policy. The conference will adjourn at 1 p.m. on March 6.

Public Testimony

The ORWH invites individuals representing organizations with an interest in research areas related to women's health to provide written and oral testimony on these topics and/or on issues related to women in biomedical careers. Due to time constraints, only one representative from an organization or professional specialty group will present oral testimony, with presentations limited to 5–7 minutes. Similarly, individuals not representing an organized entity but a personal point of view will have the same time constraint. A letter of intent to present such testimony should be sent electronically to *http://www.orwhmeetings.com/newdirections/* or by mail to Ms. Jory Barone, Educational Services, Inc., 4350 East-West Highway, Suite 1100, Bethesda, MD 20814, *joryb@esi-dc.com.* The date of receipt of the communication will establish the order of presentations at the March meeting.

Testimony should include a brief description of the organization; is limited to no more than 10 pages, double spaced, 12 point font size; and should be forwarded to the Web site listed above no later than February 20, 2009.

Individuals and organizations wishing to provide written statements only should send two (2) copies of their statements, electronically or by mail, to the above Web site or address by February 20, 2009. All written testimony will be made available to the conferees prior to the March 4 meeting date. Logistics questions related to the March conference should be addressed to Ms. Jory Barone at ESI, while program-specific questions should be addressed to Dr. Jennifer Stine Elam at Washington University, 314–747–0729, *elam@wustl.edu.*

This conference is the first of four regional public hearings and scientific

workshops of similar design to be convened by the ORWH. At the conclusion of the regional conferences, the ORWH will hold a meeting at the NIH to develop a summation of the deliberations from the regional conferences. The resulting report to the ORWH and the NIH will ensure that women's health research will incorporate vigorous new ideas and approaches in the next decade.

Dated: February 3, 2009.

Raynard S. Kington,

Acting Director, National Institutes of Health.

[FR Doc. E9–2760 Filed 2–9–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority Health and Health Disparities; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Minority Health and Health Disparities.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Minority Health and Health Disparities.

Date: February 24, 2009.

Closed: 8 a.m. to 9:30 a.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Open: 9:30 a.m. to 5 p.m.

Agenda: The agenda will include opening remarks, administrative matters, Director's Report, NCMHD Health Disparities update, Scientific Programs Highlight, and other business of the Council.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Donna Brooks, Asst. Director for Administration, National Center on Minority Health and Health Disparities, National Institutes of Health, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892, 301–435–2135, *brooksd@ncmhd.nih.gov.*

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record.

In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Dated: February 2, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–2598 Filed 2–9–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2008–1036]

Collection of Information Under Review by Office of Management and Budget: OMB Control Numbers: 1625–0079 and 1625–0088

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the U.S. Coast Guard is forwarding two Information Collection Requests (ICRs), abstracted below, to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) requesting an extension of its approval for the following collections of information: 1625–0079, Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1995 and 1997 Amendments to the International Convention; and 1625–0088, Voyage Planning for Tank Barge Transits in the Northeast United States. Our ICRs describe the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before March 12, 2009.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2008–1036] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT) or to OIRA. To avoid duplication, please submit your comments by only one of the following means:

(1) *Electronic submission.* (a) To Coast Guard docket at *http://www.regulation.gov.* (b) To OIRA by e-mail via: *oira_submission@omb.eop.gov.*

(2) *Mail or Hand delivery.* (a) DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Hand deliver between the hours of 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. (b) To OIRA, 725 17th Street, NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard.

(3) *Fax.* (a) To DMF, 202–493–2251. (b) To OIRA at 202–395–6566. To ensure your comments are received in time, mark the fax to the attention of the Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

Copies of the ICRs are available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from Commandant (CG–611), U.S. Coast Guard Headquarters, (*Attn:* Mr. Arthur Requina), 2100 2nd Street, SW., Washington, DC 20593–0001. The telephone number is 202–475–3523.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Requina, Office of Information Management, telephone 202–475–3523 or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION: The Coast Guard invites comments on whether this ICR should be granted based on it being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of information subject to the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. Comments to Coast Guard must contain the docket number of this request, [USCG 2008–1036]. For your comments to OIRA to be considered, it is best if they are received on or before the March 12, 2009.

Public participation and request for comments: We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include the docket number [USCG–2008–1036], indicate the specific section of the document to which each comment applies, providing a reason for each comment. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission. You may submit comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. In response to your comments, we may revise the ICR or decide not to seek an extension of approval for this collection. The Coast Guard and OIRA will consider all comments and material received during the comment period.

Viewing comments and documents: Go to *http://www.regulations.gov* to view documents mentioned in this Notice as being available in the docket. Enter the docket number [USCG–2008–1036] in the Search box, and click, ''Go>>.'' You may also visit the DMF in room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard has published the 60-day notice (73 FR 63720, October 27, 2008) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments.

Information Collection Requests

1. *Title: Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1995 and 1997 Amendments to the International Convention.*

OMB Control Number: 1625–0079.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners and operators of vessels, training institutions, and mariners.

Abstract: Chapter 71 of 46 U.S.C. authorizes the Coast Guard to issue regulations related to licensing of merchant mariners. These regulations are contained in 46 CFR chapter I, subchapter B.

Forms: None.

Burden Estimate: The estimated burden has decreased from 23,767 hours to 17,928 hours a year.

2. *Title:* Voyage Planning for Tank Barge Transits in the Northeast United States.

OMB Control Number: 1625–0088.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners and operators of towing vessels.

Abstract: The information for a voyage plan will provide a mechanism for assisting vessels towing tank barges to identify those specific risks, potential equipment failures, or human errors that may lead to accidents.

Forms: None.

Burden: The estimated burden has decreased from 31,651 hours to 2,692 hours a year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: February 2 2009.

D.T. Glenn,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. E9–2672 Filed 2–9–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

New Agency Information Collection Activity Under OMB Review: General Aviation Airport Threat and Vulnerability Assessment

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the new Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on June 6, 2008, 73 FR 32345. The collection involves the submission by general aviation airports of a threat and vulnerability assessment in order for TSA to develop a standardized threat and vulnerability assessment program, as mandated by the Implementing Recommendations of the 9/11 Commission Act of 2007.

DATES: Send your comments by March 12, 2009. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Desk Officer, Department of

Homeland Security/TSA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Ginger LeMay, PRA Officer, Office of Information Technology, TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011; telephone (571) 227–3616; e-mail: *ginger.lemay@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: General Aviation Airport Threat and Vulnerability Assessment.

Type of Request: New collection.

OMB Control Number: Not yet assigned.

Form(s): NA.

Affected Public: Operators of general aviation airports.

Abstract: Section 1617(k)(1) of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110–53, 121 Stat. 266, 488, Aug. 3, 2007) (9/11 Commission Act) requires that the TSA Administrator develop a standardized threat and vulnerability assessment program for general aviation airports and implement a program to perform such assessments on a risk-management basis at general aviation airports. To do this, TSA will request that general aviation airport operators complete a threat and vulnerability assessment, available on TSA's Web site, *http://www.tsa.gov.* The information collected will provide TSA the data necessary to complete the program required by the 9/11 Commission Act.

Number of Respondents: 3,000.

Estimated Annual Burden Hours: An estimated 1,500 hours annually.

Ginger LeMay,

Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. E9–2653 Filed 2–9–09; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–MB–2009–N0031; 91200–1231–9BPP–L2]

Information Collection Sent to the Office of Management and Budget (OMB) for Approval; OMB Control Number 1018-0067; Approval Procedures for Nontoxic Shot and Shot Coatings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. The ICR, which is summarized below, describes the nature of the collection and the estimated burden and cost. This ICR is scheduled to expire on February 28, 2009. 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. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must send comments on or before [March 12, 2009 **Federal Register**].

ADDRESSES: Send your comments and suggestions on this ICR to the Desk Officer for the Department of the Interior at OMB-OIRA at (202) 395-6566 (fax) or OIRA_DOCKET@OMB.eop.gov (e-mail). Please provide a copy of your comments to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222-ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail) or hope_grey@fws.gov (e-mail).

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Hope Grey by mail or e-mail (see ADDRESSES) or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1018-0067.

Title: Approval Procedures for Nontoxic Shot and Shot Coatings, 50 CFR 20.134.

Service Form Number(s): None.

Type of Request: Extension of currently approved collection.

Affected Public: Businesses that produce and/or market approved nontoxic shot types or nontoxic shot coatings.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Annual Number of Responses: 1.

Completion Time per Response: 3,200 hours.

Total Annual Burden Hours: 3,200 hours.

Total Annual Nonhour Cost Burden: $25,000.

Abstract: The Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 et seq.) prohibits the unauthorized take of migratory birds and authorizes the Secretary of the Interior to regulate take of migratory birds in the United States. Under this authority, we control the hunting of migratory game birds through regulations in 50 CFR part 20. On January 1, 1991, we banned lead shot for hunting waterfowl and coots in the United States.

The regulations at 50 CFR 20.134 outline the application and approval process for new types of nontoxic shot. When considering approval of a candidate material as nontoxic, we must ensure that it is not hazardous in the environment and that secondary exposure (ingestion of spent shot or its components) is not a hazard to migratory birds. To make that decision, we require each applicant to provide information about the solubility and toxicity of the candidate material. Additionally, for law enforcement purposes, a noninvasive field detection device must be available to distinguish candidate shot from lead shot. This information constitutes the bulk of an application for approval of nontoxic shot. The Director uses the data in the application to decide whether or not to approve a material as nontoxic.

Comments: On August 15, 2008, we published in the **Federal Register** (73 FR 47963) a notice of our intent to request that OMB renew this ICR. In that notice, we solicited comments for 60 days, ending on October 14, 2008. We did not receive any comments in response to that notice.

We again invite comments concerning this information collection on:

(1) Whether or not the collection of information is necessary, including

whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: January 30, 2009

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

FR Doc. E9–2710 Filed 2–9–09; 8:45 am

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14940–I, F–14940–S, F–14940–B2, F–14940–C2; AK–964–1410–HY–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Dinyea Corporation. The lands are in the vicinity of Stevens Village, Alaska, and are located in:

Fairbanks Meridian, Alaska

T. 16 N., R. 5 W.,
Sec. 24, those lands formerly within Native allotment F–026097.

Containing approximately 68 acres.

T. 15 N., R. 8 W.,
Secs. 1, 6, and 12;
Secs. 30 and 31.

Containing approximately 2,837 acres.

T. 14 N., R. 9 W.,
Secs. 1 and 2.

Containing approximately 1,195 acres.

T. 16 N., R. 9 W.,
Secs. 15 to 20;
Secs. 22 and 23;
Secs. 25, 26, and 27;
Secs. 35 and 36.

Containing approximately 7,796 acres.

Aggregating approximately 11,896 acres.

The subsurface estate in these lands will be conveyed to Doyon, Limited, when the surface estate is conveyed to Dinyea Corporation. Notice of the decision will also be published four times in the Fairbanks Daily News-Miner.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until March 12, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Barbara Opp Waldal,

Land Law Examiner, Land Transfer Adjudication I.

[FR Doc. E9–2725 Filed 2–9–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,321]

Olympic Panel Products, Shelton, WA; Notice of Affirmative Determination Regarding Application for Reconsideration

By application received via facsimile on January 21, 2009, the International Association of Machinists and Aerospace Workers, Woodworkers District Lodge 1, requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) applicable to workers and former workers of the subject firm. The determination was issued on December 12, 2008. The Notice of Determination was published in the **Federal Register** on December 30, 2008 (73 FR 79915).

The initial investigation resulted in a negative determination based on the finding that imports of overlay plywood did not contribute importantly to worker separations at the subject firm and no shift of production to a foreign source occurred.

In the request for reconsideration, the petitioner provided additional information regarding the customers of the subject firm and alleged that the customers might have increased imports or reliance on imports of overlay plywood.

The Department has carefully reviewed the request for reconsideration and the existing record and has determined that the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 23rd day of January 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–2737 Filed 2–9–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,414]

Mercury Marine Division of Brunswick Corporation Including On-Site Leased Workers From Westaff (USA), Inc. and Aerotek, Fond Du Lac, WI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment

Assistance on June 8, 2007, applicable to workers of Mercury Marine, Division of Brunswick Corporation, Fond du Lac, Wisconsin. The notice was published in the **Federal Register** on June 22, 2007 (72 FR 34482).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of marine outboard engines.

New information shows that workers leased from Westaff (USA), Inc. and Aerotek were employed on-site at the Fond du Lac, Wisconsin location of Mercury Marine, Division of Brunswick Corporation. The Department has determined that these workers were sufficiently under the control of Mercury Marine, Division of Brunswick Corporation to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Westaff (USA), Inc. and Aerotek working on-site at the Fond du Lac, Wisconsin location of the subject firm.

The intent of the Department's certification is to include all workers employed at Mercury Marine, Division of Brunswick Corporation, Fond du Lac, Wisconsin who were adversely affected by increased imports following a shift in production of marine outboard engines to China and Japan.

The amended notice applicable to TA–W–61,414 is hereby issued as follows:

All workers of Mercury Marine, Division of Burnswick Corporation, including on-site leased workers from Westaff (USA), Inc. and Aerotek, Fond du Lac, Wisconsin, who became totally or partially separated from employment on or after April 23, 2006 through June 8, 2009 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 28th day of January 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–2733 Filed 2–9–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,316]

Modern Plastics Corporation, Currently Known as Spi BLOW Molding LLC, Coloma, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on November 21, 2008, applicable to workers of Modern Plastics Corporation, Coloma, Michigan. The notice was published in the **Federal Register** on October 10, 2008 (73 FR 75135).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of molded plastic parts, a component for hospital furniture.

The company reports that in August 2008, an outside source purchased the Blow Molded Department of Modern Plastics Corporation, including the Coloma, Michigan location of the subject firm and is now known as SPI Blow Molding LLC.

Accordingly, the certification is being amended to include workers at the Coloma, Michigan location of Modern Plastics Corporation, whose wages are reported under the Unemployment Insurance (UI) tax account for SPI Blow Molding LLC.

The amended notice applicable to TA–W–64,316 is hereby issued as follows:

All workers of Modern Plastics Corporation, now known as SPI Blow Molding LLC, Coloma, Michigan, who became totally or partially separated from employment on or after October 24, 2007, through November 21, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 21st day of January 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–2736 Filed 2–9–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA-W) number and alternative trade adjustment assistance (ATAA) by (TA-W) number issued during the period of January 19 through January 23, 2009.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the

articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) Contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W–64,479; Pardon, Inc., Gladstone, MI: November 13, 2007

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

None

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W–64,558; East Coast Hardwood Veneers, Inc., Hagerstown, MD: November 10, 2007

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

None

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–64,453; ThyssenKrupp Crankshaft Company, LLC, Fostoria Machining, Fostoria, OH: November 5, 2007

TA–W–64,465; Eldorado Cap Company, Eldorado, IL: November 7, 2007

TA–W–64,867; Sherrill Furniture, Hickory White Furniture Division, Hickory, NC: January 12, 2008

TA–W–64,293; Statton Furniture Manufacturing Company, Hagerstown, MD: December 16, 2008

TA–W–64,353; Woodmark Originals, Inc., A Subsidiary of Howard Miller Clock Company, High Point, NC: October 31, 2007

TA–W–64,395; Armstrong Wood Products, A Subsidiary of Armstrong World Industries, Beverly, WV: November 10, 2007

TA–W–64,444; International Paper, A.K.A. Weyerhaeuser Company, Albany Mill, Albany, OR: October 17, 2007

TA–W–64,595; True Textiles, Inc., FKA Interfacefabrics, Elkin, NC: December 5, 2007

TA–W–64,835; Logistics Services, Dayton, OH: December 26, 2007

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–64,392; Columbus McKinnon Corporation, Chain Division, Lexington, TN: October 30, 2007

TA–W–64,503A; Corning Cable Systems, Administrative Site, Hickory, NC: November 20, 2008

TA–W–64,503B; Corning Cable Systems, Hickory Cable Facility, Adecco, Hickory, NC: November 20, 2008

TA–W–64,503; Corning Cable Systems, Optical Assembly Plant, Adecco, Hickory, NC: November 20, 2008

TA–W–64,621; IAC Carlisle LLC, Carlisle, PA: February 22, 2009

TA–W–64,670; NXP Semiconductors USA, A Subsidiary of NXP Semiconductors, Hopewell Junction, NY: December 2, 2007

TA–W–64,733; Modine Manufacturing, Truck Division, Lawrenceburg, TN: December 17, 2007

TA–W–64,771; Hanesbrands, Inc., China Grove, NC: December 17, 2007

TA–W–64,901; Regal-Beloit Corporation, Electric Motors Group, Neillsville, WI: January 9, 2008

TA–W–64,692; Aptara, Inc., Commerce, CA: December 15, 2007

TA–W–64,746; HDM Furniture Industries, Furniture Brands International, Drexel Heritage Plant #60, Morganton, NC: December 18, 2007

TA–W–64,760; HDM Furniture Industries, Inc., HDM/Drexel-Heritage, Morganton, NC: December 19, 2007

TA–W–64,781; Quality Synthetic Rubber, Inc., Twinsburg, OH: December 24, 2007

TA–W–64,783; Coherent-DEOS, LLC, d/b/a Coherent Radiation, Bloomfield, CT: December 26, 2007

TA–W–64,844; Coherent, Inc., Laser Diode Modules Division, Auburn, CA: January 8, 2008

TA–W–64,866; Laird Technologies, Chattanooga, TN: January 8, 2008

TA–W–64,879; Maxim Integrated Products, Hillsboro, OR: January 11, 2008

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–64,227; Federal Mogul Powertrain, Inc., A Division of Federal Mogul Corporation, South Bend, IN: October 14, 2007

TA–W–64,498; Jones Plastic and Engineering Co., LLC, Jeffersontown, KY: November 20, 2007

TA–W–64,711; Scott Brass, Inc., Cranston, RI: December 16, 2007

TA–W–64,727; Printer Components, Inc., A Subsidiary of Floturn, Inc., Victor, NY: December 17, 2007

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

None

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. The firm does not have a significant number of workers 50 years of age or older.

TA–W–64,479; Pardon, Inc., Gladstone, MI

TA–W–64,558; East Coast Hardwood Veneers, Inc., Hagerstown, MD:

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

None

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

None

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

None

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–64,311; Chrysler LLC, Toledo North Assembly Plant, Toledo, OH.

TA–W–64,656; International Designer Transitions, Inc., Graham, NC.

TA–W–64,695; Keith Manufacturing Company, Madras, OR.

TA–W–64,770; DSI Ground Support, A Subsidiary of Dywidag Systems International USA, Blairsville, PA.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–64,130; Sears, Roebuck and Company, Call Center, Home Services Division, Columbus, OH.

TA–W–64,414; Western Union Financial Services, Inc., Bridgeton, MO.

TA–W–64,604; DHL Express, Bloomington, IN.

TA–W–64,791; IMI Cornelius Equipco, Inc., Remanufacturing Division, Monmouth, IL.

TA–W–64,864; CDG Management, LLC, Millennium Teleservices Division, Central City, KY.

TA–W–64,878; EDS, AN HP Company, Charlotte, NC.

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

None

I hereby certify that the aforementioned determinations were issued during the period of January 19 through January 23, 2009. Copies of these determinations are available for inspection in Room N–5428, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: February 2, 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–2731 Filed 2–9–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,743]

Alcoa, Inc., Massena West Plant, Massena, NY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 19, 2008, in response to a worker petition filed by a company official on behalf of workers at Alcoa, Inc., Massena West Plant, Massena, New York.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 27th day of January 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–2739 Filed 2–9–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W–64,744]

Alcoa, Inc., Massena East Plant, Massena, NY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 19, 2008, in response to a worker petition filed by a company official on behalf of workers at Alcoa, Inc., Massena East Plant, Massena, New York.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 27th day of January 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–2740 Filed 2–9–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,799]

Aromatique, Inc., Mountain View Production Facility, Mountain View, AR; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 31, 2008 in response to a petition filed by the Arkansas Department of Workforce Services on behalf of the workers of Aromatique, Inc., Mountain View Production Facility, Mountain View, Arkansas.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 30th day of January 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–2741 Filed 2–9–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,868]

Costa Blanca Textile, Inc., Highpoint, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 13, 2009 in response to a petition filed by a company official on behalf of workers of Costa Blanca Textile, Inc., Highpoint, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 21st day of January 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–2742 Filed 2–9–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,894]

Georgia-Pacific Corporation, Green Bay, WI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 14, 2009 in response to a worker petition filed by a company official on behalf of workers of Georgia-Pacific Corporation, Green Bay, Wisconsin.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 23rd day of January 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–2743 Filed 2–9–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,652]

Georgia Pacific, LLC, Louisville, MS; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 11, 2008, in response to a petition filed by a company official on behalf of workers of Georgia Pacific, LLC, Louisville, Mississippi.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 23rd day of January 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–2738 Filed 2–9–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,923]

International Legwear Group: Hickory, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 21, 2009 in response to a petition filed by a company official on behalf of the workers of International Legwear Group, Hickory, North Carolina.

The workers are covered by active certification (TA–W–60,869) which expires on February 20, 2009.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 23rd day of January 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–2729 Filed 2–9–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than February 20, 2009.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than February 20, 2009.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade

Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 30th day of January 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 1/12/09 and 1/16/09]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
64851	Glenn Springs Holdings, Inc. (Comp)	New Castle, DE	01/12/09	01/08/09
64852	MGP Ingredients, Inc. (UFCW)	Pekin, IL	01/12/09	01/09/09
64853	Ethan Allen Operations, Inc. (Comp)	Eldred, PA	01/12/09	01/09/09
64854	United Knitting LP (Comp)	Cleveland, TN	01/12/09	01/09/09
64855	Federal-Mogul Corporation (Comp)	Frankfort, IN	01/12/09	01/09/09
64856	Louisiana Pacific (Wkrs)	New Limerick, ME	01/12/09	01/09/09
64857	Hutamaki Flexibles, Inc. (Comp)	Malvern, PA	01/12/09	01/09/09
64858	Wabash Alloys, LLC (USW)	Tipton, IN	01/12/09	01/09/09
64859	New Castle E Coating Plus, LLC (Comp)	New Castle, IN	01/12/09	12/31/08
64860	The McClatchy Company (Wkrs)	Modesto, CA	01/12/09	01/07/09
64861	U.S. Marine (Comp)	Arlington, WA	01/12/09	01/08/09
64862	Cintas Corporation (Comp)	Mason, OH	01/12/09	01/09/09
64863	TRW Automotive (Comp)	Auburn, NY	01/12/09	01/08/09
64864	CDG Management, LLC (Wkrs)	Central City, KY	01/12/09	01/08/09
64865	Star Building Systems (Wkrs)	Lockeford, CA	01/12/09	01/09/09
64866	Laird Technologies (Comp)	Chattanooga, TN	01/12/09	01/08/09
64867	Hickory White Furniture (Comp)	Hickory, NC	01/13/09	01/12/09
64868	Costa Blanca Textile, Inc. (Comp)	High Point, NC	01/13/09	01/08/09
64869	Alexvale Furniture/Kincaid Furniture Co. (Comp)	Taylorsville, NC	01/13/09	01/13/09
64870	Molded Fiber Glass Co. (Comp)	Stevenson, WA	01/13/09	01/12/09
64871	Mars Petcare US, Inc. (State)	Vernon, CA	01/13/09	01/12/09
64872	Trinity North American (NA) Freightcar, Inc. (Wkrs)	Springfield, MO	01/13/09	01/12/09
64873	Rohm and Haas Company (Comp)	Louisville, KY	01/13/09	01/07/09
64874	Greenwell Chisholm Printing, Inc. (Comp)	Owensboro, KY	01/13/09	01/12/09
64875	Rosboro Springfield Operations (Union)	Springfield, OR	01/13/09	01/11/09
64876	Bridgestone Firestone North American Tire, LLC (AFLCIO)	LaVergne, TN	01/13/09	01/12/09
64877	AGC Automotive Americas (Wkrs)	Bellefontaine, OH	01/13/09	01/12/09
64878	EDS, AN HP Company (Wkrs)	Charlotte, NC	01/13/09	01/09/09
64879	Maxim Integrated Products (Comp)	Beaverton, OR	01/13/09	01/11/09
64880	Dell, Inc. (Wkrs)	Round Rock, TX	01/13/09	01/12/09
64881	Dalmar Precision, Inc. (Comp)	Saegertown, PA	01/14/09	01/13/09
64882	Amphenol TCS (Comp)	Nashua, NH	01/14/09	01/05/09
64883	Celestica (State)	Arden Hills, MN	01/14/09	01/13/09
64884	White Rodgers (State)	Batesville, AR	01/14/09	01/13/09
64885	Scholastic (Wkrs)	Moberly, MO	01/14/09	01/07/09
64886	Trane Residential Systems (State)	Ft. Smith, AR	01/14/09	01/13/09
64887	Pall Life Sciences (Comp)	Ann Arbor, MI	01/14/09	01/08/09
64888	Schaeffler Group USA, Inc. (Comp)	Spartanburg, SC	01/14/09	01/13/09
64889	Columbia Machine, Inc. (Comp)	Vancouver, WA	01/14/09	01/12/09
64890	DHL (Wkrs)	Breinigsville, PA	01/14/09	01/13/09
64891	American Pacific (State)	Grove City, OH	01/14/09	01/12/09
64892	Superior Industries International, Inc. (Comp)	Van Nuys, CA	01/14/09	01/13/09
64893	Dreamer Design (Comp)	Yakima, WA	01/14/09	01/13/09
64894	Georgia-Pacific Corporation (Comp)	Green Bay, WI	01/14/09	01/13/09
64895	II VI, Incorporated (Wkrs)	Saxonburg, PA	01/14/09	01/09/09
64896	Logistics Services, Inc. (Union)	Dayton, OH	01/14/09	01/06/09
64897	Sanford (Comp)	Lewisburg, TN	01/15/09	01/15/09
64898	Tyco Electronics (Rep)	Menlo Park, CA	01/15/09	01/12/09
64899	Contact Technologies, Inc. (Comp)	St. Marys, PA	01/15/09	01/13/09
64900	Direct Tooling Group (State)	Wayland, MI	01/15/09	01/13/09
64901	Regal-Beloit Corporation (Rep)	Neillsville, WI	01/15/09	01/09/09
64902	S.E.H. America (98682)	Vancouver, WA	01/15/09	01/14/09
64903	Foamex International, Inc. (Comp)	Santa Teresa, NM	01/15/09	01/09/09
64904	R.L. Stowe Mills, Inc. (National Plant) (Comp)	Belmont, NC	01/15/09	01/13/09
64905	TRW (State)	Warrenton, GA	01/15/09	01/14/09
64906	Fabric Trends International (Wkrs)	West Hartford, CT	01/15/09	01/14/09
64907	Domino Lasers, Inc. (Comp)	Anaheim, CA	01/15/09	01/14/09
64908	Larson Boats/Genmar Minnesota (State)	Little Falls, MN	01/15/09	01/14/09
64909	American National Rubber (LIUNA)	Ceredo, WV	01/15/09	01/14/09
64910	Avery Dennison Corporation (Comp)	Greensboro, NC	01/15/09	01/14/09
64911	Brite Star Manufacturing Company (Wkrs)	Philadelphia, PA	01/15/09	01/14/09
64912	Road and Rail Services, Inc. (Wkrs)	Venice, IL	01/15/09	12/17/08
64913	Phillips Plastics Custom (Wkrs)	Phillips, WI	01/15/09	01/04/09

APPENDIX—Continued

[TAA petitions instituted between 1/12/09 and 1/16/09]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
64914	M&Q Plastic Products (Wkrs)	North Wales, PA	01/16/09	01/12/09
64915	Mahle Clevite, Inc. (Comp)	Churubusco, IN	01/16/09	12/17/08
64916	Panasonic Electronic Devices Corp. of America (Comp)	Knoxville, TN	01/16/09	01/15/09
64917	Trans-Tech, Inc. (Comp)	Adamstown, MD	01/16/09	01/16/09
64918	Lehman Brothers (State)	New Haven, CT	01/16/09	01/15/09
64919	Modine Manufacturing Company (Comp)	Logansport, IN	01/16/09	01/15/09
64920	Heritage Products, Inc. (Comp)	Crawfordsville, IN	01/16/09	01/15/09

[FR Doc. E9–2730 Filed 2–9–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,160]

Boise Cascade, LLC; Wood Products Division; St. Helens, OR; Notice of Negative Determination on Reconsideration

On December 10, 2008, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice was published in the **Federal Register** on December 18, 2008 (73 FR 77063–77064).

The initial investigation resulted in a negative determination based on the finding that imports of softwood veneer did not contribute importantly to worker separations at the subject firm and no shift of production to a foreign source occurred.

The petitioner alleged that imports of softwood lumber and plywood from Canada have a strong influence on the United States softwood market and caused layoffs at the subject facility. The petitioner seems to allege that because imports of non-petroleum articles and, specifically imports from China, were at a record during August 2008, workers of the subject firm should be eligible for Trade Adjustment Assistance.

In order to establish import impact and whether imports contributed importantly to worker separations, the Department must consider imports that are like or directly competitive with those produced at the subject firm. The ''contributed importantly'' test is generally demonstrated through a survey of customers of the workers' firm regarding their import purchases.

On reconsideration the Department conducted a survey of all the subject firm's customers regarding purchases of softwood veneer and like or directly competitive products during 2006, 2007 and during January through September 2008. The survey revealed that the customers did not increase their imports of softwood veneer in 2006, 2007 and during January through September 2008 over the corresponding 2007 period.

Furthermore, United States aggregate imports of veneer decreased from 2006 to 2007 and from January through November 2008 over the corresponding 2007 period.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Boise Cascade, LLC, Wood Products Division, St. Helens, Oregon.

Signed at Washington, DC, this 21st day of January 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–2735 Filed 2–9–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,924; TA–W–63,924A]

Boise Cascade, LLC, Wood Products Division, La Grande Lumber Mill, La Grande, OR; Boise Cascade, LLC, Wood Products Division, La Grande Particleboard, La Grande, OR; Notice of Revised Determination on Reconsideration

On November 14, 2008, the Department issued an Affirmative Determination Regarding Application on Reconsideration applicable to workers and former workers of the subject firm. The notice was published in the **Federal Register** on November 25, 2008 (73 FR 71693).

The previous investigation initiated on August 25, 2008, resulted in a negative determination issued on October 1, 2008, was based on the finding that imports of softwood lumber and particleboard did not contribute importantly to worker separations at the subject firm and no shift in production to a foreign source occurred. The denial notice was published in the **Federal Register** on October 20, 2008 (73 FR 62323).

On reconsideration, the Department requested an additional list of customers of the subject firm and conducted a customer survey to determine whether imports of lumber and particleboard negatively impacted employment at the subject firms.

Upon further investigation, after receiving the customer list it was determined that Boise Cascade, LLC, Wood Products Division, La Grande Lumber Mill, La Grande, Oregon (TA–W–63,924) supplied component parts for window and door frames and a loss of business with a manufacturer of window and door frames whose workers were certified eligible to apply for adjustment assistance contributed importantly to the separation or threat of separation of workers at Boise Cascade, LLC, Wood Products Division, La Grande Lumber Mill, La Grande, Oregon (TA–W–63,924).

Furthermore, the survey of the major declining customers of Boise Cascade, LLC, Wood Products Division, La Grande Particleboard, La Grande, Oregon (TA–W–63,924A) revealed that the major declining customer increased its reliance on imports of particleboard while decreasing purchases from the subject firm from 2006 to 2007 and during January through August 2008 over the corresponding 2007 period.

In accordance with Section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for alternative trade adjustment assistance (ATAA) for older workers.

In order for the Department to issue a certification of eligibility to apply for

ATAA, the group eligibility requirements of Section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of Section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I determine that workers of Boise Cascade, LLC, Wood Products Division, La Grande Lumber Mill, La Grande, Oregon (TA–W–63,924), qualify as adversely affected secondary workers under Section 222 of the Trade Act of 1974, as amended, and that an increased reliance on imports of articles like or directly competitive with those produced at Boise Cascade, LLC, Wood Products Division, La Grande Particleboard, La Grande, Oregon (TA–W–63,924A), contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Boise Cascade, LLC, Wood Products Division, La Grande Lumber Mill, La Grande, Oregon (TA–W–63,924), and all workers of Boise Cascade, LLC, Wood Products Division, La Grande Particleboard, La Grande, Oregon (TA–W–63,924A), who became totally or partially separated from employment on or after August 20, 2007, through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 26th day of January 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–2734 Filed 2–9–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,700]

Joy Technologies, Inc., dba Joy Mining Machinery, Mt. Vernon Plant, Mt. Vernon, IL; Notice of Revised Determination on Remand

On January 22, 2009, the U.S. Court of International Trade (USCIT) remanded to the U.S. Department of Labor (Department) for further review *Former Employees of Joy Technologies, Inc.* v. *U.S Secretary of Labor,* Court No. 06–00088.

On August 2, 2005, the International Brotherhood of Boiler-makers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 483, filed a petition for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) on behalf of workers and former workers of Joy Mining Machinery, Mt. Vernon, Illinois (subject facility) producing underground mining equipment. The petition alleged that the subject facility would close September 23, 2005, due to a shift of production to Canada, China, Mexico and Russia.

During the initial TAA investigation, the Department determined that the subject workers produced mining machinery and mining machinery components, and that the workers were not separately identifiable by product line.

The group eligibility requirements for directly impacted (primary) workers under Section 222(a) the Trade Act of 1974, as amended, can be satisfied in either of two ways:

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles is a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

The initial negative determination regarding eligibility to apply for TAA, issued on September 25, 2005, was based on the Department's findings that employment at the subject facility increased during the relevant period, that subject facility sales did not decrease during the relevant period, that Joy corporate sales increased during the relevant period, and that there was no shift of production to a foreign country.

By application letter application dated November 3, 2005, the former workers requested administrative reconsideration, alleging that the workers' separations were due to a shift of production to Mexico.

On January 19, 2006, the Department issued a negative determination on reconsideration. The denial was based on the Department's findings that there was no shift of production to Mexico and that the workers were not eligible to apply for TAA as workers of a secondarily affected company.

By letter dated March 15, 2006, Plaintiffs sought judicial review. Plaintiffs asserted that the petitioning workers are eligible to apply for TAA due to either increased imports of articles like or directly competitive with crawler track frames (a type of mining machinery component) produced by the subject facility or a shift of production crawler track frames to Mexico.

During the first remand investigation, the Department determined that there was no shift of production to a foreign country and that increased imports could not have contributed importantly to the workers' separations because subject firm sales increased during the relevant period. On January 8, 2007, the Department issued a negative determination on remand.

During the second remand investigation, the Department determined that crawler track frame production at the subject facility increased during the relevant period and that imports of articles like or directly competitive with these articles ceased before the subject facility closed, and concluded that imports of crawler track frames did not contribute

importantly to subject facility sales and/or production declines and worker separations. A second negative determination on remand was issued on June 12, 2008.

During the third remand investigation, the Department carefully reviewed the language of the statute, the applicable regulation, and the administrative record.

As a result of the review, the Department determined that, during the relevant period, a significant portion or number of workers at the subject facility was separated and there was a shift of production of mining machinery components to Mexico. Therefore, the Department determines that the group eligibility requirements under Section 222(a)(2)(B) the Trade Act of 1974, as amended, has been met.

In accordance with Section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department herein presents the results of its investigation regarding certification of eligibility to apply for ATAA.

The Department has determined in this case that the group eligibility requirements of Section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the facts generated through the first and second remand investigations, I determine that a shift of production to Mexico of articles like or directly competitive to mining machinery components produced at the subject facility contributed to the total or partial separation of a significant number or proportion of workers at the subject facility.

In accordance with the provisions of the Act, I make the following certification:

''All workers of Joy Technologies, Inc., DBA Joy Mining Machinery, Mt. Vernon Plant, Mt. Vernon, Illinois (TA–W–57,700), who became totally or partially separated from employment on or after August 2, 2004, through two years from the issuance of this revised determination, are eligible to apply for Trade Adjustment Assistance under Section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed at Washington, DC this 26th day of January 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–2732 Filed 2–9–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Extension of the Approval of Information Collection Requirements

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning its proposal to extend the Office of Management and Budget (OMB) approval of the Information Collection: Rehabilitation Maintenance Certificate (OWCP–17). A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before April 13, 2009.

ADDRESSES: Mr. Steven D. Lawrence, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0292, fax (202) 693–1451, E-mail *Lawrence.Steven@dol.gov*. Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

I. Background: The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act (FECA) and the Longshore and Harbor Workers' Compensation Act (LHWCA). These acts provide vocational rehabilitation services to eligible workers with disabilities. Section 8111(b) of the FECA and § 908(g) of the LHWCA provides that person(s) undergoing such vocational rehabilitation shall receive maintenance allowances as additional compensation. Form OWCP–17 is used to collect information necessary to decide the amount of any maintenance allowance to be paid. This information collection is currently approved for use through August 31, 2009.

II. Review Focus: The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions: The Department of Labor seeks the approval of the extension of this information collection in order to carry out its responsibility to assure payment of compensation benefits to injured workers at the proper rate.

Type of Review: Extension.

Agency: Employment Standards Administration.

Titles: Rehabilitation Maintenance Certificate.

OMB Number: 1215–0161.

Agency Numbers: OWCP–17.

Affected Public: Individuals or households.

Total Respondents: 1,300.

Total Annual Responses: 15,600.

Estimated Total Burden Hours: 2,590.

Estimated Time per Response: 10 minutes.

Frequency: On Occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $7,020.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 4, 2009.

Hazel Bell,

Acting Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E9–2701 Filed 2–9–09; 8:45 am]

BILLING CODE 4510–CR–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Extension of the Approval of Information Collection Requirements

ACTION: Notice.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning its proposal to extend the Office of Management and Budget (OMB) approval of the Information Collection: Wage Statement (WH–501 (English) and WH–501S (Spanish)). A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before April 13, 2009.

ADDRESSES: Mr. Steven D. Lawrence, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0292, fax (202) 693–1451, E-mail *Lawrence.Steven@dol.gov.* Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

I. Background: Migrant and Seasonal Agricultural Worker Protection Act (MSPA) sections 201(d) and 301(c)–29 U.S.C. sections 1821(d), 1831(c) and Regulations 29 CFR 500.80(a), require each farm labor contractor, agricultural employer and agricultural association that employs any migrant or seasonal worker (collectively respondents) to make, keep, and preserve records for three years for each such worker concerning the:

(1) Basis on which wages are paid; (2) Number of piecework units earned, if paid on piecework basis; (3) Number of hours worked; (4) Total pay period earnings; (5) Specific sums withheld and the purpose of each sum withheld and (6) Net pay.

Respondents are also required to provide an itemized written statement of this information to each migrant and seasonal agricultural worker each pay period. In addition, MSPA sections 201(e) and 301(d) require that each farm labor contractor provide copies of all the records noted above for the migrant or seasonal agricultural workers the contractor has furnished to other farm labor contractors, agricultural employers or agricultural associations who use the workers. Forms WH–501 (English) and WH–501S (Spanish), MSPA Wage Statement, are DOL created optional use forms that allow a farm labor contractor, agricultural employer, or agricultural association to satisfy the statutory requirement to make, keep, preserve, and disclose certain payroll records and to provide a statement of earnings listing the method of payment of wages to migrant and seasonal agricultural workers and to the users of such workers. This information collection is currently approved for use through August 31, 2009.

II. Review Focus: The DOL is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions: The DOL seeks the approval of the extension of this information collection in order to ensure parties receive information required by the MSPA and for the agency to carry out its responsibilities under the Act.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: MSPA Wage Statement.

OMB Number: 1215–0148.

Agency Numbers: WH–501 (English) and WD–501S (Spanish).

Affected Public: Business or other for-profit; Farms.

Total Respondents: 51,542.

Total Annual Responses: 42,925,000.

Estimated Total Burden Hours: 715,417.

Estimated Time per Response: 1 minute.

Frequency: On Occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $2,146,250.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 4, 2009.

Hazel Bell,

Acting Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E9–2702 Filed 2–9–09; 8:45 am]

BILLING CODE 4510–27–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 09–06]

Agency Information Collection Request, Comment Request

AGENCY: Millennium Challenge Corporation.

ACTION: 60 Day Notice.

SUMMARY: The Millennium Challenge Corporation, in accordance with the Paperwork Reduction Act of 1995, invites public comment on a proposed information collection request. Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections.

This document describes the collection of information on which the Millennium Challenge Corporation intends to seek OMB approval.

DATES: Please submit comments by April 13, 2009.

SUPPLEMENTARY INFORMATION: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, as amended, the Millennium Challenge Corporation (MCC) is publishing the following summary of a proposed information collection for public comment. Interested persons are invited to send comments on: (i) The necessity and utility of the proposed collection of information for the proper performance of the agency's functions; (ii) the accuracy of the estimated burden; (iii) the quality, utility and clarity of the information to be collected; and (iv) the burden of the collection of information on those who are to respond, including various technological collection techniques or other forms of information technology to minimize the information collection burden.

Proposed Project: A survey of international development organizations to assist in measuring MCC's leadership role in development practice. This survey, conducted by an independent organization, will become a part of MCC's data measuring its performance under the provisions of the Government Performance Results Act of 1993. It will seek to measure how MCC is affecting change in the manner development assistance is administered by other organizations providing similar assistance.

Abstract:

Type of Information Collection Request: New Request.

Title of Information Collection: Leadership in Development Assistance Survey.

Use: The Millennium Challenge Act of 2003 (Pub. L. 108–199) established the Millennium Challenge Corporation (MCC) to reduce poverty through sustainable economic growth to poor countries demonstrating through their policy performance their commitment to good governance. One of MCC's strategic goals, as stated in its strategic plan developed pursuant to GPRA, is to ''advance the international development practice.'' This survey will gather information regarding how MCC's unique model of assistance is impacting the development assistance community. In particular, it will measure whether other organizations recognize the distinguishing characteristics of MCC's approach to providing foreign assistance, whether they believe that MCC's approach represents best practice, and whether they are modifying their own assistance programs to include elements of MCC's approach. The survey will be conducted by phone to organizations and individuals selected by MCC. Data gathered by the independent survey will be provided to MCC for the purpose of assessing its performance with respect to the above-stated strategic goal.

Frequency: Every other year.

Affected Public: International donors, foundations, think tanks, academicians.

Number of Respondents: 300.

Total Responses: 300.

Average Burden per Response: 10 minutes.

Total Hours: 50 hours.

ADDRESSES: To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, and title of information collection by e-mail at *Kellytj@mcc.gov*, by fax at (202) 521–3700, or call Thomas Kelly, Senior Director, Economic Policy at (202) 521–3600. Written comments and recommendations for the proposed information collection must be received within 60 days of this notice, and directed to Thomas Kelly, Director, Economic Policy at the following address: Millennium Challenge Corporation, Policy and International Relations, 875 15th Street, NW., Washington, DC 20005.

Authority: The Paperwork Reduction Act of 1995 and 5 CFR 1320.8(d).

Dated: January 30, 2009.

Henry Pitney,

Acting Vice President and General Counsel, Millennium Challenge Corporation.

[FR Doc. E9–2678 Filed 2–9–09; 8:45 am]

BILLING CODE 9211–03–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of Agency Meeting

TIME AND DATE: 10 a.m., Tuesday, February 10, 2009.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel Matter. Closed pursuant to Exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, *Telephone:* 703–518–6304.

Mary Rupp,

Board Secretary.

[FR Doc. E9–2897 Filed 2–6–09; 4:15 pm]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of Matter To Be Added to the Agenda for Consideration at an Agency Meeting

TIME AND DATE: 10 a.m., Tuesday, February 10, 2009.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE ADDED:

2. Administrative Action under Section 207 of the Federal Credit Union Act. Closed pursuant to Exemptions (8) and (9)(A)(ii) and 9(B).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Mary Rupp,

Board Secretary.

[FR Doc. E9–2917 Filed 2–6–09; 4:15 pm]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2009–0048]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The NRC invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* ''Generic Customer Satisfaction Surveys and NRC Form 671, Request for Review of a Customer

Satisfaction Survey under Generic Clearance.''

2. *Current OMB approval number:* 3150–0197.

3. *How often the collection is required:* On occasion.

4. *Who is required or asked to report:* Voluntary reporting by the public and NRC licensees.

5. *The number of annual respondents:* 1,261.

6. *The number of hours needed annually to complete the requirement or request:* 226 hours.

7. *Abstract:* Voluntary customer satisfaction surveys will be used to contact users of NRC services and products to determine their needs, and how the Commission can improve its services and products to better meet those needs. In addition, focus groups will be contacted to discuss questions concerning those services and products. Results from the surveys will give insight into how NRC can make its services and products cost effective, efficient and responsive to its customer needs. Each survey will be submitted to OMB for its review.

Submit, by April 13, 2009, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. Comments submitted should reference Docket No. NRC–2009–0048. You may submit your comments by any of the following methods. Electronic comments: Go to *http://www.regulations.gov* and search for Docket No. NRC–2009–0048. Mail comments to NRC Clearance Officer, Gregory Trussell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Questions about the information collection requirements may be directed to the NRC Clearance Officer, Gregory Trussell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–6445, or by e-mail to *INFOCOLLECTS.Resource@NRC.GOV*.

Dated at Rockville, Maryland, this 3rd day of February 2009.

For the Nuclear Regulatory Commission,

Tremaine Donnell,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. E9–2713 Filed 2–9–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–045]

Biweekly Notice Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. 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 staff) 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 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 January 14, 2009 to January 28, 2009. The last biweekly notice was published on January 27, 2009 (74 FR 4767).

Notice of Consideration of Issuance of Amendments to Facility Operating 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 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.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

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. 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 Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, 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 set forth the specific contentions which the petitioner/requestor 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 petitioner/requestor 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 petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor 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 petitioner/requestor to relief. A petitioner/requestor 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, and the Commission has not made a final determination on the issue of no significant hazards consideration, 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, 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, which the NRC promulgated in August 28, 2007 (72 FR 49139). 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 a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least five (5) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *hearingdocket@nrc.gov*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html*. Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*.

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-*

submittals.html or by calling the NRC electronic filing Help Desk, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday. The help electronic filing Help Desk can be contacted by telephone at 1–866–672–7640 or by e-mail at *MSHD.Resource@nrc.gov*.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, 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.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a 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. 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.

For further details with respect to this amendment action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *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 Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: November 24, 2008.

Description of amendments request: The proposed amendments would delete Technical Specification (TS) 3.6.3.2, ''Containment Atmosphere Dilution (CAD) System,'' and the associated TS Bases that will result in modifications to containment combustible gas control TS requirements as permitted by 10 CFR 50.44. This change is consistent with NRC-approved Revision 2 to Technical Specification Task Force (TSTF) Improved Standard Technical Specification Change Traveler, TSTF–478, ''BWR [Boiling Water Reactor] Technical Specification Changes that Implement the Revised Rule for Combustible Gas Control.'' TSTF–478, Revision 2 also makes TS and associated TS Bases changes for the TS section on Drywell Cooling System Fans. Since Brunswick Steam Electric Plant (BSEP), Units 1 and 2 TSs do not have this TS section, these changes are not needed. The availability of TSTF–478 was announced in the **Federal Register** on November 21, 2007 (72 FR 65610), as part of the consolidated line item improvement process (CLIIP). The licensee affirmed the applicability of the no significant hazard consideration (NSHC) determination in its application dated November 24, 2008.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the analysis of the issue of NDHD that was adopted by the licensee is presented below:

Criterion 1: The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Containment Atmosphere Dilution (CAD) system is not an initiator to any accident previously evaluated. The TS Required Actions taken when a drywell cooling system fan is inoperable are not initiators to any accident previously evaluated. As a result, the probability of any accident previously evaluated is not significantly increased.

The revised 10 CFR 50.44 no longer defines a design basis accident (DBA) hydrogen release and the Commission has subsequently found that the DBA loss of coolant accident (LOCA) hydrogen release is not risk significant. In addition, CAD has been determined to be ineffective at mitigating hydrogen releases from the more risk significant beyond design basis accidents that could threaten containment integrity. Therefore, elimination of the CAD system will not significantly increase the consequences of any accident previously evaluated. The consequences of an accident while relying on the revised TS Required Actions for drywell cooling system fans are no different than the consequences of the same accidents under the current Required Actions. As a result, the consequences of any accident previously evaluated is [are] not significantly increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2: The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

No new or different accidents result from utilizing the proposed change. The proposed change permits physical alteration of the plant involving removal of the CAD system. The CAD system is not an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post-accident confinement of radionuclides within the containment building from any design basis event. The changes to the TS do not alter assumptions made in the safety analysis, but reflect changes to the design requirements allowed under the revised 10 CFR 50.44. The proposed change is consistent with the revised safety analysis assumptions.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3: The proposed change does not involve a significant reduction in a margin of safety.

The Commission has determined that the DBA LOCA hydrogen release is not risk significant, therefore is not required to be analyzed in a facility accident analysis. The proposed change reflects this new position and, due to remaining plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, including postulated beyond design basis events, does not result in a significant reduction in a margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, the NRC 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. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of amendment request: January 14, 2009.

Description of amendment request: The proposed amendment would: (1) Delete Technical Specification (TS) surveillance requirement (SR) 3.1.3.2 and revise SR 3.1.3.3, (2) remove reference to SR 3.1.3.2 from Required Action A.2 of TS 3.1.3, ''Control Rod OPERABILITY,'' (3) renumber SRs 3.1.3.3 through 3.1.3.5 to reflect the deletion of SR 3.1.3.2, and (4) revise Example 1.4–3 in Section 1.4, ''Frequency,'' to clarify the applicability of the 1.25 surveillance test interval extension.

The NRC staff issued a notice of opportunity to comment in the **Federal Register** on August 16, 2007 (72 FR 46103), on possible amendments to revise the plant-specific TSs, modify TS control rod SR testing frequency, clarify TS control insertion requirements, and clarify SR frequency discussions, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on November 13, 2007 (72 FR 63935). The licensee affirmed the applicability of the model NSHC determination in its application dated January 14, 2009. The licensee is not proposing to clarify the requirement to fully insert all insertable rods for the limiting condition for operation (LCO) in TS 3.3.1.2, Required Action E.2, ''Source Range Monitor (SRM) Instrumentation,'' because the clarification is already included in the Columbia Generating Station TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of NSHC adopted by the licensee is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change generically implements TSTF–475, Revision 1, ''Control Rod Notch Testing Frequency and SRM [Source Range Monitor] Insert Control Rod Action.'' TSTF–475, Revision 1 modifies NUREG–1433 (BWR/4) and NUREG–1434 (BWR/6) STS. The changes: (1) Revise TS testing frequency for surveillance requirement (SR) 3.1.3.2 in TS 3.1.3, ''Control Rod OPERABILITY,'' (2) clarify the requirement to fully insert all insertable control rods for the limiting condition for operation (LCO) in TS 3.3.1.2, Required Action E.2, ''Source Range Monitoring Instrumentation'' (NUREG–1434 only), and (3) revise Example 1.4–3 in Section 1.4 ''Frequency'' to clarify the applicability of the 1.25 surveillance test interval extension. The consequences of an accident after adopting TSTF–475, Revision 1 are no different than the consequences of an accident prior to adoption. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 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 does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The proposed change will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously analyzed. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

TSTF–475, Revision 1 will: (1) Revise the TS SR 3.1.3.2 frequency in TS 3.1.3, ''Control Rod OPERABILITY,'' (2) clarify the requirement to fully insert all insertable control rods for the limiting condition for operation (LCO) in TS 3.3.1.2, ''Source Range Monitoring Instrumentation,'' and (3) revise Example 1.4–3 in Section 1.4 ''Frequency'' to clarify the applicability of the 1.25 surveillance test interval extension. The GE [General Electric] Nuclear Energy Report, ''CRD [Control Rod Drive] Notching Surveillance Testing for Limerick Generating Station,'' dated November 2006, concludes that extending the control rod notch test interval from weekly to monthly is not expected to impact the reliability of the scram system and that the analysis supports the decision to change the surveillance frequency. Therefore, the proposed changes in TSTF–475, Revision 1 are acceptable and do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the analysis adopted by the licensee and, based upon this review, it appears that the 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.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: June 30, 2008.

Description of amendment request: The proposed amendment would modify Technical Specification requirements related to Refueling Water Tank (RWT) minimum contained volume of borated water. The proposed changes will make permanent the current administrative RWT minimum level of 32.5 feet for both units.

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) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not impact the initiation or probability of occurrence of any accident.

The proposed changes will not impact assumptions or conditions previously used in the radiological consequence evaluations nor affect mitigation of these consequences due to an accident described in the UFSAR [Updated Final Safety Analysis Report]. Also, the proposed changes will not impact a plant system such that previously analyzed structures, systems, and components (SSCs) could be more likely to fail. The SSCs will continue to perform their intended safety functions. The initiating conditions and assumptions for accidents described in the UFSAR remain as analyzed. The proposed changes do not adversely affect the protective and mitigative capabilities of the plant. The containment sump pH calculations are not adversely impacted by the proposed change to the RWT volume. The offsite and control room doses will continue to meet the requirements of 10 CFR 100 and 10 CFR 50 Appendix A, Design Criterion 19.

Based on the above evaluation, it is reasonable to conclude that the proposed amendment does not significantly increase the probability or consequences of accidents previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

No new or different components or plant physical changes are involved with the proposed change. The currently installed equipment will not be operated in a new or

different manner. No new or different system interactions are created, and no new processes are introduced. The proposed changes will not introduce new failure mechanisms, malfunctions, or accident initiators not already considered in the design and licensing bases. The possibility of a new or different malfunction of safety-related equipment is not created. No new accident scenarios, transient precursors, or limiting single failures are introduced as a result of these changes. There will be no adverse effects or challenges imposed on any safety-related system as a result of the proposed changes.

Therefore, the proposed change does not create the possibility of a new or different accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The proposed changes raising the minimum RWT contained volume of borated water do not affect the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The change enhances the water available for recirculation therefore, maintaining and enhancing the margin of safety.

The safety analyses acceptance criteria are not affected by these changes. The proposed changes will not result in plant operation outside of the design basis.

Therefore, operation in accordance with the proposed amendment would 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: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Branch Chief: Thomas H. Boyce.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: July 10, 2008.

Description of amendment request: The proposed amendment would modify Technical Specification (TS) requirements related to diesel fuel oil testing consistent with Nuclear Regulatory Commission approved Industry/Technical Specification Task Force (TSTF) TSTF–374, ''Revision to TS 5.5.13 and Associated TS Bases for Diesel Fuel Oil, '' Revision 0. This amendment would revise TSs by relocating references to specific American Society for Testing and Materials (ASTM) standards for fuel oil testing to licensee-controlled documents and adding alternate criteria to the ''clear and bright'' acceptance test for new fuel oil.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No.

The proposed changes relocate the specific ASTM standard references from the Administrative Controls Section of TS to a licensee-controlled document. Requirements to perform testing in accordance with applicable ASTM standards are retained in the TS as are requirements to perform surveillances of both new and stored diesel fuel oil. Future changes to the licensee controlled document will be evaluated pursuant to the requirements of 10 CFR 50.59, ''Changes, tests and experiments,'' to ensure that such changes do not result in more than a minimal increase in the probability or consequences of an accident previously evaluated. In addition, the ''clear and bright'' test used to establish the acceptability of new fuel oil for use prior to addition to storage tanks has been expanded to recognize more rigorous testing of water and sediment content. Relocating the specific ASTM standard references from the TS to a licensee-controlled document and allowing a water and sediment content test to be performed to establish the acceptability of new fuel oil will not affect nor degrade the ability of the emergency diesel generators (DGs) to perform their specified safety function. Fuel oil quality will continue to meet ASTM requirements.

The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes do not adversely affect the ability of structures, systems, and components (SSCs) to perform their intended safety function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed changes do not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of any accident previously evaluated. Further, the proposed changes do not increase the types and amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposures.

Therefore, the changes do not involve a significant increase in the probability or consequences of any 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 changes relocate the specific ASTM standard references from the Administrative Controls Section of TS to a licensee-controlled document. In addition, the ''clear and bright'' test used to establish the acceptability of new fuel oil for use prior to addition to storage tanks has been expanded to allow a water and sediment content test to be performed to establish the acceptability of new fuel oil. 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 change in the methods governing normal plant operation. The requirements retained in the TS continue to require testing of the diesel fuel oil to ensure the proper functioning of the DGs.

Therefore, the changes do 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.

The proposed changes relocate the specific ASTM standard references from the Administrative Controls Section of TS to a licensee-controlled document. Instituting the proposed changes will continue to ensure the use of applicable ASTM standards to evaluate the quality of both new and stored fuel oil designated for use in the emergency DGs. Changes to the licensee-controlled document are performed in accordance with the provisions of 10 CFR 50.59. This approach provides an effective level of regulatory control and ensures that diesel fuel oil testing is conducted such that there is no significant reduction in a margin of safety.

The ''clear and bright'' test used to establish the acceptability of new fuel oil for use prior to addition to storage tanks has been expanded to allow a water and sediment content test to be performed to establish the acceptability of new fuel oil. The margin of safety provided by the DGs is unaffected by the proposed changes since there continue to be TS requirements to ensure fuel oil is of the appropriate quality for emergency DG use. The proposed changes provide the flexibility needed to improve fuel oil sampling and analysis methodologies while maintaining sufficient controls to preserve the current margins of safety.

Based upon the reasoning presented above, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Branch Chief: Thomas H. Boyce.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: July 31, 2008.

Description of amendment request: The proposed changes would modify the transformer allowed outage time

(AOT) in the Fort Calhoun Station Technical Specifications (TS) Sections 2.7(2)a., 2.7(2)b., and 2.7(2)c., and delete the associated 2.7(2) special reporting requirements in TS 5.9.3j.

The proposed changes would revise TS 2.7(2)a. to allow both auxiliary power transformers, T1A–1 and T1A–2, to be inoperable for a period of 72 hours, consistent with NUREG–1432, Standard Technical Specifications for Combustion Engineering Plants, and would revise TS 2.7(2)b. and c. to impose a limit of 7 days for plant operation in the event that house service transformers T1A–3 and/or T1A–4 become 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, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to remove the allowance for unlimited plant operation in the event of a degraded or inoperable 161 kilovolt (KV) source does not adversely impact the probability of an accident previously evaluated. Because the change imposes a more restrictive allowed outage time (AOT) than that which currently exists, there would be a reduced probability that the plant would operate in the future for an extended period without the 161 KV circuit operable. Further, analyses for abnormal operational occurrences (AOOs) and design basis accidents (DBAs) assume that all offsite power circuits are lost when it is conservative to make such an assumption. The successful mitigation of those accident scenarios is based on the assumption that diesel generators are the only source of alternating current (AC) power supplying safeguards loads. The proposed change does not affect the operability requirements for the emergency diesel generators (EDGs) and therefore does not impact the consequences of an analyzed accident.

The proposed change to remove the requirement to verify diesel generator operability by ensuring that relevant surveillances have been performed in the event of a degraded or inoperable 161 KV source has no impact on the probability of an accident since diesel generators are not initiators for any analyzed event. The consequences of an accident are not impacted because diesel generator operability is controlled by other portions of Technical Specification (TS) 2.7, which ensures that required surveillances are performed. Appropriate limiting conditions for operation (LCOs) are entered in the event that EDG surveillance criteria are not met.

The proposed change to the allowed outage time for inoperability of auxiliary transformers (powered from the 345 KV offsite source) from 24 to 72 hours does not significantly increase the probability of an accident since the only impact of not having auxiliary transformers is that there would be no offsite source to backup power to plant buses in the event that the preferred source of offsite power is lost (i.e., the 161 KV source). Historical experience with the reliability of the 161 KV has shown the power supply has been highly reliable. The likelihood of losing 161 KV power is not significantly different over a 72-hour period from the likelihood over a 24-hour period. The consequences of an analyzed event does not change allowing the 345 KV source to be inoperable for 72 hours as opposed to 24 hours since the 345 KV source is not credited as a mitigating power source.

The administrative changes to add ''T1A'' to the house service transformer T1A–2 equipment number in TS 2.7(2)a. and add a period to the text in TS 5.9.3i. are being made for consistency and clarification. The special reporting requirement is deleted from TS 2.7(2)b., 2.7(2)c., and 5.9.3j., as there is no method for the NRC to provide the concurrence required via the special reporting requirements in the current TS. The administrative change to TS 2.7(2)c. clarifies that the telephone notification will be made to the NRC Operations Center within 4 hours after inoperability of both transformers.

Therefore, the proposed change does 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 change to remove the allowance for unlimited plant operation in the event of a degraded or inoperable 161 KV source does not create the possibility of a new or different kind of accident since the design function of the affected equipment is not changed. No new interactions between systems or components are created. No new failure mechanisms of associated systems will exist. The consequence of losing offsite power sources during plant operation is precisely the same with the proposed change as it was previously. In fact, the proposed change is more restrictive in terms of operating with degraded power sources than is the current requirement.

The proposed change to remove the requirement to verify diesel generator operability by ensuring that relevant surveillances have been performed in the event of a degraded or inoperable 161 KV source will not create a possibility for a new or different type of accident since the operability requirements for EDGs will be maintained in accordance with surveillance and operability requirements which exist elsewhere in TS 2.7. The allowed outage times proposed for degraded or inoperable 161 KV circuits are the same as those that currently exist for EDG inoperability. If an EDG were inoperable coincident with a loss of the 161 KV offsite source, the remaining EDG would still be operable for providing power to safeguards loads in the event of an accident, consistent with current analytical assumptions. No new failure mechanisms would be created.

The proposed change to the AOT for inoperability of auxiliary transformers (powered from the 345 KV offsite source) from 24 to 72 hours does not create the possibility of a new or different kind of accident since no new design function is established for the power supply already assumed to be unavailable. The 345 KV source of power is not credited in any design basis event. No new failure mechanism is created by increasing the allowed outage time from 24 to 72 hours.

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 amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change to remove the allowance for unlimited plant operation in the event of a degraded or inoperable 161 KV source does not adversely impact any margins of safety since no design basis function of the affected systems are changed. In the future, the length of time that the preferred source of offsite power is inoperable could be reduced which would potentially enhance plant safety margins by increasing the likelihood that diverse sources of power are available during a design basis event. Furthermore, sources of power credited for design basis events are not affected by this change.

The proposed change to remove the requirement to verify diesel generator operability by ensuring that relevant surveillances have been performed in the event of a degraded or inoperable 161 KV source will not adversely impact margins of safety since the requirement to verify EDG operability exists in TS 3.7. Further, the proposed change does not change the design function of any equipment assumed to operate in the event of an accident.

The proposed change to the AOT time for inoperability of auxiliary transformers (powered from the 345 KV offsite source) from 24 to 72 hours does not adversely impact any margins of safety since the offsite power source associated with the 345 KV system is not credited in any design basis event. In any case, no design functions of plant equipment will be modified by this proposed change.

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: David A. Repka, Esq., Winston & Strawn, 1700 K Street, NW., Washington, DC 20006–3817.

NRC Branch Chief: Michael T. Markley.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: July 15, 2008.

Description of amendment request: The proposed amendments would revise the TS 5.5.7 Ventilation Filter Testing Program to eliminate the requirement to test the power output of the Standby Gas Treatment System's (SGTS) electric heater and to raise the testing requirement for the relative humidity of the charcoal adsorbed air stream. Also, a surveillance requirement is being revised to eliminate reference to the heater and to shorten the required SGTS run time. *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 consequences of an accident previously evaluated?

Response: No.

The SGTS ensures that radioactivity leaking into the secondary containment from design basis accidents is treated and filtered before being released to the environment. This TS amendment request does not require or otherwise propose any physical changes to any system intended for the prevention of accidents or intended for the mitigation of accident consequences including the SGTS system. Neither does it involve any changes to the operation or maintenance of the SGTS system, or to any other system designed for the prevention or mitigation of design basis accidents. This proposed TS change involves the elimination of the SGTS electric heater testing requirements and its concomitant increase in the testing criteria for relative humidity (RH). However, the percent penetration through the carbon bed when challenged with methyl iodide during laboratory testing will not change as a result of this amendment. Therefore, the carbon efficiency will not be decreased as a result of this amendment. With respect to the reduction of the run time requirement for SR 3.6.4.3.1, the proposed run time is adequate to ensure proper operation of the SGTS.

For the above reasons, this TS amendment request will not result in a significant increase in the probability of occurrence, or the consequences, of a previously evaluated event.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

This proposed Unit 1 and 2 TS amendment request involves elimination of the testing requirements for the SGTS electric heater. This in turn requires that the testing criteria for the air stream RH be increased from their current value of 70% to 95%. However, no changes are being made to the way the SGTS system, or any other system, is operated or maintained. Changes are being made to how the SGTS will be surveilled, however these changes will not result in the system being operated outside of its design basis. Since no new modes of operation are introduced, the probability of occurrence of an event different from any previously evaluated is not increased.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

Response: No

The requirements for the Unit 1 and 2 SGTS electric heater are being eliminated. Without the benefit of the heater, the laboratory testing criteria for the RH of the air stream are higher and are therefore being changed from 70% to 95%. The requirements on carbon efficiency are not being changed by this TS revision request; the methyl iodide penetration criteria will remain at less than 2.5%. The capability of the SGTS system to holdup the iodine will therefore remain unchanged. The proposed 15 minute run time for the SR 3.6.4.3 will still allow for the adequate verification of the proper operation of the credited SGTS components. For this reason, the margin of safety is not significantly reduced.

Based on the above, Southern Nuclear concludes that the proposed amendment does not involve a 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: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Branch Chief: Melanie C. Wong.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Unit Nos. 1 and 2, Louisa County, Virginia

Date of amendment request: December 17, 2008.

Description of amendment request: The proposed amendments would revise Technical Specifications (TSs) 1.1, ''Definitions,'' and 3.4.16, ''RCS Specific Activity,'' and Surveillance Requirements 3.4.16.1 and 3.4.16.3. The proposed changes would replace the current TS 3.4.16 limit on reactor coolant system (RCS) gross specific activity with a new limit on RCS noble gas specific activity. The noble gas specific activity limit would be based on a new dose equivalent Xe–133 definition that would replace the current E Bar average disintegration energy definition. The availability of this TS revision was announced in the **Federal Register** on March 15, 2007 (72 FR 12217) as part of the consolidated line item improvement process. The licensee affirmed the applicability of the model no significant hazards consideration determination in its application.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration adopted by the licensee is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

Reactor coolant specific activity is not an initiator for any accident previously evaluated. The Completion Time when primary coolant gross activity is not within limit is not an initiator for any accident previously evaluated. The current variable limit on primary coolant iodine concentration is not an initiator to any accident previously evaluated. As a result, the proposed change does not significantly increase the probability of an accident. The proposed change will limit primary coolant noble gases to concentrations consistent with the accident analyses. The proposed change to the Completion Time has no impact on the consequences of any design basis accident since the consequences of an accident during the extended Completion Time are the same as the consequences of an accident during the Completion Time. As a result, the consequences of any accident previously evaluated are not significantly increased.

Criterion 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 in specific activity limits does not alter any physical part of the plant nor does it affect any plant operating parameter. The change does not create the potential for a new or different kind of accident from any previously calculated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change revises the limits on noble gas radioactivity in the primary coolant. The proposed change

is consistent with the assumptions in the safety analyses and will ensure the monitored values protect the initial assumptions in the safety analyses.

The Nuclear Regulatory Commission (NRC) staff has reviewed the analysis adopted by the licensee and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Counsel, Dominion Resources Services, Inc., 120 Tredegar Street, RS–2, Richmond, VA 23219.

NRC Branch Chief: Melanie C. Wong.

Notice of Issuance of Amendments to Facility Operating 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.

Notice of Consideration of Issuance of Amendment to Facility Operating License, 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 Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *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 Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3, Maricopa County, Arizona

Date of application for amendment: January 17, 2008, as supplemented by letter dated February 29, 2008.

Brief description of amendment: The amendments modified the Technical Specifications (TSs) to establish more effective and appropriate action, surveillance, and administrative requirements related to ensuring the habitability of the control room envelope (CRE) in accordance with Nuclear Regulatory Commission (NRC)-approved TS Task Force (TSTF) Standard Technical Specification change traveler TSTF–448, Revision 3, ''Control Room Habitability.'' Specifically, the proposed amendments modified TS 3.7.11, ''Control Room Essential Filtration System (CREFS),'' and added new TS 5.5.17, ''Control Room Envelope Habitability Program,'' to TS Administrative Controls Section 5.5, ''Programs and Manuals.''

Date of issuance: January 23, 2009.

Effective date: As of the date of issuance and shall be implemented within 180 days from the date of issuance.

Amendment No.: Unit 1—171; Unit 2—171; Unit 3—171.

Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: The amendment revised the Operating Licenses and Technical Specifications.

*Date of initial notice in **Federal Register***: May 6, 2008 (73 FR 25036). The supplemental letter dated February 29, 2008, 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 January 23, 2009.

No significant hazards consideration comments received: No.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: August 28, 2008.

Brief description of amendments: These amendments revise Technical Specification (TS) Surveillance Requirement 3.7.2.1 by replacing the main steam isolation valve (MSIV) closure time with the phrase ''within limits.'' The MSIV closure time is relocated to the licensee controlled document that is referenced in the TS Bases. The changes are consistent with the Nuclear Regulatory Commission approved Technical Specification Task Force (TSTF)–491, Revision 2, ''Removal of Main Steam and Main Feedwater Valve Isolation Times from Technical Specifications.''

Date of issuance: January 26, 2009.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment Nos.: 289 and 265.

Renewed Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the License and Technical Specifications.

*Date of initial notice in **Federal Register***: October 7, 2008 (73 FR 58671). The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated January 26, 2009.

No significant hazards consideration comments received: No.

Duke Energy Carolinas, LLC, et al., Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: December 11, 2007, as supplemented December 18, 2008.

Brief description of amendments: The amendments revised the Technical Specifications sections to allow the bypass test times and Completion Times (CTs) for Limiting Condition for Operation (LCOs) 3.3.1, ''Reactor Trip System (RTS) Instrumentation'' and 3.3.2, ''Engineered Safety Feature Actuation System (ESFAS) Instrumentation.''

The proposed license amendment request (LAR) adopts changes as described in Westinghouse Commercial Atomic Power (WCAP) topical report WCAP–14333–P–A, Revision 1, ''Probabilistic Risk Analysis of the Reactor Protection System and Engineered Safety Features Actuation System Test Times and Completion Times,'' issued October 1998 and approved by U.S. Nuclear Regulatory

Commission (NRC) letter dated July 15, 1998. Implementation of the proposed changes is consistent with Technical Specification Task Force (TSTF) Traveler TSTF–418, Revision 2, ''RPS [Reactor Protection System] and ESFAS Test Times and Completion Times (WCAP–14333).'' The NRC approved TSTF–418, Revision 2, by letter dated April 2, 2003.

In addition, the proposed LAR adopts changes as described in WCAP–15376–P–A, Revision 1,''Risk-Informed Assessment of the RTS and ESFAS Surveillance Test Intervals and Reactor Trip Breaker Test and Completion Times,'' issued March 2003, as approved by NRC letter dated December 20, 2002. Implementation of the proposed changes is consistent with TSTF Traveler # TSTF–411, Revision 1, ''Surveillance Test Interval Extension for Components of the Reactor Protection System (WCAP–15376).'' The NRC approved TSTF–411, Revision 1, by letter dated August 30, 2002. The licensee also requested additional changes not specifically included in the above topical reports. These changes will be evaluated in a future amendment.

Date of issuance: December 30, 2008.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment Nos.: 248 and 228.

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the licenses and the technical specifications.

Date of initial notice in ***Federal Register***: March 25, 2008 (73 FR 15783). The supplement dated December 18, 2008, 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 amendments is contained in a Safety Evaluation dated December 30, 2008.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: July 21, 2008, as supplemented by letter dated December 11, 2008.

Brief description of amendment: The amendment revised the Arkansas Nuclear One, Unit No. 1 Technical Specification (TSs) requirements for inoperable snubbers by adding Limiting Condition for Operation (LCO) 3.0.8 and associated Bases, allowing a delay time for entering a supported system TSs, when the inoperability is due solely to an inoperable snubber, if risk is assessed and managed. The changes relating to the addition of LCO 3.0.8 are consistent with Nuclear Regulatory Commission (NRC)-approved Industry/Technical Specification Task Force (TSTF) Standard Technical Specification (STS) change TSTF–372, Revision 4.

Date of issuance: January 28, 2009.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 235.

Renewed Facility Operating License No. DPR–51: Amendment revised the Technical Specifications/license.

Date of initial notice in ***Federal Register***: November 4, 2008 (73 FR 65695). The supplemental letter dated December 11, 2008, 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 amendment is contained in a Safety Evaluation dated January 28, 2009.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: January 22, 2008, as supplemented by letters dated August 27 and October 22, 2008.

Brief description of amendment: The amendment modified the Technical Specification (TS) 3.8.3 requirements related to Diesel Fuel Oil, Lube Oil, and Starting Air by replacing the specific fuel oil and lube oil storage values with the corresponding number of days supply. The specific values would be relocated to a licensee-controlled document (i.e., the TS Bases). It also expanded the ''clear and bright'' test in TS 5.5.10 by allowing a water and sediment test to be performed to establish the acceptability of new fuel oil prior to addition to the storage tanks.

Date of issuance: January 21, 2009.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 293.

Facility Operating License No. DPR–59: The amendment revised the License and the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 6, 2008 (73 FR 25037). The supplements dated August 27 and October 22, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 21, 2009.

No significant hazards consideration comments received: No.

Entergy Gulf States Louisiana, LLC, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: July 28, 2008.

Brief description of amendment: The amendment (1) deleted Technical Specification (TS) surveillance requirement (SR) 3.1.3.2 and revised SR 3.1.3.3; (2) removed the reference to SR 3.1.3.2 from Required Action A.2 of TS 3.1.3, ''Control Rod OPERABILITY''; (3) clarified the requirement to fully insert all insertable rods for the limiting condition for operation in TS 3.3.1.2, ''Source Range Monitor (SRM) Instrumentation,'' Required Action E.2; and (4) revised Example 1.4–3 in Section 1.4, ''Frequency,'' to clarify the applicability of the 1.25 surveillance test interval extension. The changes are in accordance with NRC-approved TS Task Force (TSTF) traveler TSTF–475, Revision 1, ''Control Rod Notch Testing Frequency and SRM Insert Control Rod Action.''

Date of issuance: January 23, 2009.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 161.

Facility Operating License No. NPF–47: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register***: November 4, 2008 (73 FR 65690). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 23, 2009.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: February 1, 2008, as supplemented by letter dated August 20, 2008.

Brief description of amendments: The amendments revised Technical Specification (TS) 5.5.16.b, ''Containment Leakage Rate Testing Program,'' to specify a lower peak calculated containment internal pressure following a large-break loss-of-coolant accident and the containment design pressure at the Diablo Canyon Power Plant, Units 1 and 2. By letter dated August 20, 2008, the licensee withdrew its request to use the guidance in American National Standards Institute/American National Standards (ANSI/ANS) 56.8–2002, ''Containment System Leakage Testing,'' in lieu of the 1994 Edition.

Date of issuance: January 15, 2009.

Effective date: As of its date of issuance and shall be implemented within 120 days from the date of issuance.

Amendment Nos.: Unit 1—203; Unit 2—204.

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Facility Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register***: March 25, 2008 (73 FR 15787). The supplemental letter dated August 20, 2008, 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 January 15, 2009.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendment request: December 20, 2007, as supplemented on September 12, October 8, and October 27, 2008.

Brief description of amendment request: The amendment request contained sensitive unclassified non-safeguards information. The amendments revised technical specification (TS) 3.3.1, ''Reactor Trip System Instrumentation,'' TS 3.3.2, ''Engineered Safety Feature Actuation System Instrumentation,'' TS 3.3.6, ''Containment Purge and Exhaust Isolation Instrumentation,'' TS 3.3.7, ''Control Room Emergency Filtration/Pressurization System Actuation Instrumentation,'' and TS 3.3.8, ''Penetration Room Filtration System Actuation Instrumentation'' to adopt completion time, bypass test time, and surveillance requirement (SR) frequency changes approved by the Nuclear Regulatory Commission (NRC) in WCAP–14333–P–A, Rev.1, ''Probabilistic Risk Analysis of the Reactor Protection System and Engineered Safety Feature Actuation System Test Times and Completion Times,'' October 1998 and WCAP–15376–P–A, Rev.1, ''Risk-Informed Assessment of the Reactor Trip System and Engineered Safety Feature Actuation System Surveillance Test Intervals and Reactor Trip Breaker Test and Completion Times,'' March 2003. In addition, the amendments revised SR 3.3.1.8 to adopt surveillance frequency changes approved by the NRC in Industry/Technical Specification Task Force (TSTF) Standard Technical Specification (STS) Change Traveler 242, Rev.1, ''Increase the Time to Perform a Channel Operational Test on Power Range and Intermediate Range Instruments.'' Also, the amendments revised the completion times of limiting condition for operation 3.3.1, Condition F from 2 hours to 24 hours consistent with changes approved by the NRC in Industry/TSTF STS Change Traveler 246, Rev. 0, ''Reactor Trip System Instrumentation, 3.3.1 Condition F Completion Time.'' Finally, the amendments provided for minor editorial changes.

Date of Issuance: January 15, 2009.

Amendment Nos.: Unit 1—180; Unit 2—173.

Facility Operating License Nos. NPF–2 and NPF–8: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register***: July 8, 2008 (73 FR 39056). The supplements dated September 12, October 8, and October 27, 2008, provided clarifying information that did not change the scope of the December 20, 2007, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a safety evaluation dated January 15, 2009.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: August 12, 2008.

Brief description of amendments: The amendments revised the Facility Operating Licenses (FOLs) to delete Section 2.H of the Facility Operating Licenses, which require reporting of violations of the requirements in Section 2.C of the Facility Operating License.

Date of issuance: January 15, 2009.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: Unit 1—155; Unit 2—136.

Facility Operating License Nos. NPF–68 and NPF–81: Amendments revised the licenses.

Date of initial notice in ***Federal Register***: October 7, 2008 (73 FR 58677). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 15, 2009.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: January 28, 2008, as supplemented by letters dated July 28, September 25 and 30, and November 24, 2008.

Brief description of amendments: The current amendments revised Action 5 in Table 3.3–1, ''Reactor Trip System Instrumentation,'' of Technical Specification (TS) 3.3.1, ''Reactor Trip Instrumentation,'' into Action 5.a for one inoperable channel of extended range neutron flux instrumentation and Action 5.b for two inoperable channels of this instrumentation. The previous Amendment Nos. 187 (Unit 1) and 174 (Unit 2), issued October 16, 2008, revised (1) Action 5 in TS Table 3.3–1 for one inoperable channel of extended range neutron flux instrumentation and (2) Action c in TS 3.4.1.4.2, ''Reactor Coolant System, Cold Shutdown—Loops Not Filled.'' The current amendments complete the Nuclear Regulatory Commission staff's review of the application.

Date of issuance: January 28, 2009.

Effective date: As of the date of issuance and shall be implemented within 90 days of issuance.

Amendment Nos.: Unit 1—189; Unit 2—177.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Facility Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register***: March 25, 2008 (73 FR 15788). The supplemental letters dated July 28 and September 25 and 30, and November 24, 2008, 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 January 28, 2009.

No significant hazards consideration comments received: No.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: January 14, 2008, as supplemented by letters dated November 26 and December 17, 2008.

Brief description of amendment: The amendment modified the Technical Specification (TS) to establish more effective and appropriate action, surveillance, and administrative requirements related to ensuring the habitability of the control room envelope (CRE) in accordance with U.S. Nuclear Regulatory Commission (NRC)-approved TS Task Force (TSTF) Standard Technical Specification change traveler TSTF–448, Revision 3, ''Control Room Habitability.'' Specifically, the amendment modified TS 3.7.10, ''Control Room Emergency Ventilation System (CREVS),'' and established a CRE habitability program in TS Section 5.5, ''Administrative Controls—Programs and Manuals.''

Date of issuance: January 27, 2009.

Effective date: As of its date of issuance and shall be implemented within 120 days from the date of issuance.

Amendment No.: 190.

Facility Operating License No. NPF–30: The amendment revised the Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** October 21, 2008 (73 FR 62570). The supplemental letters dated November 26 and December 17, 2008, 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 amendment is contained in a Safety Evaluation dated January 27, 2009.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

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 for the amendment 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.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective 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 51.12(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 application for amendment, (2) the amendment to Facility Operating License, 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 Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *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 Reference staff at 1 (800) 397–4209,

(301) 415–4737 or by e-mail to *pdr@nrc.gov.*

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. 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. 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 Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If there are problems in accessing the document, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov.* 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 petitioner/requestor 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 petitioner/requestor 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 petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the 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.[1] 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 petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. *Technical*—-primarily concerns/issues relating to technical and/or health and safety matters discussed or referenced in the applications.

2. *Environmental*—-primarily concerns/issues relating to matters discussed or referenced in the environmental analysis for the applications.

3. *Miscellaneous*—-does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more petitioners/requestors seek to co-sponsor a contention, the petitioners/requestors shall jointly designate a representative who shall have the authority to act for the petitioners/requestors with respect to that contention. If a petitioner/requestor seeks to adopt the contention of another sponsoring petitioner/requestor, the petitioner/requestor who seeks to adopt the contention must either agree that the sponsoring petitioner/requestor shall act as the representative with respect to that contention, or jointly designate with the sponsoring petitioner/requestor a representative who shall have the authority to act for the petitioners/requestors with respect to that contention.

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. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

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, which the NRC promulgated in August 28, 2007, (72 FR 49139). The E-Filing process requires participants to submit and serve 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 a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least five (5) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV,* or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/ requestor will need to download the Workplace Forms Viewer ™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer ™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in

[1] To the extent that the applications contain attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel and discuss the need for a protective order.

Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC electronic filing Help Desk, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday. The electronic filing Help Desk can be contacted by telephone at 1–866–672–7640 or by e-mail at *MSHD.Resource@nrc.gov.*

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, 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.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a 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. 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.

STP Nuclear Operating Company, Docket No. 50–499, South Texas Project, Unit 2, Matagorda County, Texas

Date of amendment request: December 19, 2008, as supplemented by letter dated January 7, 2009.

Description of amendment request: The amendment is requested to extend the Allowed Outage (AOT) Time for Technical Specification 3.7.1.7, ''Main Feedwater System.'' This AOT extension is requested from the current 4 hours to 24 hours, only to facilitate repair to the South Texas Project (STP), Unit 2, Train D Main Feedwater Isolation Valve, which is degraded due to a leak in its pneumatic actuator.

Date of issuance: January 16, 2009.

Effective date: As of the date of issuance and shall be implemented prior to the start of the STP, Unit 2, Train D Main Feedwater Isolation Valve repairs.

Amendment No.: 176.

Facility Operating License No. NPF–80: The amendment revised the Facility Operating License and Technical Specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes (73 FR 80437; December 31, 2008). The supplemental letter dated January 7, 2009, 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 notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received. The notice also provided an opportunity to request a hearing by March 2, 2009, but indicated that if the Commission makes a final NSHC determination, any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated January 16, 2009.

Attorney for licensee: A. H. Gutterman, Esq., Morgan, Lewis & Bockius, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.

NRC Branch Chief: Michael T. Markley.

Dated at Rockville, Maryland, this 30th day of January 2009.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–2553 Filed 2–9–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on March 4, 2009, Room T2–B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, March 4, 2009, 12 noon–1 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions

and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Officer, Mr. Sam Duraiswamy (*Telephone:* 301–415–7364) between 7:30 a.m. and 4 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 6, 2008, (73 FR 58268–58269).

Further information regarding this meeting can be obtained by contacting the Designated Federal Officer between 7:30 a.m. and 4 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: February 3, 2009.

Cayetano Santos,

Chief, Reactor Safety Branch A, Advisory Committee on Reactor Safeguards.

[FR Doc. E9–2714 Filed 2–9–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Subcommittee Meeting on Materials, Metallurgy & Reactor Fuels; Notice of Meeting

The ACRS Subcommittee on Materials, Metallurgy & Reactor Fuels will hold a meeting on Wednesday, March 4, 2009, at 11545 Rockville Pike, Rockville, Maryland, Room T–2B1.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, March 4, 2009, 1:30 p.m. to 5:30 p.m.

The Subcommittee will review the draft Final Amendment to 10 CFR 50.61, ''Fracture Toughness Requirements for Protection Against Pressurized Thermal Shock Events.'' The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Officer, Michael L. Benson (Telephone: 301–415–6396) 5 days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 6, 2008, (73 FR 58268–58269).

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7 a.m. and 5 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: February 4, 2009.

Cayetano Santos,

Branch Chief, Reactor Safety Branch A, Advisory Committee on Reactor Safeguards.

[FR Doc. E9–2715 Filed 2–9–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of February 9, 16, 23, March 2, 9, 16, 2009.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of February 9, 2009

There are no meetings scheduled for the week of February 9, 2009.

Week of February 16, 2009—Tentative

There are no meetings scheduled for the week of February 16, 2009.

Week of February 23, 2009—Tentative

There are no meetings scheduled for the week of February 23, 2009.

Week of March 2, 2009—Tentative

Friday, March 6, 2009

9:30 a.m. Briefing on Guidance for Implementation of Security Rulemaking (Public Meeting) (Contact: Rich Correia, 301–415–7674).

This meeting will be Webcast live at the Web address— *http://www.nrc.gov.*

Week of March 9, 2009—Tentative

There are no meetings scheduled for the week of March 9, 2009.

Week of March 16, 2009—Tentative

There are no meetings scheduled for the week of March 16, 2009.

* * * * *

* 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.

* * * * *

Additional Information

Affirmation of AmerGen Energy Company, LLC (License Renewal for Oyster Creek Nuclear Generating Station), Docket No. 50–219–LR, Citizens' Petition for Review of LBP–07–17 and Other Interlocutory Decisions in the Oyster Creek Proceeding, previously tentatively scheduled on February 4, 2009, has been postponed.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/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 the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *rohn.brown@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred 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). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *darlene.wright@nrc.gov.*

Dated: February 5, 2009.

Richard J. Laufer,

Office of the Secretary.

[FR Doc. E9–2892 Filed 2–6–09; 12:00 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–25]

Foster Wheeler Environmental Corporation; Idaho Spent Fuel Facility; Notice of Order Approving Indirect Transfer of Materials License

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Issuance of Order Approving Indirect Transfer of Materials License No. SNM–2512.

FOR FURTHER INFORMATION, CONTACT: Shana Helton, Senior Project Manager, Licensing Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards (NMSS), U.S. Nuclear Regulatory Commission (NRC), Rockville, MD 20852. *Telephone:* (301) 492–3284; *fax number:* (301) 492–3348; e-mail: *shana.helton@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I

Foster Wheeler Environmental Corporation (FWENC) is the holder of Special Nuclear Materials (SNM) License No. 2512, issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 72. The license authorizes FWENC to construct and operate the Idaho Spent Fuel (ISF) Facility in accordance with the terms and conditions specified therein. The yet-to-be constructed ISF Facility is an independent spent fuel storage installation, which, if constructed, will be located adjacent to the Department of Energy's Idaho Nuclear Technology and Engineering Center site on the Idaho National Laboratory grounds in Idaho.

II

By letter dated December 11, 2008, as supplemented on December 22, 2008 (Agencywide Documents Access and Management System Accession Nos. ML083500374 and ML083640311, respectively), FWENC submitted an application seeking consent to the indirect transfer of control of SNM License No. 2512 for the ISF Facility.

The indirect transfer of control of FWENC's license would result from a planned restructuring whereby Foster Wheeler AG will become the new ultimate corporate parent holding company of FWENC, replacing Foster Wheeler Ltd, the current ultimate parent holding company. The shares of Foster Wheeler Ltd., a corporation duly organized under the laws of Bermuda, are widely held and publicly traded in the United States on the NASDAQ Global Select Market. The proposed new ultimate parent holding company, Foster Wheeler AG, is a corporation duly organized under the laws of Switzerland, and it is currently a wholly owned subsidiary of Foster Wheeler Ltd.

No physical changes to the planned ISF Facility were proposed in the application. FWENC will still be authorized to construct and operate the ISF Facility, notwithstanding the proposed corporate restructuring, and will continue to hold the license. No direct transfer of the license will result from the planned restructuring.

Approval of the application was requested pursuant to Section 184 of the Atomic Energy Act of 1954, as amended (AEA), and 10 CFR 72.50. Notice of the application and an opportunity for a hearing was published in the **Federal Register** on December 29, 2008 (73 FR 79518). No hearing requests or written comments were received.

Under 10 CFR 72.50, no license or any part included in a license issued under 10 CFR Part 72 for an ISFSI shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission gives its consent in writing. Upon review of the information submitted in the application and other information before the Commission, the NRC staff has determined that the proposed corporate restructuring as described above will not affect the qualifications of FWENC as holder of SNM License No. 2512, and that the indirect transfer of control of the license, to the extent effected by the restructuring, is otherwise consistent with applicable provisions of the law, and the regulations and orders issued by the Commission. These findings are supported by a Safety Evaluation of the same date as this Order.

III

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234; and 10 CFR 72.50, *it is hereby ordered* that the application regarding the indirect license transfer described above related to the proposed corporate restructuring and establishment of Foster Wheeler AG as the new ultimate parent holding company of FWENC is approved, subject to the following condition:

Should the proposed corporate restructuring and establishment of Foster Wheeler AG as the new ultimate corporate parent holding company not be completed within one year from the date of this Order, this Order shall become null and void, provided, however, upon written application and good cause shown, such date may be extended by Order.

This Order is effective upon issuance.

For further details with respect to this Order, see the application dated December 11, 2008, as supplemented by letter dated December 22, 2008, and the NRC's safety evaluation dated January 29, 2009 (ADAMS Accession Nos. ML083500374, ML083640311, and ML090220068, respectively). These documents are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland and accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland this 29th day of January 2009.

For the Nuclear Regulatory Commission.

Michael F. Weber,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E9–2712 Filed 2–9–09; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of BIH Corporation; Order of Suspension of Trading

February 6, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of BIH Corporation (''BIH'') because of questions regarding the accuracy of assertions by BIH in its Web site and in press releases to investors concerning, among other things: (1) The identity of the person or persons in control of the operation and management of the company, and (2) contracts entered into by one of BIH's subsidiaries.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange

Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EST on February 6, 2009, through 11:59 p.m. EST, on February 20, 2009.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E9–2918 Filed 2–6–09; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59355; File No. SR–CBOE–2009–004]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Options Regulatory Fee

February 3, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 30, 2009, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by CBOE. 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

Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') proposes to amend its Fees Schedule relating to the Options Regulatory Fee. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

In October 2008, the Exchange filed a proposed rule change to eliminate Registered Representative Fees and establish a transaction-based ''Options Regulatory Fee'' to become effective on January 1, 2009 (''ORF'').[3] In December 2008, the Exchange filed a proposed rule change to waive the fee until February 1, 2009, to allow additional time for the Exchange and OCC to implement the procedures to be used by OCC to bill and collect the ORF.[4]

The Exchange proposes to again waive the ORF until March 1, 2009. The Exchange is waiving the ORF to provide firms time to put in place appropriate procedures to implement the fee.

The Exchange notes that it is also in the process of evaluating the amount of the ORF to ensure that it does not experience a regulatory revenue shortfall as the result of the waiver of the ORF for the first two months of 2009. If the Exchange determines to change the ORF rate, it will file a proposed rule change and provide members with notice of the rate change as far in advance of March 1, 2009 as possible.

(b) Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (''Act''),[5] in general, and furthers the objectives of Section 6(b)(4)[6] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes it is appropriate to waive the ORF for February 2009 to allow firms additional time to put in place appropriate procedures to implement the fee.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of 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 has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and subparagraph (f)(2) of Rule 19b–4[8] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2009–004 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2009–004. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 58817 (October 20, 2008), 73 FR 63744 (October 27, 2008). The ORF is $.0045 per contract and is assessed to each member for all options transactions executed by the member that are cleared by The Options Clearing Corporation (''OCC'') in the customer range (*i.e.*, that clear in a customer account at OCC), excluding Options Intermarket Linkage Plan (''Linkage'') orders. The ORF is imposed upon all such transactions executed by a member, even if such transactions do not take place on the Exchange. The ORF is collected indirectly from members through their clearing firms by OCC on behalf of the Exchange.

[4] *See* Securities Exchange Act Release No. 59182 (December 30, 2008),

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(2).

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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–CBOE–2009–004 and should be submitted on or before March 3, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–2657 Filed 2–9–09; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59347; File No. SR–ISE–2009–05]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Eliminate $3 Underlying Price Requirement for Continued Listing and Listing of Additional Series

February 3, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 2, 2009, the International Securities Exchange, LLC (''ISE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by ISE. ISE has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend Rule 503(b) to eliminate the $3 market price per share requirement from the Exchange's requirements for continued approval for an underlying security. The Exchange also proposes to amend Rule 503(c) by eliminating the prohibition against listing additional series of options on an underlying security at any time when the price per share of such underlying security is less than $3. The text of the proposed rule change is as follows, with deletions in [brackets] and additions in *italics*:

Rule 503. Withdrawal of Approval of Underlying Securities:

(a) No Change.

(b) Absent exceptional circumstances, an underlying security will not be deemed to meet the Exchange's requirements for continued approval whenever any of the following occur:

(1) There are fewer than 6,300,000 shares of the underlying security held by persons other than those who are required to report their security holdings under Section 16(a) of the Exchange Act.

(2) There are fewer than 1,600 holders of the underlying security.

(3) The trading volume (in all markets in which the underlying security is traded) has been less than 1,800,000 shares in the preceding twelve (12) months.

(4) [The market price per share of the underlying security closed below $3 on the previous trading day as measured by the closing price reported by the primary market in which the underlying security is traded.] *Reserved.*

(5) The underlying security ceases to be an ''NMS stock'' as defined in Rule 600 of Regulation NMS under the Exchange Act.

(6) If an underlying security is approved for options listing and trading under the provisions of Rule 502(c), the trading volume [and price history] of the Original Security (as therein defined) prior to but not after the commencement of trading in the Restructure Security (as therein defined), including ''when-issued'' trading, may be taken into account in determining whether the trading volume [and market price] requirement[s] of (3) [and (4)] of this paragraph (b) [are] *is* satisfied.

(c) [In connection with paragraph (b)(4) of this Rule, the Exchange shall not open for trading any additional series of options contracts of the class covering an underlying security at any time (including on a next-day, expiration or intra-day basis) when the market price per share of such underlying security closed less than $3 on the last trading day preceding the day on which such series are added, as measured by the closing price reported by the primary market in which the underlying security trades. In addition to closing at or above $3 on the last trading day preceding the day series are added, the Exchange shall not open for trading any additional series of options contracts on an intra-day basis unless the last reported trade in the primary market in which the underlying security trades is at least $3 at the time the Exchange determines to add the series. Notwithstanding the above, the Exchange may add a series if the additional series is traded on at least one other registered national securities exchange and, at the time the additional series was listed by such other registered national securities exchange, it met the $3 market price requirement.] *Reserved.*

(d)–(k) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to eliminate the $3 market price per share requirement from the Exchange's requirements for continued

approval for an underlying security from Rule 503(b)(4). This proposed rule change also amends Rule 503(c) by eliminating the prohibition against listing additional series or options on an underlying security at any time when the price per share of such underlying security is less than $3. The Exchange also proposes to make technical changes throughout Rule 503 to eliminate references to paragraph (4) of Rule 503.

ISE's rules require that the market price for a security be at least $3 on the previous trading day for the continued listing of options on that underlying security. If the price of an underlying security falls below $3, the Exchange can continue to trade then-listed series on that underlying security, but is unable to list new series of options. The Exchange believes that the $3 market price per share requirement is no longer necessary or appropriate, and that only those underlying securities meeting the remaining continued listing criteria set forth in Rule 503 will be eligible for continued listing and the listing of additional options series. The Exchange believes that the current $3 market price per share requirement could have a negative effect on investors. For example, in the current volatile market environment in which the market price for a large number of securities has fallen below $3, the Exchange is currently unable to list new series on underlying securities trading below $3. If there is market demand for series below $3, the Exchange would be unable to accommodate such requests and investors would be unable to hedge their positions with options series with strikes below $3.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism for a free and open market and a national market system, and in general, to protect investors and the public interest. In particular, the proposed rule change will permit the Exchange to make options on underlying securities available even if the price of the underlying security is less than $3 thus providing investors additional opportunities to hedge their positions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not 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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [4] and Rule 19b–4(f)(6) thereunder.[5]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [6] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6) [7] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. ISE requests that the Commission waive the 30-day operative delay. The Commission notes that this proposed rule change is substantially identical to a proposed rule change that was approved by the Commission after an opportunity for public comment,[8] and does not raise any new substantive issues. The Exchange believes that waiving the 30-day operative delay will allow the Exchange to respond promptly to demand by market participants to list the options series that CBOE is expected to list upon receiving Commission approval of CBOE's proposed rule change. For these reasons, the Commission believes that waiving the 30-day operative delay [9] is consistent with the protection of investors and the public interest and designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2009–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2009–05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. ISE has satisfied this requirement.

[6] 17 CFR 240.19b–4(f)(6).

[7] 17 CFR 240.19b–4(f)(6).

[8] ISE's proposed rule change is substantially identical to a proposed rule change by the Chicago Board Options Exchange (''CBOE'') recently approved by the Commission. *See* Securities Exchange Act Release No. 59336 (February 2, 2009) (SR–CBOE–2008–127).

[9] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–ISE–2009–05 and should be submitted on or before March 3, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–2655 Filed 2–9–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59322; File No. SR–Phlx–2009–03]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Phlx Rule 1092, Obvious Errors and Catastrophic Errors

January 30, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 27, 2009, NASDAQ OMX PHLX, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. Phlx has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rule 1092, Obvious Errors and Catastrophic Errors, to clarify when an options trade can be nullified in a ''no bid'' option.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to clarify how the obvious error rule operates where an options is priced ''no bid.'' Currently, under the obvious error rule, the trade in question must result from an execution price where that series was quoted no bid and at least one strike price below (for calls) or above (for puts) in the same class was also quoted no bid at the time of the erroneous execution (in which case the trade shall be nullified). The Exchange proposes to amend Rule 1092(c)(ii)(E) to state that: (i) For 5 seconds prior to the execution the series must have remained no bid; (ii) the quote in question that results in the erroneous trade is not considered; and (iii) bids and offers of the parties to the subject trade that are in any of the series in the same options class are not be considered. Accordingly, the new rule makes clear, similar to the rules of other exchanges, what is taken into consideration when dealing with a potential obvious error in no bid options.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[4] in general, and furthers the objectives of Section 6(b)(5) of the Act[5] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by clarifying the situations where relief from an error may be sought.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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.

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[8] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)[9] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. Phlx requests that the Commission waive the 30-day operative delay to immediately offer market participants on Phlx the same potential for relief that is available at other options exchanges for errors involving options series quoted no bid. The Exchange argued that the proposed changes should serve to clarify the situation where relief from such errors may be sought. The Commission believes that waiving the 30-day

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. Phlx has satisfied this requirement.

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6).

operative delay[10] is consistent with the protection of investors and the public interest. Given that the Exchange's proposed rule change is substantially similar to the rules of other exchanges previously approved by the Commission,[11] the proposal does not appear to present any novel regulatory issues. Therefore, the Commission designates the proposal operative upon filing.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2009–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2009–03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–Phlx–2009–03 and should be submitted on or before March 3, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–2698 Filed 2–9–09; 8:45 am]

BILLING CODE 8011–01–P

[10] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] *See* Nasdaq Options Market Rules, Chapter V, Section 6(b)(ii) and Chicago Board Options Exchange, Incorporated Rule 6.25(a)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59346; File No. SR–Phlx–2009–07]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. To Eliminate the $3 Price Requirement for Continued Approval for an Underlying Security and Listing Additional Series of Options

February 3, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 2, 2009, NASDAQ OMX PHLX, Inc. (''Phlx'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. Phlx has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rule 1010, Withdrawal of Approval of Underlying Securities or Options, to eliminate the $3 market price per share requirement for continued approval for an underlying security. The Exchange also proposes to amend Rule 1010 by eliminating the prohibition against listing additional series of options on an underlying security at any time when the price per share of such underlying security is less than $3.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to eliminate the $3 market price per share requirement from the Exchange's requirements for continued approval for an underlying security from Phlx Rule 1010. This proposed rule change also amends Rule 1010 by eliminating the prohibition against listing additional series or options on an underlying security at any time when the price per share of such underlying security is less than $3.

Phlx's rules require that the market price for a security be at least $3 on the previous trading day for the continued listing of options on that underlying security. If the price of an underlying security falls below $3, the Exchange can continue to trade then-listed series on that underlying security, but is unable to list new series of options. The Exchange believes that the current $3 market price per share requirement could have a negative effect on investors. For example, in the current volatile market environment in which the market price for a large number of securities has fallen below $3, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

Exchange is currently unable to list new series on underlying securities trading below $3. If there is market demand for series below $3, the Exchange would be unable to accommodate such requests and investors would be unable to hedge their positions with options series with strikes below $3.

The Exchange believes that the $3 market price per share requirement is no longer necessary or appropriate, and therefore proposes that underlying securities meeting the remaining continued listing criteria set forth in Phlx Rule 1010 will be eligible for continued listing and the listing of additional options series.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [4] in general, and furthers the objectives of Section 6(b)(5) of the Act [5] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. In particular, the proposed rule change will permit the Exchange to make options on underlying securities available even if the price of the underlying security is less than $3 thus providing investors additional opportunities to hedge their positions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [6] and Rule 19b–4(f)(6) thereunder.[7]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [8] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6) [9] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. Phlx requests that the Commission waive the 30-day operative delay. The Commission notes that this proposed rule change is substantially identical to a proposed rule change that was approved by the Commission after an opportunity for public comment,[10] and does not raise any new substantive issues. The Exchange believes that waiving the 30-day operative delay would enable it to not be at a competitive disadvantage in respect of other exchanges. For these reasons, the Commission believes that waiving the 30-day operative delay [11] is consistent with the protection of investors and the public interest and designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2009–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2009–07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–Phlx–2009–07 and should be submitted on or before March 3, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–2699 Filed 2–9–09; 8:45 am]

BILLING CODE 8011–01–P

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. Phlx has satisfied this requirement.

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6).

[10] Phlx's proposed rule change is substantially identical to a proposed rule change by the Chicago Board Options Exchange (''CBOE'') recently approved by the Commission. *See* Securities Exchange Act Release No. 59336 (February 2, 2009) (SR–CBOE–2008–127).

[11] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59354; File No. SR–NYSE–2008–101]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change To Establish the Risk Management Gateway Service

February 3, 2009.

I. Introduction

On December 12, 2008, New York Stock Exchange LLC (''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish the Risk Management Gateway (''RMG'') service. The proposed rule change was published for comment in the **Federal Register** on December 31, 2008.[3] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to offer, through its wholly-owned subsidiary NYSE Euronext Advanced Trading Solutions, Inc., the RMG service to NYSE members and member organizations pursuant to voluntary, contractual arrangements.[4] NYSE Transact Tools, Inc, a division of the NYSE Euronext Advanced Trading Solutions Group (''NYXATS''), owns RMG.[5] NYSE Rule 123B.30 permits NYSE members and member organizations (a ''Sponsoring Member Organization'') to provide sponsored access to non-member firms or customers (''Sponsored Participants'') to Exchange trading systems. Pursuant to this proposal, the Exchange would offer RMG to facilitate a Sponsoring Member Organization's ability to monitor and supervise the trading activity of its Sponsored Participants. RMG is a risk filter that verifies orders entered by Sponsored Participants prior to the receipt of the order by the Exchange's trading systems. Specifically, RMG verifies whether a Sponsored Participant's order complies with order criteria established by the Sponsoring Member Organization for the Sponsored Participant, including, amongst other things, criteria related to order size (per order or daily quantity limits), credit limits (per order or daily value), specific symbols or end users. If the order is consistent with the parameters set by the Sponsoring Member Organization, after RMG's verification, the order would be permitted to continue along its path to the Exchange's trading systems. However, if the order did not meet the specified parameters, RMG would return the order to the Sponsored Participant.

RMG would only interact with a Sponsored Participant's order prior to the order's receipt by the Exchange's trading system. In addition, RMG would only return an order to the Sponsored Participant if the order did not meet the criteria set by the Sponsoring Member Organization. RMG would not provide order execution or trade reporting capabilities, but RMG would maintain records of all messages related to Sponsored Participants' transactions and provide the applicable Sponsoring Member Organization copies of those records.

The Sponsoring Member Organization, and not RMG, will have full responsibility for ensuring that Sponsored Participants' sponsored access to the Exchange complies with the Exchange's sponsored access rules. The use of the RMG by a Member Organization does not automatically constitute compliance with Exchange rules.

The Exchange proposes to make RMG available to its members and member organizations pursuant to contractual arrangements. The Exchange states that it believes that RMG will offer its members and member organizations another option in the efficient risk management of its Sponsored Participant's access to the NYSE.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the Exchange's proposal to establish its RMG service is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[7] which requires that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Commission believes that RMG should be a useful risk management tool for NYSE member firms that provide sponsored access to the Exchange.

For the foregoing reasons, the Commission believes that the proposal to establish the RMG service is consistent with the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NYSE–2008–101) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–2700 Filed 2–9–09; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59145 (December 22, 2008), 73 FR 80492.

[4] A similar service has been approved for NYSE Alternext. *See* Securities Exchange Act Release No. 59353 (February 3, 2009) (SR–NYSEAlternext-2008–12).

[5] NYXATS will host the RMG software on its infrastructure. After passing through the RMG software, each order will enter the NYSE Common Customer Gateway for connectivity to the Exchange's matching engine. According to the Exchange, in the future, NYXATS may integrate RMG into the NYSE CCG for more direct access to the Exchange's matching engine.

[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59348; File No. SR–NYSEALTR–2009–08]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Alternext US, LLC Amending Rule 916 To Eliminate the $3 Market Price Per Share Requirement

February 3, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 2, 2009, NYSE Alternext US, LLC (''NYSE Amex'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. NYSE Amex has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

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 Rule 916, Withdrawal of Approval of Underlying Securities, to eliminate the $3 market price per share requirement from the Exchange's requirements for continued approval for an underlying security and eliminate the prohibition against listing additional series of options on an underlying security at any time when the price per share of such underlying security is less than $3. Changes to the rule text are shown in the attached Exhibit 5. Changes to the rule text are shown in the attached Exhibit 5.[4] A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to eliminate the $3 market price per share requirement from the Exchange's requirements for continued approval for an underlying security from Rule 916. In addition, the rule filing would further amend Rule 916 by eliminating the prohibition against listing additional series of options on an underlying security at any time when the price per share of such underlying security is less than $3.

The Exchange believes that the $3 market price per share requirement is no longer necessary or appropriate, and states that only those underlying securities meeting the remaining maintenance listing criteria set forth in Rule 5.4 will be eligible for continued listing and the listing of additional option series. The Exchange believes that the current $3 market price per share requirement could have a negative effect on investors. For example, in the current volatile market environment, the Exchange is currently unable to list new series on underlying securities trading below $3. If there is market demand for series while the underlying is below $3, the Exchange would be unable to accommodate such requests and investors would be unable to hedge their positions with new options series.

As of January 2, 2009, the Exchange had 161 underlying issues that closed below $3 per share, and an additional 114 that closed between $3 and $5 per share, out of a total of 1646 underlying classes.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest, as it provides for the continued listing of options overlying securities that meet all requirements except for share price. By continuing the listing, investors will be able to continue managing risk in these securities.

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 either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[5] and Rule 19b–4(f)(6) thereunder.[6]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[7] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)[8] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE Amex requests that the Commission waive the 30-day operative delay. The Commission notes that this proposed rule change is substantially identical to a proposed rule change that was approved by the Commission after an opportunity for public comment,[9] and does not raise any new substantive issues. The Exchange requests the waiver of the 30-day operative delay so that the proposed rule change may become effective and operative on or near the date that the CBOE proposal is operative. For these reasons, the Commission believes that waiving the 30-day operative delay[10] is consistent with the protection of investors and the public interest and designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[4] The Commission notes that while provided in Exhibit 5 to the filing, the text of the proposed rule change is not attached to this notice but is available at the Exchange, the Commission's Public Reference Room, and at *http://www.nyse.com.*

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. NYSE Amex has satisfied this requirement.

[7] 17 CFR 240.19b–4(f)(6).

[8] 17 CFR 240.19b–4(f)(6).

[9] NYSE Amex's proposed rule change is substantially identical to a proposed rule change by the Chicago Board Options Exchange (''CBOE'') recently approved by the Commission. *See* Securities Exchange Act Release No. 59336 (February 2, 2009) (SR–CBOE–2008–127).

[10] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEALTR–2009–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEALTR–2009–08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEALTR–2009–08 and should be submitted on or before March 3, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–2656 Filed 2–9–09; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11640]

Washington Disaster #WA–00020 Declaration of Economic Injury

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Washington, dated 01/30/2009.

Incident: December 2008 Snowstorms.

Incident Period: 12/12/2008 through 01/05/2009.

EFFECTIVE DATE: 01/30/2009.

EIDL Loan Application Deadline Date: 10/30/2009.

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 EIDL declaration, applications for economic injury 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:

Clark, Cowlitz, Garfield, Grays Harbor, Island, Jefferson, King, Kitsap, Kittitas, Klickitat, Lewis, Okanogan, Pierce, San Juan, Skagit, Snohomish, Spokane, Stevens, Thurston, Walla Walla, Whitman.

Contiguous Counties:

Washington: Adams, Asotin, Benton, Chelan, Clallam, Columbia, Douglas, Ferry, Franklin, Grant, Lincoln, Mason, Pacific, Pend Oreille, Skamania, Wahkiakum, Whatcom, Yakima.

Idaho: Benewah, Bonner, Kootenai, Latah, Nez Perce.

Oregon: Columbia, Gilliam, Hood River, Morrow, Multnomah, Sherman, Umatilla, Wallowa, Wasco.

The Interest Rate is: 4.000.

The number assigned to this disaster for economic injury is 116400.

The States which received an EIDL Declaration # are Washington, Idaho, Oregon.

(Catalog of Federal Domestic Assistance Number 59002)

Dated: January 30, 2009.

Darryl K. Hairston,

Acting Administrator.

[FR Doc. E9–2673 Filed 2–9–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11641 and #11642]

Washington Disaster #WA–00019

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Washington (FEMA–1817–DR), dated 01/30/2009.

Incident: Severe Winter Storm, Landslides, Mudslides, and Flooding.

Incident Period: 01/06/2009 through 01/16/2009.

EFFECTIVE DATE: 01/30/2009.

Physical Loan Application Deadline Date: 03/31/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 10/30/2009.

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 President's major disaster declaration on 01/30/2009, 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 (Physical Damage and Economic Injury Loans):

King, Lewis, Mason, Pacific, Pierce, Snohomish, Thurston, Wahkiakum.

Contiguous Counties (Economic Injury Loans Only):

Washington: Chelan, Cowlitz, Grays Harbor, Island, Jefferson, Kitsap, Kittitas, Skagit, Skamania, Yakima.

Oregon: Clatsop, Columbia.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.375
Homeowners Without Credit Available Elsewhere	2.687

	Percent
Businesses With Credit Available Elsewhere	7.750
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	4.500
Businesses And Non-Profit Organizations Without Credit Available Elsewhere	4.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11641B and for economic injury is 116420.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E9–2674 Filed 2–9–09; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 6521]

60-Day Notice of Proposed Information Collection: DS–260, Electronic Application for Immigrant Visa and Alien Registration, OMB Control Number 1405–XXXX

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Electronic Application for Immigrant Visa and Alien Registration.
- *OMB Control Number:* None.
- *Type of Request:* New Collection.
- *Originating Office:* Department of State, Bureau of Consular Affairs, Visa Services (CA/VO).
- *Form Number:* DS–260.
- *Respondents:* Aliens applying for an immigrant visa.
- *Estimated Number of Respondents:* 700,000.
- *Estimated Number of Responses:* 700,000.
- *Average Hours per Response:* 120 minutes (2 hours).
- *Total Estimated Burden:* 1,400,000 hours per year.
- *Frequency:* Once per respondent.
- *Obligation To Respond:* Required To Obtain or Retain a Benefit.

DATE(S): The Department will accept comments from the public up to 60 days from April 13, 2009.

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

- *Web:* Persons with access to the internet may also view and comment on this notice by going to the regulations.gov Web site at *http:www.regulations.gov/index/cfm.*
- *Mail (paper, disk, or CD–ROM submissions):* Chief, Legislation and Regulations Division, Visa Services—DS–160, 2401 E. Street, NW., Washington DC 20520–30106.

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 Andrea Lage, Visa Services, U.S. Department of State, 2401 E. Street, NW., L–603, Washington, DC 20522, who may be reached at (202) 663–1399.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of 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, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection:

Form DS–260 will be used to elicit information to determine the eligibility of aliens applying for immigrant visas.

Methodology:

The DS–260 will be submitted electronically to the Department via the internet. The applicant will be instructed to print a confirmation page containing a 2–D bar code record locator, which will be scanned at the time of processing. Applicants who submit the electronic application will no longer submit paper-based applications to the Department.

Dated: January 22, 2009.

David T. Donahue,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. E9–2776 Filed 2–9–09; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 6520]

60-Day Notice of Proposed Information Collection: DS–261, Electronic Choice of Address and Agent, OMB Control Number 1405–XXXX

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Electronic Choice of Address and Agent.
- *OMB Control Number:* None.
- *Type of Request:* New Collection.
- *Originating Office:* Department of State, Bureau of Consular Affairs, Visa Services (CA/VO).
- *Form Number:* DS–261.
- *Respondents:* Alien beneficiaries notifying Department of address or agent appointment.
- *Estimated Number of Respondents:* 700,000.
- *Estimated Number of Responses:* 700,000.
- *Average Hours per Response:* 10 minutes.
- *Total Estimated Burden:* 70,000 per year.
- *Frequency:* Once per respondent.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

DATES: The Department will accept comments from the public up to 60 days from February 10, 2009.

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

- *Web:* Persons with access to the internet may also view and comment on this notice by going to the regulations.gov Web site at *http://www.regulations.gov/index/cfm.*
- *Mail (paper, disk, or CD-ROM submissions):* Chief, Legislation and Regulations Division, Visa Services—DS–160, 2401 E Street, NW., Washington DC 20520–30106.

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 Andrea Lage, Visa Services, U.S. Department of State, 2401 E Street, NW., L–603, Washington, DC 20522, who may be reached at (202) 663–1399.

SUPPLEMENTARY INFORMATION:

We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary for the proper performance of 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, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection:

The DS–261 allows the beneficiary of an approved and current immigrant visa petition to provide the Department with his current address, which will be used for communications with the beneficiary. The DS–261 also allows the beneficiary to appoint an agent to receive mailings from the National Visa Center (NVC) and assist in the filing of various application forms and/or paying the required fees. The beneficiary is not required to appoint an agent but must provide current contact information. All cases will be held at NVC until the DS–261 is electronically submitted to the Department. If the form is not electronically submitted to the Department within one year, NVC will begin the case termination process.

Methodology:

The DS–261 will be submitted electronically to the Department via the internet. Applicants who submit the electronic form will no longer submit paper-based applications to the Department.

Dated: January 22, 2009.

David T. Donahue,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. E9–2777 Filed 2–9–09; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 6519]

Notice of Intent To Prepare an Environmental Impact Statement and To Conduct Scoping Meetings and Notice of Floodplain and Wetland Involvement and To Initiate Consultation Under Section 106 of the National Historic Preservation Act for the Proposed Transcanada Keystone XL Pipeline; Correction

AGENCY: Department of State.

ACTION: Notice of intent; correction.

SUMMARY: The United States Department of State published a notice of intent in the **Federal Register** on January 28, 2009, (74 FR 5019) announcing its intent to prepare an environmental impact statement (EIS) for the proposed Keystone international pipeline project (the Keystone XL Project), which is designed to transport crude oil production from the Western Canadian Sedimentary Basin to existing markets in the Texas Gulf Coast area. The document contained the incorrect time for the public scoping meeting to be held in Faith, South Dakota on February 26, 2009.

Correction: In the **Federal Register** of January 28, 2009, in FR Doc. E9–1828, on page 5020, the following corrections should be made for the announced time of public meeting to be held in Faith, South Dakota:

Meeting date: Thursday, February 26, 12–2 p.m.

Location: Faith, SD.

Venue: Community Legion Hall, Main Street, Faith, SD 57626.

FOR FURTHER INFORMATION CONTACT: Elizabeth Orlando, OES/ENV Room 2657, U.S. Department of State, Washington, DC 20520, telephone (202) 647–4284 or by fax at (202) 647–5947. A downloadable from a Web site that is being established for this purpose: *www.keystonepipeline-XL.state.gov.*

Issued in Washington, DC, on February 10, 2009.

Stephen J. Gallogly,

Director, Office of International Energy and Commodities Policy, Department of State.

[FR Doc. E9–2768 Filed 2–9–09; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 6518]

Notice of Receipt of Application for a Presidential Permit To Operate and Maintain Pipeline Facilities on the Border of the United States

Notice is hereby given that the Department of State has received an application from Dome Petroleum Corp., a North Dakota corporation (''Dome Petroleum''), with its principal address at 4101 Winfield Road, Warrenville, Illinois 60555, and Kinder Morgan Cochin, LLC, (''Kinder Morgan''), a Delaware limited liability company with its principal office at 500 Dallas Street Suite 1000, Houston, TX 77002, for Presidential permits, pursuant to Executive Order 13337 of April 30, 2004, to operate and maintain two cross-border pipelines they recently acquired from Dome Pipeline Corporation (''Dome Pipeline'') to transport petroleum, petroleum products, and other liquid hydrocarbons between the United States and Canada, crossing the international boundary line underneath the Detroit River between Detroit, Michigan and Windsor, Canada.

A Permit for these pipelines was originally issued to American Brine, Inc. on October 23, 1957. The permit granted American Brine the authority to construct, connect, operate, and maintain two pipelines (collectively, the ''Pipelines'') to carry liquid brine between the United States and Canada, crossing underneath the Detroit River between Detroit, Michigan and Windsor, Canada. This permit was superseded by a new permit issued to American Brine on March 13, 1969. Following the sale of these pipelines to Dome Pipeline in 1972, this superseding permit was amended to reflect Dome Pipeline as the new owner, and to permit the pipelines to transport petroleum, petroleum products and other liquid hydrocarbons.

On March 15, 2007 Dome Petroleum sold Dome Pipeline, its former subsidiary, to Kinder Morgan Energy Partners LP, a master limited partnership with its principal office in Houston, Texas. Following the sale, Dome Pipeline was merged into Kinder Morgan Cochin (''Kinder Morgan''), a Delaware limited liability company and subsidiary of Kinder Morgan Energy Partners with its principal office in Houston, Texas.

Under the terms of the all-stock sale, ownership of the Pipelines was to be transferred to Dome Petroleum and Kinder Morgan. Dome Petroleum shall be the sole owner of the pipeline common referred to as the Eastern Delivery System South Pipeline System

(''EDS Pipeline''), located to the east-southeast of the other pipeline. Kinder Morgan shall be the sole owner of the pipeline commonly referred to as the Cochin Pipeline, located to the west-northwest of the EDS Pipeline. Each party shall be solely responsible for the maintenance of their pipeline and any liability associated with that pipeline. All easements, licenses, leases and permits associated with the Pipelines, except for any Presidential permits issued by the Department, and all real property formerly owned in fee by Dome Pipeline, shall be owned jointly by Dome Petroleum and Kinder Morgan as tenants in common. If approved by the Department, separate individual Presidential permits will be issued to Dome Petroleum and Kinder Morgan for their respective pipelines.

According to the application, Dome Petroleum and Kinder Morgan have, in written correspondence to the Department of State, committed to abide by the relevant terms and conditions of the permit previously issued by the Department to Dome Pipeline. Further, Dome Petroleum and Kinder Morgan have indicated in that correspondence that there have been no substantial changes in the operations of the EDS and Cochin pipelines from those originally authorized by the Department and further stated that the future operation of the pipelines will remain essentially unchanged from that previously permitted. Therefore, in accordance with 22 CFR 161.7(b)(3) and the Department's Procedures for Issuance of a Presidential Permit Where There Has Been a Transfer of the Underlying Facility, Bridge or Border Crossing for Land Transportation (70 FR 30990, May 31, 2005), the Department of State does not intend to conduct an environmental review of the application unless information is brought to its attention that the transfer potentially would have a significant impact on the quality of the human environment.

As required by E.O. 13337, the Department of State is circulating this application to concerned federal agencies for comment.

DATES: Interested parties are invited to submit, in duplicate, comments relative to this proposal on or before March 12, 2009 to J. Brian Duggan, Office of International Energy and Commodities Policy, Department of State, Washington, DC 20520. The application and related documents that are part of the record to be considered by the Department of State in connection with this application are available for inspection in the Office of International Energy and Commodities Policy during normal business hours.

FOR FURTHER INFORMATION CONTACT: J. Brian Duggan, Office of International Energy and Commodity Policy (EB/ESC/IEC/EPC), Department of State, Washington, DC 20520; or by telephone at (202) 647–1291; or by e-mail at *DugganJB@state.gov.*

Dated: January 30, 2009.

Stephen J. Gallogly,

Director, Office of International Energy and Commodity Policy, Department of State.

[FR Doc. E9–2769 Filed 2–9–09; 8:45 am]

BILLING CODE 4710–07–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 09–01).

TIME AND DATE: 9 a.m. (EST), February 12, 2009, TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

STATUS: Open.

Agenda

Old Business

Approval of minutes of December 11, 2008, Board Meeting.

New Business

1. Chairman's Report
2. Kingston Report
3. President's Report
4. Report of the Finance, Strategy, Rates, and Administration Committee
   A. Retention of Net Power Proceeds
   B. Modification of Financial Trading Program
   C. Compensation
5. Report of the Operations, Environment, and Safety Committee
   A. AREVA Settlement
   B. Contracts for greater than 100 MW of Firm Power
6. Report of the Community Relations and Energy Efficiency Committee
   A. Honeycomb Campground New Lease
7. Report of the Audit, Governance, and Ethics Committee
   A. Delegation of authority to resolve claims
   B. Selection of Board Chairman
8. Information Item
   A. Authorization to Resolve Claims

For more information: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: February 5, 2009.

Maureen H. Dunn,

General Counsel and Secretary.

[FR Doc. E9–2883 Filed 2–6–09; 12:00 pm]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Indiana

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and Other Federal Agencies.

SUMMARY: This notice announces action taken by the FHWA and Other Federal Agencies that are final within the meaning of 23 U.S.C. § 139(l)(1). This action is the Record of Decision issued by FHWA for the U.S. 31 Hamilton County Project in the State of Indiana.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. § 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before August 10, 2009. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence Heil, P.E., Air Quality/Environmental Specialist, Federal Highway Administration, Indiana Division, 575 North Pennsylvania Street, Room 254, 46204; *telephone:* (317) 226–7480; *e-mail: Larry.Heil@fhwa.dot.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA has taken final agency action subject to 23 U.S.C. 139(l)(1) by approving the Record of Decision for the following highway project in the State of Indiana: U.S. 31 Hamilton County Project, in Marion and Hamilton Counties. The Selected Alternative provides for an upgrade of existing U.S. 31 to an access-controlled, six-lane freeway between I–465 North Leg and State Road (SR) 38, with the southern terminus of the project extending to 96th Street (approximately 13.1 miles long). The proposed freeway will be substantially within the existing U.S. 31 Corridor, with interchanges and

grade separations at key cross-streets. The actions by FHWA are described in the Final Environmental Impact Statement (FEIS) for the project, approved on December 1, 2008 and in the FHWA Record of Decision (ROD) issued on January 30, 2009, and in other documents in the project record. The FEIS, ROD, and other documents in the FHWA project file are available by contacting the FHWA at the addresses provided above. The FEIS and ROD can be viewed and downloaded from the project Web site at: *http://us31hamiltoncounty.in.gov/* or viewed at public libraries in the project area.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act, 42 U.S.C. 7401–7671(q).

3. *Land:* Land and Water Conservation Fund (LWCF), 16 U.S.C. 4601–4604; Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers), [23 U.S.C. 319]; National Forest Management Act (NFMA) of 1976 [16 U.S.C. 1600–1614].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources:* Safe Drinking Water Act (SDWA), 42 U.S.C. 300(f)–300(j)(6); Rivers and Harbors Act of 1899, 33 U.S.C. 401–406; Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287; Emergency Wetlands Resources Act, 16 U.S.C. 3921, 3931; TEA–21 Wetlands Mitigation, 23 U.S.C. 103(b)(6)(m), 133(b)(11); Flood Disaster Protection Act, 42 U.S.C. 4001–4128.

8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1)

Issued on: February 2, 2009.

Robert F. Tally Jr.,

Division Administrator, Indianapolis, Indiana.

[FR Doc. E9–2646 Filed 2–9–09; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2000–7363; FMCSA–2002–13411]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 11 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective March 4, 2009. Comments must be received on or before March 12, 2009.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2000–7363; FMCSA–2002–13411, using any of the following methods.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time 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. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our 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, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://DocketInfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202)-366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 11 individuals who have requested a renewal of their exemption in accordance with FMCSA procedures. FMCSA has evaluated these 11 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are: Howard K. Bradley, Kirk G. Braegger, Ambrosio E. Calles, Jose G. Cruz, Harry P. Henning, Christopher L. Humphries, Ralph J. Miles, Thomas C. Rylee, Stanley B. Salkowski, III, Michael G. Thomas, William H. Twardus.

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) 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 (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the 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.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 11 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (65 FR 45817; 65 FR 77066; 67 FR 71610; 70 FR 7545; 72 FR 7812; 67 FR 76439; 68 FR 10298). Each of these 11 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by *March 12, 2009.*

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 11 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: February 5, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–2753 Filed 2–9–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–98–3637; FMCSA–00–7165; FMCSA–00–7363; FMCSA–00–8203; FMCSA–02–12294; FMCSA–06–26066]

Qualification of Drivers; Exemption Renewals; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA previously announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 11 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has reviewed the comments submitted in response to the previous announcement and concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT:

Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 400 Seventh Street, SW., Room 8301, 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.*

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The comment period ended on January 21, 2009.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 11 renewal applications, FMCSA renews the Federal vision exemptions for David S. Brumfield, Robert R. Buis, George J. Ghigliotty, Charles R. Kuderer, William S. LaMar, Sr., Thomas D. Laws, Clifford C. Priesmeyer, Gerald R. Rietmann, Arthur A. Sappington, William H. Smith, and Edward C. Williams.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) the person fails to comply with the terms and conditions of the 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 and 31315.

Issued on: February 5, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–2755 Filed 2–9–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–00–7918; FMCSA–00–8398; FMCSA–06–26066]

Qualification of Drivers; Exemption Renewals; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA previously announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 44 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has reviewed the comments submitted in response to the previous announcement and concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 400 Seventh Street, SW., Room 8301, 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.*

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The comment period ended on January 21, 2009.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 44 renewal applications, FMCSA renews the Federal vision exemptions for Michael L. Allen, Felipe Bayron, Dennis M. Boggs, Roy L. Brown, David L. Cattoor, Roger E. Clark, Gary C. Cone, Cesar A. Cruz, Arthur Dolengewicz, Wayne A. Elkins, II, Barry J. Ferdinando, Leon C. Flynn, David G. Guldan, Larry W. Hancock, Guadalupe J. Hernandez, James L. Houser, Richard G. Isenhart, Ricky G. Jacks, Joe E. Jones, Damir Kocijan, Robert T. Lantry, John W. Laskey, Kenneth Liuzza, Samson B. Margison, Michael W. McClain, Terrence L. McKinney, Ellis T. McKneely, Dennis N. McQuiston, Garth R. Mero, Ronald C. Morris, Charles R. Patten, Kenneth E. Parrott, Raymond E. Royer, Randal C. Schmude, Steven M. Scholfield, Dennis J. Smith, David C. Stitt, Kevin L. Truxell, Earl M. Vaughan, Bruce A. Walker, Harold R. Wallace, Lee A. Wiltjer, John H. Wisner, and Theron L. Wood.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the 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 and 31315.

Issued on: February 3, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–2756 Filed 2–9–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–04–19477]

Qualification of Drivers; Exemption Renewals; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA previously announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 13 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has reviewed the comments submitted in response to the previous announcement and concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT:

Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 400 Seventh Street, SW., Room 8301, 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.*

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The comment period ended on January 15, 2009.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 13 renewal applications, FMCSA renews the Federal vision exemptions for Johnny Becerra, Ross E. Burroughs, Lester W. Carter, Christopher L. DePuy, John B. Ethridge, Larry J. Folkerts, Paul W. Hunter, Ray P. Lenz, Michael B. McClure, Francis M. McMullin, Norman Mullins, Harold W. Mumford and David J. Triplett.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) the person fails to comply with the terms and conditions of the 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 and 31315.

Issued on: February 3, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–2757 Filed 2–9–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–02–12844; FMCSA–04–19477; FMCSA–06–26066]

Qualification of Drivers; Exemption Renewals; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA previously announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 13 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has reviewed the comments submitted in response to the previous announcement and concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT:

Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 400 Seventh Street, SW., Room 8301, 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.*

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The comment period ended on January 15, 2009.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 13 renewal applications, FMCSA renews the Federal vision exemptions for Howard F. Breitkreutz, John E. Evenson, Steven C. Humke, Neil W. Jennings, Craig M. Landry, Joe L. Meredith, Jr., Richard W. Nordhausen, Jr., Tony E. Parks, Andrew H. Rusk, Jesse J. Sutton, Kenneth E. Vigue, Jr., David G. Williams, and Richard A. Winslow.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the 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 and 31315.

Issued on: February 3, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–2758 Filed 2–9–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Union Pacific Railroad Company

[Docket Number FRA–2008–0166]

The Union Pacific Railroad Company (UP) seeks a waiver of compliance from certain provisions of 49 CFR Part 218, *Railroad Operating Practices*. Specifically, UP is requesting a waiver of Blue Signal Requirements as prescribed in 49 CFR 218.25 *Workers on a main track*, in Kansas City, KS, and Kansas City, MO. These tracks are in the middle of the Kansas City facilities and are used for functions normally performed on yard tracks. Trains passing through the Kansas City

Terminal stop for fuel, locomotive inspection, or adding or removing power from the train. To perform this work on the main track, UP must provide blue signal protection under 49 CFR 218.25. This request is for the following track locations:

- Main 1 and Main 2 between Manchester and Troost (MX279–MX281).
- Main 1 and Main 2 at 18th St. between KX004 and KX006.
- Mainline at 10th St. (KX287–KX289).

UP is requesting flexibility to treat these main tracks at the Kansas City facilities as tracks other than main tracks so they can have the option of protecting its employees working on, under, or between rolling equipment in accordance with § 218.25 *Workers on a main track*, or § 218.27 *Workers on track other than main track*, or a combination of both. UP believes that the safest and most efficient method of protecting its employees in the Kansas City facilities is through the use of a combination of blue signal protection and remotely controlled switches. UP believes that this request is similar to a waiver originally granted to the SP at El Paso, TX, and renewed to UP under Docket Number FRA–2000–7669. UP states they have operated under the requirements of that waiver without any adverse effect on safety of operations and would like to have the same conditions for this request.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2008–0166) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov*.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Issued in Washington, DC, on January 30, 2009.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E9–2382 Filed 2–9–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[USCG–2007–28535]

Atlantic Sea Island Group LLC, Safe Harbor Energy Liquefied Natural Gas Deepwater Port License Application; Preparation of Environmental Impact Statement

AGENCY: Maritime Administration, DOT.

ACTION: Notice of extending the scoping comment period to March 11, 2009 and corrected project location information.

SUMMARY: By **Federal Register** notice of January 9, 2009 (74 FR 982–984) the Maritime Administration and the Coast Guard announced the intent to prepare an environmental impact statement (EIS) for the Atlantic Sea Island Group LLC, Safe Harbor Energy liquefied natural gas deepwater port license application located in Federal Waters approximately 13.5 miles south of the City of Long Beach, New York, 19 miles east of Highlands, New Jersey, and 23 miles southeast of the Ports of New York and New Jersey. The project location was incorrectly noted in the referenced **Federal Register** notice. The correct proposed location is in the area between the Ambrose-to-Nantucket and Hudson Canyon-to-Ambrose shipping lanes, located at approximately 40°23′ N and 73°36′ W, in water depth of between 60 and 70 feet covering an area known as Cholera Bank.

The EIS will be prepared with the New York State Department of Environmental Conservation (NYSDEC) as a cooperating agency in the environmental review with the Coast Guard. The EIS will meet the requirements of both the National Environmental Policy Act (NEPA) and the New York State Environmental Quality Review Act (SEQRA). In addition, the Coast Guard and the Maritime Administration will be working with appropriate state agency representatives from New Jersey to ensure potential impacts and concerns of New Jersey are addressed in the EIS.

Publication of this notice began a 30 day scoping process and requested public participation to assist in the identification and determination of the environmental issues to be addressed in the EIS with a deadline for submitting comments of February 9, 2009.

In addition to receiving comments at the public scoping meetings on January 27, 2009 and January 29, 2009, instructions were provided for submitting comments to the Department of Transportation (DOT) Docket Management Facility and to the Federal Docket Management System (FDMS). The Coast Guard and Maritime Administration have received several requests to extend the scoping comment period; therefore, upon further consideration the scoping comment period is extended to March 11, 2009.

DATES: Comments or related material must be received by March 11, 2009.

ADDRESSES: Docket submissions for USCG–2007–28535 should be addressed to: Department of Transportation, Docket Management Facility, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

The Docket Management Facility accepts hand-delivered submissions, and makes docket contents available for public inspection and copying at this address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Facility telephone number is 202–366–9329, the fax number is 202–493–2251, and the Web site for electronic submissions or for electronic access to docket contents is: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mark Prescott, U.S. Coast Guard, *telephone:* 202–372–1440, e-mail: *Mark.A.Prescott@uscg.mil;* or LT Hannah Kawamoto, U.S. Coast Guard,

telephone: 202–372–1438, *e-mail: Hannah.K.Kawamoto@uscg.mil;* or Yvette Fields, U.S. Maritime Administration, *telephone:* 202–366–0926, *e-mail: Yvette.Fields@dot.gov;* or John Ferguson, New York State Department of Environmental Conservation, *telephone:* 518–402–9167, *e-mail: jjfergus@gw.dec.state.ny.us.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, *telephone:* 202–493–0402, *e-mail: renee.wright@dot.gov.*

The FDMS also contains the notices, application and related correspondence; informational open house materials; will also contain the public meeting transcripts; and will contain the Draft and the Final EIS and all comments submitted whether at public meetings or submitted directly to the DOT Docket Management Facility or the FDMS.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard, Maritime Administration, and the NYSDEC request submittal of comments and related material on environmental issues related to the proposed deepwater port using one of the methods described below. We most particularly seek comments that identify potentially significant impacts, alternatives, or mitigation measures that should be taken into account in determining the scope of the EIS.

The Coast Guard, Maritime Administration, and the NYSDEC will consider all comments and material received during the comment period. It is not necessary to present comments more than once. Comments need not be submitted to multiple agencies; all comments received will be shared amongst the agencies.

Submissions to the DOT Docket Management Facility or FDMS should include:

- Docket number USCG–2007–28535;
- Your name and address;
- Please include reasons for making each comment or bringing information to our attention so that we may properly address your concerns.

Submit comments or material using one of the following methods:

- Electronic submission to FDMS (preferred) at *http://www.regulations.gov:* Click on ''Search for Dockets;'' Enter Docket ID 28535; view documents by clicking the PDF icon under ''Views;'' and/or follow the online instructions for submitting comments.
- Fax, mail, or hand delivery to the DOT Docket Management Facility (see **ADDRESSES**). Faxed or hand delivered submissions must be unbound, no larger than 8½ by 11 inches, and suitable for copying and electronic scanning. If you mail your submission and want to know when it reaches the Facility, include a stamped, self-addressed postcard or envelope.

Regardless of the method used for submitting comment or material, all submissions will be posted, without change, to the FMDS Web site (*http://www.regulations.gov*), and will include any personal information provided. Therefore, submitting this information makes it public. You may wish to read the Privacy and Use Notice that is available on the FDMS Web site, and the Department of Transportation Privacy Act Notice that appeared in the **Federal Register** on April 11, 2000 (65 FR 19477), see PRIVACY ACT. You may view docket submissions at the Department of Transportation Docket Management Facility or electronically on the FDMS Web site (*see* **ADDRESSES**).

Privacy Act

The electronic form of all comments received into the Federal Docket Management System can be searched by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). The DOT Privacy Act Statement can be viewed in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, pages 19477–78) or you may visit *http://www.regulations.gov.*

(Authority 49 CFR 1.66)

By order of the Maritime Administrator.

Dated: February 4, 2009.

Christine S. Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. E9–2668 Filed 2–9–09; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 290 (Sub-No. 4)]

Railroad Cost Recovery Procedures—Productivity Adjustment

AGENCY: Surface Transportation Board.

ACTION: Adoption of a Railroad Cost Recovery Procedures Productivity Adjustment.

SUMMARY: In a decision served on February 5, 2009, we proposed to adopt 1.012 (1.2% per year) as the measure of average change in railroad productivity for the 2003–2007 (5-year) averaging period. This value was a decline of 0.1 of a percentage point from the current measure of 1.3% that was developed for the 2002–2006 period. That decision stated that comments may be filed addressing any perceived data and computational errors in our calculation. It also stated that, if there were no further action taken by the Board, the proposed productivity adjustment would become effective on March 1, 2009.

DATES: The productivity adjustment is effective March 1, 2009. Comments are due by February 23, 2009.

ADDRESSES: Send comments (an original and 10 copies) referring to STB Ex Parte No. 290 (Sub-No. 4) to: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Michael Smith, (202) 245–0322. [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision, which is available on our Web site *www.stb.dot.gov.* To purchase a copy of the full decision, write to, or call the Board's Office of Public Assistance, Governmental Affairs, and Compliance; 395 E Street, SW., Washington, DC 20423–0001; phone (202) 245–0235. [Assistance for the hearing impaired is available through FIRS: 1–800–877–8339.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: February 3, 2009.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–2697 Filed 2–9–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0003]

Agency Information Collection (Application for Burial Benefits) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before March 12, 2009.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0003'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@va.gov*. Please refer to ''OMB Control No. 2900–0003.''

SUPPLEMENTARY INFORMATION:

Title: Application for Burial Benefits (Under 38 U.S.C. Chapter 23), VA Form 21–530.

OMB Control Number: 2900–0003.

Type of Review: Revision of a currently approved collection.

Abstract: Claimants complete VA Form 21–530 to apply for burial benefits, including transportation for deceased veterans. VA will use the information collected to determine the veteran's eligibility for burial benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on December 5, 2008, at pages 74231–74232.

Affected Public: Individuals or households.

Estimated Annual Burden: 110,000 hours.

Estimated Average Burden per Respondent: 22 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 300,000.

Dated: February 4, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–2703 Filed 2–9–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (VRE)]

Proposed Information Collection (Evaluation of VA's Vocational Rehabilitation and Employment (VR&E) Program) Activity; Comment Request

AGENCY: Office of Policy and Planning, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Policy and Planning, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection of information, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to satisfy the requirements detailed in Public Law 108–454, section 805. This project will collect information on awareness, demographics, health care, disability, life insurance, burial benefits, employment, education and training, and vocational rehabilitation. This project will provide information needed to evaluate the effectiveness of the VR&E program and support VA policy, planning, and quality improvement decisions.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 13, 2009.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov*; or to George Fitzelle, Office of Policy and Planning, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420 or e-mail *george.fitzelle@va.gov*. Please refer to ''OMB Control No. 2900–NEW (VRE)'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: George Fitzelle at (202) 461–5770 or FAX (202) 273–5993.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, the Office of Policy and Planning invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VA's functions, including whether the information will have practical utility; (2) the accuracy of VA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Evaluation of VA's Vocational Rehabilitation and Employment (VR&E) Program.

OMB Control Number: 2900–NEW (VRE).

Type of Review: New collection.

Abstract: The evaluation requires information that is not available in VA administrative files and therefore surveys will be conducted of program participants and non-participants and counselors who assist them. Focus groups will be conducted with dependents of program participants. In addition, interviews will be conducted with officials of state vocational rehabilitation programs to conduct an inventory of these programs that are also available to disabled veterans. This evaluation is part of an ongoing assessment of the effectiveness of programs conducted to fulfill the requirements of Public Law 103–62, the Government Performance and Results Act of 1993, and Title 38, § 527, Evaluation and Data Collection. This evaluation will provide information to support VA policy, planning, and quality improvement decisions.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 15,175 hours.

Estimated Average Burden per Respondent: 35 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 24,300.

Dated: February 4, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–2704 Filed 2–9–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (NVS)]

Proposed Information Collection (National Survey of Veterans, Active Duty Service Members, Activated National Guard and Reserve Members, Family Members and Survivors) Activity; Comment Request

AGENCY: Office of Policy and Planning, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Policy and Planning, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection of information, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to satisfy the requirements detailed in Public Law 108–454, section 805. This project will collect information on awareness, demographics, health care, disability, life insurance, burial benefits, employment, education and training, and vocational rehabilitation. This project will provide information needed to support VA policy, planning, and quality improvement decisions.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 13, 2009.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov*; or to Maribel Aponte, Office of Policy and Planning, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420 or e-mail *maribel.aponte@va.gov*. Please refer to ''OMB Control No. 2900–NEW (NSV)'' in any correspondence. During the comment period, comments may be viewed online through the Federal docket Management System (FDMS) at *http://www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte at (202) 461–5790 or FAX (202) 273–5993.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, the Office of Policy and Planning invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VA's functions, including whether the information will have practical utility; (2) the accuracy of VA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: National Survey of Veterans, Active Duty Service Members, Activated National Guard and Reserve Members, Family Members and Survivors (NSV).

OMB Control Number: 2900–NEW (NSV).

Type of Review: New collection.

Abstract: The NSV will be conducted to obtain needed information that is not available in VA administrative files. The survey will be used to help VA improve services for beneficiaries and their families. For the first time, the NSV will include active duty service members; activated National Guard and Reserves; and family members and survivors in addition to veterans. The scope of the survey will be expanded to address the requirements of Public Law 108–454, section 805, to assess awareness of veterans' benefits and services. The NSV provides VA, Congress, stakeholders, and the public more accurate descriptions and assessments of the characteristics of the veteran population to evaluate existing programs and policies, to establish baseline measures before planning and implementing new programs and policies, and to monitor progress of programs and policies and their impacts on the population. The NSV will provide information to support VA policy, planning, and quality improvement decisions.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 14,165 hours.

Estimated Average Burden per Respondent: 10.81 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 78,599.

Dated: February 2, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–2706 Filed 2–9–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0321]

Proposed Information Collection (Appointment of Veterans Service Organization or Individuals as Claimant's Representative) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine whether claimant appointed a veterans service organization or an individual to prosecute their VA claims.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 13, 2009.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov*. Please refer to ''OMB Control No. 2900–0321'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles: Appointment of Veterans Service Organization as Claimant's Representative, VA Form 21–22 and Appointment of Individual as Claimant's Representative, VA Form 21–22a.

OMB Control Number: 2900–0321.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants complete VA Forms 21–22 and 21–22a to appoint a veterans service organization or an individual to assist in the preparation, representation, and prosecution of claims for VA benefits and to authorize VA to disclose any or all records to the appointed representative.

Affected Public: Individuals or households.

Estimated Annual Burden:

a. VA Form 21–22—27,083 hours.
b. VA Form 21–22a—533 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: One time.

Estimated Number of Respondents:

a. VA Form 21–22—325,000.
b. VA Form 251–22a—6,400.

Dated: February 2, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–2708 Filed 2–9–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Prosthetics and Special Disabilities Programs Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on Prosthetics and Special Disabilities Programs will be held March 10–11, 2009, at VA Central Office, 810 Vermont Avenue, NW., Washington, DC. On March 10, the session will be held in Room 630 from 8:30 a.m. to 4:30 p.m. and on March 11, the session will be held in Room 230 from 8:30 a.m. to noon. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on VA's prosthetic programs designed to provide state-of-the-art prosthetics and the associated rehabilitation research, development, and evaluation of such technology. The Committee also provides advice to the Secretary on special disability programs which are defined as any program administered by the Secretary to serve veterans with spinal cord injury, blindness or visual impairment, loss of extremities or loss of function, deafness or hearing impairment, and other serious incapacities in terms of daily life functions.

On the morning of March 10, the Committee will be briefed by a representative from the Commission on Accreditation of Rehabilitation Facilities and the Chief Consultant for Rehabilitation Services on Audiology and Speech Pathology Programs. In the afternoon, the Committee will receive briefings from the Chief Consultant for Spinal Cord Injury and Disorders, the Chief of Prosthetics and Clinical Logistics Officer, and the Director of Blind Rehabilitation Service. On the morning of March 11, an update will be provided by the Chief of Ophthalmology Services.

No time will be allocated for receiving oral presentations from the public. However, members of the public may direct questions or submit written statements for review by the Committee in advance of the meeting to Mr. Larry N. Long, Designated Federal Officer, Veterans Health Administration, Patient Care Services, Rehabilitation Services (117D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public wishing to attend the meeting should contact Mr. Long at (202) 461–7354.

Dated: February 5, 2009.

By direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. E9–2709 Filed 2–9–09; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Tuesday,
February 10, 2009

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Reticulated Flatwoods Salamander; Designation of Critical Habitat for Frosted Flatwoods Salamander and Reticulated Flatwoods Salamander; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R4–ES–2008–0082; MO 9921050083–B2]

RIN 1018–AU85

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Reticulated Flatwoods Salamander; Designation of Critical Habitat for Frosted Flatwoods Salamander and Reticulated Flatwoods Salamander

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), finalize the listing under the Endangered Species Act of 1973, as amended (Act), of the currently threatened flatwoods salamander (*Ambystoma cingulatum*) into two distinct species: Frosted flatwoods salamander (*Ambystoma cingulatum*) and reticulated flatwoods salamander (*Ambystoma bishopi*) due to a recognized taxonomic reclassification; determine endangered status for the reticulated flatwoods salamander; retain threatened status for the frosted flatwoods salamander; and designate critical habitat for the frosted flatwoods salamander and the reticulated flatwoods salamander. In total, approximately 27,423 acres (ac) (11,100 hectares (ha)) in 35 units or subunits fall within the boundaries of the critical habitat designation; 22,970 ac (9,297 ha) of critical habitat is designated for the frosted flatwoods salamander and 4,453 ac (1,803 ha) for the reticulated flatwoods salamander. This area is a reduction of 3,205 ac (977 ha) from the proposed designation; 162 ac (66 ha) less for the frosted flatwoods salamander and 3,043 ac (928 ha) less for the reticulated flatwoods salamander. The critical habitat is located in Baker, Calhoun, Franklin, Holmes, Jackson, Jefferson, Liberty, Santa Rosa, Wakulla, Walton, and Washington Counties in Florida; Baker and Miller Counties in Georgia; and Berkeley, Charleston, and Jasper Counties in South Carolina.

DATES: This rule becomes effective on March 12, 2009.

ADDRESSES: This final rule and final economic analysis are available on the Internet at *http://www.regulations.gov.* Supporting documentation we used in preparing this final rule is available for public inspection, by appointment, during normal business hours, at U.S. Fish and Wildlife Service, Mississippi Fish and Wildlife Office, 6578 Dogwood View Parkway, Jackson, MS 39213.

FOR FURTHER INFORMATION CONTACT: Ray Aycock, Field Supervisor, U.S. Fish and Wildlife Service, Mississippi Field Office, 6578 Dogwood View Parkway, Jackson, MS 39213; *telephone:* 601–321–1122; *facsimile:* 601–965–4340. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION: This document consists of: (1) A final rule to change the listing of the currently threatened flatwoods salamander (*Ambystoma cingulatum*) to frosted flatwoods salamander (*Ambystoma cingulatum*) and reticulated flatwoods salamander (*Ambystoma bishopi*) (the frosted flatwoods salamander will continue to be listed as threatened and the reticulated flatwoods salamander is listed as endangered); and (2) final critical habitat designations for each species.

Previous Federal Actions

The flatwoods salamander was listed as threatened on April 1, 1999 (64 FR 15691). At that time, we found that designation of critical habitat for the flatwoods salamander was not prudent because such designation would not be beneficial and may increase threats to the species. On April 1, 2005, Center for Biological Diversity, Wild South, and Florida Biodiversity Project filed a lawsuit against the Secretary of the Interior alleging failure to designate critical habitat for the flatwoods salamander. In a court-approved settlement agreement, we agreed to re-evaluate the need for critical habitat for the species and, if prudent, submit a proposed designation of critical habitat to the **Federal Register** by January 30, 2007, and submit a final critical habitat rule for publication in the **Federal Register** by January 30, 2008. We published a proposed rule to designate critical habitat for the flatwoods salamander in the **Federal Register** on February 7, 2007 (72 FR 5856). After that proposed rule published, new information became available on its taxonomic classification and additional threats to occupied habitat that necessitated a reevaluation of the proposed rule. On January 25, 2008, the court-approved settlement agreement was modified to require that a revised proposed critical habitat designation for the frosted flatwoods salamander and the reticulated flatwoods salamander be submitted for publication in the **Federal Register** on or before July 30, 2008, with the final critical habitat rule to be submitted for publication in the **Federal Register** by January 30, 2009. The revised proposed rule was signed on and delivered to the **Federal Register** on July 30, 2008, and it subsequently published on August 13, 2008 (73 FR 47258). We also published supplemental information on the proposed rule to maintain the status of the frosted flatwoods salamander as threatened (73 FR 54125; September 18, 2008).

Public Comments

Due to the nature of the proposed rule, we received combined comments from the public on the listing action and the critical habitat designation. Therefore, we have addressed these issues in a single comment section. In this final rule, we have presented the listing analysis first, followed by the analysis for designation of critical habitat. All public comments and our responses to them are presented under the Critical Habitat section.

Background

It is our intent to discuss only those topics directly relevant to the taxonomic reclassification of the flatwoods salamander into two species, the frosted flatwoods salamander and the reticulated flatwoods salamander, the determination of the status of these two species, and the designation of critical habitat for both species. For more information on the biology and ecology of flatwoods salamanders, refer to the final listing rule published in the **Federal Register** on April 1, 1999 (64 FR 15691). For information on our proposed determination of endangered status for the reticulated flatwoods salamander, and on the proposed designation of critical habitat for the frosted flatwoods salamander and the reticulated flatwoods salamander, refer to the proposed rule published in the **Federal Register** on August 13, 2008 (73 FR 47258).

Taxonomic Classification

The original listing rule (64 FR 15691; April 1, 1999) described the geographic range of the flatwoods salamander as it was known at that time. The range for the species included occurrences across the lower southeastern Coastal Plain in Florida, Georgia, and South Carolina. Taxonomic revision resulted from research done by Pauly *et al.* (2007, pp. 415–429) that suggested a taxonomic reclassification of the species by splitting the flatwoods salamander into two species—the frosted flatwoods salamander and the reticulated

flatwoods salamander. The Apalachicola River drainage forms a geographic barrier between the two species. This drainage is a common site for east-west phylogeographic breaks in many other taxa as well. For this reason, the reclassification of the flatwoods salamander into two species is currently accepted by the scientific community and by the Service. We hereby amend the List of Endangered and Threatened Wildlife at 50 CFR 17.11(h) to reflect this revision to taxonomy.

Goin (1950, p. 299) recognized two distinct subspecies of flatwoods salamander based on morphological and color pattern variation. This reclassification between the eastern and western portions of the salamander's range was later discounted in an analysis by Martof and Gerhardt (1965, pp. 342–346) and for the past 40 years the concept of a single undifferentiated species persisted. Pauly *et al.* (2007, pp. 415–429) conducted molecular and morphological analyses to test whether the flatwoods salamander, as originally described, followed a pattern of east-west disjunction at the Apalachicola River as has been described in many other species. They were able to demonstrate this predicted phylogeographic break. Based on mitochondrial DNA (mtDNA), morphology, and allozymes, they recognize two species of flatwoods salamanders, frosted flatwoods salamander to the east of the Apalachicola drainage and reticulated flatwoods salamander to the west. The Apalachicola River is probably the cause of major disjunctions in species distributions due to the repeated marine embayments during the Pliocene and Pleistocene interglacials that likely caused a barrier to gene flow.

In the Pauly *et al.* (2007, pp. 415–429) analyses, the use of mtDNA splits flatwoods salamander populations into two major clades east and west of the Apalachicola-Flint rivers. Samples from Jackson and Liberty Counties, Florida, are informative because, geographically, they are located on opposite sides of the river but are phylogenetically distant with respect to mtDNA sequence divergence. In contrast, geographically distant populations on the same side of the Apalachicola River are very closely related. Their morphological analyses also support a taxonomic boundary at the Apalachicola-Flint rivers. Salamanders on opposite sides of this boundary significantly differed in both body shape and size based on multivariate analyses. The number of costal grooves (grooves along the side body of salamanders used in species identification), snout-vent length, six additional morphometric traits, and sexual dimorphisms in tail length, height, and width are all significantly different between the two taxa. Due to the importance of the tail in ambystomatid courtship and fertilization, tail differences may be particularly important (Duellman and Trueb 1986, pp. 64–66).

Allozyme data presented in Shaffer *et al.* (1991, pp. 290–291, 302) also indicated differences between salamanders on either side of the Apalachicola River. Their results demonstrated these populations have fixed-allele differences, consistent with the mtDNA and morphological results.

The frosted and reticulated flatwoods salamanders can be differentiated from each other by the use of several morphological characters (Pauly *et al.* 2007, pp. 424–425). The frosted flatwoods salamander generally has more costal grooves and tends to be larger than the reticulated flatwoods salamander. For individuals of the same size, the frosted flatwoods salamander has longer forelimbs and hind limbs and a larger head. Male frosted flatwoods salamanders have longer tails than those of the reticulated flatwoods salamander. The belly pattern of the frosted flatwoods salamander consists of discrete white spots on a dark background, while the spots are less distinct in the reticulated flatwoods salamander giving a ''salt and pepper'' appearance (Goin 1950, pp. 300–314). The back pattern of the reticulated flatwoods salamander has a more net-like appearance than the frosted flatwoods salamander, as the common names imply.

In summary, in the Regulation Promulgation section of this document, we present a taxonomic change reflecting the reclassification of flatwoods salamander (*Ambystoma cingulatum*) to frosted flatwoods salamander (*A. cingulatum*) and reticulated flatwoods salamander (*A. bishopi*).

Listing of the Reticulated Flatwoods Salamander

History of the Action

On December 16, 1997, we published a proposed rule to list the flatwoods salamander as a threatened species (62 FR 65787). We published the final rule to list the species on April 1, 1999 (64 FR 15691). On August 13, 2008, we published the proposal to list the reticulated flatwoods salamander, currently known as the flatwoods salamander west of the Apalachicola-Flint Rivers, as a new species (73 FR 47258).

Species Information

As far as we currently know, the life history traits and habitat use of both the frosted flatwoods salamander and the reticulated flatwoods salamander are similar to those previously described for the flatwoods salamander. Both species of flatwoods salamanders are moderately sized salamanders that are generally black to chocolate-black with fine, irregular, light gray lines and specks that form a cross-banded pattern across their backs (back pattern more net-like in the reticulated flatwoods salamander). The frosted flatwoods salamander generally tends to be larger than the reticulated flatwoods salamander, as described above. Adults are terrestrial and live underground most of the year. They breed in relatively small, isolated ephemeral ponds where the larvae develop until metamorphosis. Post-metamorphic salamanders migrate out of the ponds and into the uplands where they live until they move back to ponds to breed as adults. Both species of flatwoods salamander are endemic to the lower southeastern Coastal Plain and occur in what were historically longleaf pine-wiregrass flatwoods and savannas (Palis and Means 2005, pp. 608–609).

The historical range of what is now considered the reticulated flatwoods salamander included parts of the States of Alabama, Florida, and Georgia, which are in the lower Coastal Plain of the southeastern United States west of the Apalachicola-Flint Rivers. We have compiled 26 historical (pre-1990) records for the reticulated flatwoods salamander.

In Alabama, there are five historical localities for the reticulated flatwoods salamander, all in the extreme southern portion of the State in Baldwin, Covington, Houston, and Mobile Counties. Surveys have been conducted at numerous sites since 1992; however, no reticulated flatwoods salamanders have been observed in Alabama since 1981 (Jones *et al.* 1982, p. 51; Godwin 2008).

Two historical records for the reticulated flatwoods salamander are known from Georgia, one each in Baker and Early Counties. Site visits to the areas in the vicinity of these two records have indicated that there is no longer suitable habitat for flatwoods salamanders at these localities. The area of the Baker County record has been cleared for agriculture (LaClaire 1994b). The upland habitat surrounding the Early County record has been converted to home sites and agricultural fields (Seyle 1994, p. 4). Four new reticulated flatwoods salamander breeding ponds

have been discovered since 1990. One pond is on the Mayhaw Wildlife Management Area owned by the State of Georgia in Miller County. Three ponds are on private property in Baker County. Currently, two reticulated flatwoods salamander populations are supported by these breeding sites in Georgia.

Nineteen historical (pre-1990) records for the reticulated flatwoods salamander are known for Florida. Reticulated flatwoods salamander breeding has been documented at only five (26 percent) of these sites since 1990. Extensive surveys throughout the range of the *Ambystoma cingulatum,* conducted prior to the original listing in 1999, resulted in identifying 39 additional breeding sites. Thirty-one (80 percent) of these sites are located in Okaloosa and Santa Rosa Counties, primarily on Department of Defense lands. Currently, 18 populations of the reticulated flatwoods salamander are known from Florida.

The combined data from all survey work completed since 1990 in Florida and Georgia indicate there are 20 populations of the reticulated flatwoods salamander. Some of these populations are inferred from the capture of a single individual. Nine (45 percent) of the known reticulated flatwoods salamander populations occur, at least in part, on public land. Of these, Department of Defense lands in Florida harbor four populations of the reticulated flatwoods salamander at Eglin Air Force Base, Hurlburt Field, and Navy Outlying Landing Field Holley. State and local agencies in Florida and Georgia partially manage habitat for five additional populations and monitor breeding ponds. In Florida, Pine Log State Forest harbors a single population; Northwest Florida Water Management District (NWFLWMD) and Blackwater River State Forest share management of a single population; NWFLWMD and Yellow River Marsh Preserve State Park share management of most of another property supporting an additional population; and the Santa Rosa County School Board owns a portion of the habitat supporting a single population. In Georgia, the Mayhaw Wildlife Management Area supports a single population. Eleven (55 percent) reticulated flatwoods salamander populations are solely on private land.

Summary of Factors Affecting the Reticulated Flatwoods Salamander

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to Federal lists. 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). The original listing rule for the flatwoods salamander (64 FR 15691) contained a discussion of these five factors, as did the proposed rule (73 FR 47258; August 13, 2008) and supplemental information (73 FR 54125; September 18, 2008). Only those factors relevant to the proposed reclassification of the reticulated flatwoods salamander (*Ambystoma bishopi* Goin, 1950) from threatened to endangered are described below:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The major threat to the reticulated flatwoods salamander is loss of both its longleaf pine–slash pine flatwoods terrestrial habitat and its isolated, seasonally ponded breeding habitat. The combined pine flatwoods (longleaf pine–wiregrass flatwoods and slash pine flatwoods) historical area was approximately 32 million acres (ac) (12.8 million hectares (ha)) (Outcalt 1997, p. 4). This area has been reduced to 5.6 million ac (2.27 million ha) or approximately 18 percent of its original extent (Outcalt 1997, p. 4). These remaining pine flatwoods (non-plantation forests) areas are typically fragmented, degraded, second-growth forests (Outcalt 1997, p. 6). Conversion of pine flatwoods to intensively managed (use of heavy mechanical site preparation, high stocking rates, and low fire frequencies) slash or loblolly plantations often resulted in degradation of flatwoods salamander habitat by creating well-shaded, closed-canopied forests with an understory dominated by shrubs or pine needles (Outcalt 1997, pp. 4–6; Palis 1997, pp. 61–63). Disturbance-sensitive ground cover species, such as wiregrass (*Aristida stricta* [= *A. beyrichiana*] Kesler *et al.* 2003, p. 9), dropseed (*Sporobolus* spp.), and perennial forbs were either greatly reduced in extent or were replaced by weedy pioneering species (Moore *et al.* 1982, p. 216; Outcalt and Lewis 1988, pp. 1–12; Hardin and White 1989, pp. 243–244). In a study conducted by Hedman *et al.* (2000, p. 233), longleaf pine plots had significantly more herbaceous species and greater herbaceous cover than loblolly or slash pine plots. For example, wiregrass is often lost from a site when habitat is converted from longleaf pine forest to other habitat types using common mechanical site preparation methods (Outcalt and Lewis 1988, p. 2). Loss of wiregrass is considered an indicator of site degradation from fire suppression or soil disturbance (Clewell 1989; pp. 226, 230–232). Flatwoods salamanders are unlikely to persist in uplands with a disturbed, wiregrass-depauperate ground cover (Palis 1997, p. 63).

Forest management that includes intensive site preparation may adversely affect flatwoods salamanders directly and indirectly (Means *et al.* 1996, p. 426). Bedding (a technique in which a small ridge of surface soil is elevated as a planting bed) alters the surface soil layers, disrupts the site hydrology, and often eliminates the native herbaceous ground cover. This can have a cascading effect of reducing the invertebrate community that serves as a food source for flatwoods salamander adults. Post-larval and adult flatwoods salamanders occupy upland flatwoods sites where they live underground in crayfish burrows, root channels, or burrows of their own making (Goin 1950, p. 311; Neill 1951, p. 765; Mount 1975, pp. 98–99; Ashton and Ashton 2005, pp. 63, 65, 68–71). The occurrence of these underground habitats is dependent upon protection of the soil structure. Intensive site preparation destroys the subterranean voids and may result in entombing, injuring, or crushing individuals.

Ecologists consider fire suppression the primary reason for the degradation of remaining longleaf pine forest habitat. The disruption of the natural fire cycle has resulted in an increase in slash and loblolly pine on sites formerly dominated by longleaf pine, an increase in hardwood understory, and a decrease in herbaceous ground cover (Wolfe *et al.* 1988, p. 132). Although reticulated flatwoods salamanders have been found at sites with predominately loblolly or slash pine, the long-term viability of populations at these sites is unknown. On public lands, prescribed burning is a significant part of habitat management plans. However, implementation of prescribed burning has been inconsistent due to financial constraints and limitations of weather (drought, wind direction, etc.) that restrict the number of opportunities to burn.

These alterations of the longleaf pine ecosystem, as a result of incompatible forest practices, have caused historic losses of reticulated flatwoods salamander habitat. Conversion of native pine flatwoods to plantation forests is not considered a significant threat at this time. Forecasts indicate that most new plantation forests will come from converting agricultural fields (Wear and Greis 2002, p. 47). Nevertheless, we have documented the historic extirpation of at least one previously known population each from Gulf and Jackson Counties in Florida,

over the last 4 decades because of habitat degradation on lands currently managed as pine plantations. In addition, ponds surrounded by pine plantations and protected from the natural fire regime may become unsuitable as reticulated flatwoods salamander breeding sites due to canopy closure and the resultant reduction in emergent herbaceous vegetation needed for egg deposition and larval development sites (Palis 1997, p. 62). In addition, lack of fire within the pond during periods of dry-down may result in chemical and physical (vegetative) changes that are unsuitable for the salamander (Palis 1997, p. 62). Lack of fire in the ecotone may result in the development of a thick shrub zone making it physically difficult or impossible for adult salamanders to enter the breeding ponds (Ripley and Printiss 2005, pp. 1–2, 11).

Land use conversions to urban development and agriculture eliminated large areas of pine flatwoods in the past (Schultz 1983, pp. 24–47; Stout and Marion 1993, pp. 422–429; Outcalt and Sheffield 1996, pp. 1–5; Outcalt 1997, pp. 1–6). Urbanization and agriculture have resulted in the loss of one reticulated flatwoods salamander population from each of the following counties: Mobile and Baldwin Counties, Alabama; Escambia, Jackson, and Washington Counties, Florida; and Early County, Georgia. Two known populations have been extirpated from Santa Rosa County, Florida. State forest inventories completed between 1989 and 1995 indicated that flatwoods losses through land use conversion were still occurring (Outcalt 1997, pp. 3–6). Urbanization in the panhandle of Florida and around major cities is reducing the available pine forest habitat. Wear and Greis (2002, pp. 47, 92) identify conversion of forests to urban land uses as the most significant threat to southern forests. They predict that the South could lose about 12 million ac (4.9 million ha) of pine forest habitat to urbanization between 1992 and 2020. Several relatively recent discoveries of previously unknown reticulated flatwoods salamander breeding sites in Santa Rosa County, Florida, have been made in conjunction with wetland surveys associated with development projects (Cooper 2008a). No reticulated flatwoods salamanders have been observed at these degraded sites since completion of the projects (Cooper 2008a).

In addition to the loss of upland forested habitat, the number and diversity of small wetlands where reticulated flatwoods salamanders breed have been substantially reduced. Threats to breeding sites include alterations in hydrology, agricultural and urban development, road construction, incompatible silvicultural practices, shrub encroachment, dumping in or filling of ponds, conversion of wetlands to fish ponds, domestic animal grazing, soil disturbance, and fire suppression (Vickers *et al.* 1985, pp. 22–26; Palis 1997, p. 58; Ashton and Ashton 2005, p. 72). Hydrological alterations, such as those resulting from ditches created to drain flatwoods sites or fire breaks and plow lines, represent one of the most serious threats to reticulated flatwoods salamander breeding sites. Lowered water levels and shortened hydroperiods at these sites may prevent successful flatwoods salamander recruitment because larval salamanders require 11 to 18 weeks to reach metamorphosis and leave the ponds (Palis 1995, p. 352).

Drought conditions exacerbate other threats and, although they represent a natural phenomenon, can lower the resiliency of populations to withstand other man-made threats. The U.S. Geological Survey (USGS) has documented multiple drought periods in the southeastern United States since the 1890s (USGS 2000, p. 1). Significant drought periods documented in the last three decades are: 1980–1982, 1984–1989, 1998–2002, 2005–2008 (USGS 1991, p. 163; USGS 2000, p. 1; Seager *et al.* 2008, pp. 2, 22). Although a naturally occurring condition, drought presents additional complications for a species, like reticulated flatwoods salamander, which has been extirpated from most of its historic range and for which populations are represented by single ponds. Palis *et al.* (2006, p. 5–6) conducted a study in Florida on a population of the closely related frosted flatwoods salamander during a drought from 1999–2002. This study found three consecutive years of reproductive failure and a steadily declining adult immigration to breed at the site as the drought progressed.

Taylor *et al.* (2005, p. 792) noted that wide variation in reproductive success is common among pond-breeding amphibians that depend on seasonal filling of these areas, but that adult persistence may buffer against fluctuations in that success, particularly for species that are long-lived. Although Palis *et al.* (2006, p. 6) suggested that the flatwoods salamander may only live about 4 years (based on captive animals), we are currently unsure of the exact lifespan of wild individuals. Other sources have suggested 10 years may represent a maximum lifespan (Jensen 2008). As a result, it is difficult to predict how long adults could persist in the landscape without a successful breeding event to replenish the population. However, Taylor *et al.* (2005, pp. 792, 796) constructed a model, based on extensive population data available for the marbled salamander (*Ambystoma opacum*), to look at how many years of reproductive failure would be required to result in local extinction of pond-breeding salamanders (with varying lifespans) and found that even without total reproductive failure, populations required moderate to high upland post-metamorphic survival to persist. Catastrophic failure in this study created fluctuations in the population, raised the threshold of survival required to achieve persistence, and imposed the possibility of extinction even under otherwise favorable environmental conditions. Reproductive failure was closely tied to hydrologic conditions; insufficient or short hydroperiod was the primary cause for complete failure. In addition, early filling of the ponds could also facilitate the establishment of invertebrate or vertebrate predators before hatching of the eggs (Taylor *et al.* 2005, p. 796).

Palis *et al.* (2006, p. 6–7) discussed the necessity of protecting clusters of flatwoods salamander breeding sites, especially those with different hydrologic regimes, to guard against population declines at any one breeding site resulting from random events, such as droughts (Palis 2006, p. 7). A cluster of breeding sites represents a metapopulation, which is defined as neighboring local populations close enough to one another that dispersing individuals could be exchanged (gene flow) at least once per generation. Currently, the only place where a metapopulation exists for the reticulated flatwoods salamander is on Eglin Air Force Base.

Habitat fragmentation of the longleaf pine ecosystem resulting from habitat conversion threatens the survival of the reticulated flatwoods salamander. Large tracts of intact longleaf pine flatwoods habitat are fragmented by pine plantations, roads, and unsuitable habitat. Most reticulated flatwoods salamander populations are widely separated from each other by unsuitable habitat. This has been verified through recent reviews of aerial photography and site visits to localities of historical and current records for the species. Studies have shown that the loss of fragmented populations is common, and recolonization is critical for their regional survival (Fahrig and Merriam 1994, pp. 50–56; Burkey 1995, pp. 527–540). Amphibian populations may be

unable to recolonize areas after local extirpations due to their physiological constraints, relatively low mobility, and site fidelity (Blaustein *et al.* 1994, pp. 60, 67–68). In the case of the reticulated flatwoods salamander, 70 percent of populations only have one breeding pond and if the habitat at that one site is destroyed, recolonization would be impossible (see further discussion of metapopulation dynamics under Factor E).

Roads contribute to habitat fragmentation by isolating blocks of remaining contiguous habitat. They may disrupt migration routes and dispersal of individuals to and from breeding sites. Road construction can result in changes in hydrology and destruction of breeding ponds, as described above. In addition, vehicles may also cause the death of reticulated flatwoods salamanders when they are attempting to cross roads (Means 1996, p. 2). Road construction resulted in the destruction of a historic reticulated flatwoods salamander breeding pond in Escambia County, Florida (Palis 1997, p. 62). A road through Eglin Air Force Base (Eglin) and Hurlburt Field has been proposed by the Northwest Florida Transportation Corridor Authority (NWFTCA) (NWFTCA 2007). We are currently in consultation regarding this bypass project. The conceptually approved route for the project, as currently proposed, places the road adjacent to or through 22 breeding sites that support the largest reticulated flatwoods salamander population (Mittiga 2007). However, the Service has been assured by Eglin that they will not allow negative impacts to the salamander's habitat and that they will continue to ensure the conservation of the reticulated flatwoods salamander (Department of the Air Force (DoAF) 2008a, p. 1; 2008b, p. 1). The Service will work with Eglin to protect these breeding sites which represent the only population of this species supported by more than three breeding ponds and functioning as a metapopulation.

In summary, the loss of habitat is a significant threat to the reticulated flatwoods salamander. This threat is compounded by current drought conditions and the nature of pond-breeding salamanders to undergo periodic reproductive failure. We consider this threat to be imminent and of high magnitude because of this species' narrow range and the rapid rate of habitat loss that is currently occurring within the range of this species. Thirteen (65 percent) of the reticulated flatwoods salamander populations are partly or completely on private land where habitat continues to be degraded by management that frequently includes fire suppression and intensive site preparation that alters surface soil layers, disrupts site hydrology, disturbs the ground cover, and which has the potential to entomb, injure, or crush individual salamanders. Forest management conducted in this way is considered incompatible for maintaining flatwoods salamander populations. Range-wide historic losses of both upland and wetland habitat have occurred due to conversion of flatwoods sites to agriculture, urban development, and intensively managed pine plantations. The remaining flatwoods habitat continues to be threatened by fire suppression and other incompatible forest management practices, road construction, and habitat fragmentation across the range of the species. Localized threats to existing wetland breeding sites include alterations in hydrology from agriculture, urban development, road construction, and incompatible forest management; and fire suppression. As a result, we have determined that the present or threatened destruction, modification, or curtailment of the reticulated flatwoods salamander's habitat and range represents an imminent and significant threat to the species.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overcollecting does not appear to be a threat to the reticulated flatwoods salamander at this time. There is no evidence of a past or current problem with collection of this species. Consequently, we have determined that the factor of overutilization for commercial, recreational, scientific, or educational purposes is not a threat to the reticulated flatwoods salamander at this time.

C. Disease or Predation

Although disease has not been specifically documented in the reticulated flatwoods salamander thus far, disease outbreaks with mass mortality in other species of salamanders indicate that disease may be a threat for this species as well (Daszak *et al.* 1999, p. 736). ''Red-leg'' disease (*Aeromonas hydrophila*), a pathogen bacterium, caused mortality of the mole salamander (*A. talpoideum*) at the breeding pond of the reticulated flatwoods salamander in Miller County, Georgia (Maerz 2006), and reticulated flatwoods salamanders have not been observed at this site since the disease was reported. In addition, Whiles *et al.* (2004, p. 211) found a parasitic nematode (*Hedruris siredonis*, family Hedruridae) in larvae of the closely related frosted flatwoods salamander from South Carolina and Florida. This parasite has been found in other ambystomatids and can cause individuals to become undersized and thin, thus reducing their fitness (Whiles *et al.* 2004, p. 212). The infestations were not considered heavy and were probably not having a negative impact on the larvae studied; however, environmental degradation may change the dynamics between salamander populations and normally innocuous parasites (Whiles *et al.* 2004, p. 212). Ranaviruses in the family Iridoviridae and the amphibian chytrid fungus (*Batrachochytrium dendrobatidis*) may be other potential threats, although the susceptibility of the reticulated flatwoods salamander to these diseases is unknown. Ranaviruses have been responsible for die-offs of tiger salamanders throughout western North America and spotted salamanders (*A. maculatum*) in Maine (Daszak *et al.* 1999, p. 736). Chytrid fungus has been discovered and associated with mass mortality in tiger salamanders in southern Arizona and California, and the Santa Cruz long-toed salamander (*A. macrodactylum croceum*) (Vredenburg and Summers 2001, p. 151; Davidson *et al.* 2003, p. 601; Padgett-Flohr and Longcore 2005, p. 50). This discussion of disease in other species of closely related salamanders indicates the potential existence of similar threats to reticulated flatwoods salamander populations.

Exposure to increased predation by fish is a threat to the reticulated flatwoods salamander when isolated, seasonally ponded wetland breeding sites are changed to or connected to more permanent wetlands inhabited by fish species not typically found in temporary ponds. Studies of other ambystomatid species have demonstrated a decline in larval survival in the presence of predatory fish (Semlitsch 1987, p. 481). Ponds may be modified specifically to serve as fish ponds or sites may be altered because of drainage ditches, firebreaks, or vehicle tracks that can all provide avenues for fish to enter the wetlands.

Red imported fire ants (*Solenopsis invicta*) are potential predators of flatwoods salamanders, especially in disturbed areas. They have been seen in areas disturbed by the installation of drift fences at known breeding sites of the closely related frosted flatwoods salamander (Palis 2008). The severity and magnitude, as well as the long-term effect, of fire ants on reticulated flatwoods salamander populations are currently unknown.

In summary, diseases of amphibians in the southeastern United States remain largely unstudied. However, given the incidence of disease in species that could be considered surrogates for flatwoods salamanders, the probability exists for similar infections to occur in reticulated flatwoods salamander populations. We consider this to be an imminent threat of moderate magnitude. Predation by fish is a historic threat that continues to be a localized problem when ditches, firebreaks, or vehicle ruts provide connections allowing the movement of fish from permanent water bodies into reticulated flatwoods salamander breeding sites. Sixty-five percent of reticulated flatwoods salamander breeding ponds are partly or completely on private land. This situation increases the probability of fish being introduced to a breeding site, which would then cause the breeding habitat to become unsuitable and result in the extinction of the population. Fire ants also have the potential of being a localized threat, particularly in disturbed areas. In addition, we believe that the threats described here would also act to exacerbate other threats to the species. Overall, we consider the threat within this factor to be imminent and of moderate magnitude because 70 percent of reticulated flatwoods salamander populations are supported by a single breeding pond; diseases and fish and invertebrate predators have been found at ponds within the species' range; and these diseases and predators are known to cause mortality or reproductive failure in related species.

D. The Inadequacy of Existing Regulatory Mechanisms

There are no existing regulatory mechanisms for the protection of the upland habitats where reticulated flatwoods salamanders spend most of their lives. Section 404 of the Clean Water Act is the primary Federal law that has the potential to provide some protection for the wetland breeding sites of the reticulated flatwoods salamander. However, due to recent case law (*Solid Waste Agency of Northern Cook County* (*SWANCC*) v. *U.S. Army Corps of Engineers 531 U.S. 159 (2001)*; *Rapanos* v. *United States 547 U.S. 715 (2006))*, isolated wetlands are no longer considered to be under Federal jurisdiction (not regulatory wetlands). Wetlands are only considered to be under the jurisdiction of the U.S. Army Corps of Engineers (Corps) if a ''significant nexus'' exists to a navigable waterway or its tributaries. Currently, some Corps Districts do not coordinate with us on flatwoods salamanders and, since isolated wetlands are not considered under their jurisdiction, they are often not included on maps in permit applications (Brooks 2008). We are aware of two isolated wetlands that supported reticulated flatwoods salamander populations that have been lost since 2006 under this scenario.

Longleaf pine habitat management plans have been written for public lands occupied by the reticulated flatwoods salamander. They include management plans for State-owned lands and integrated natural resource management plans (INRMPs) for Department of Defense lands. Most of the plans contain specific goals and objectives regarding habitat management that would benefit reticulated flatwoods salamanders including prescribed burning. However, because multiple-use is the guiding principle on most public land, protection of the flatwoods salamander may be just one of many management goals including timber production and military and recreational use.

At the State and local levels, regulatory mechanisms are limited. Although not listed as threatened or endangered in Alabama, the reticulated flatwoods salamander is listed among those nongame species for which it is ''unlawful to take, capture, kill, or attempt to take, capture or kill; possess, sell, trade for anything of monetary value, or offer to sell or trade for anything of monetary value'' (Alabama Department of Conservation and Natural Resources 2008, p. 1). The flatwoods salamander is listed as a threatened species in the State of Georgia (Jensen 1999, pp. 92–93). This designation protects the species by preventing its sale, purchase, or possession in Georgia and by prohibiting actions that cause direct mortality or the destruction of its habitat on lands owned by the State of Georgia (Ozier 2008). There is only one known flatwoods salamander population on lands owned by the State of Georgia, and that is Mayhaw Wildlife Management Area. In 2001, the Florida Fish and Wildlife Conservation Commission (FFWCC) listed the flatwoods salamander (which would include the reticulated flatwoods salamander) as a species of special concern (FFWCC 2007, p. 2) and prohibited direct take except through permit. As part of the listing process, a statewide management plan was developed for the salamander in Florida (FFWCC 2001, p. 1–60). This plan sets an ambitious conservation goal of maintaining at least 129 self-sustaining populations of flatwoods salamanders (which would include both frosted and reticulated flatwoods salamander species) in Florida. The plan also outlines a monitoring plan for population status assessment, an implementation strategy for the management of populations, and areas for future research. The Alabama and Florida regulations offer no protection against the most significant threat to the reticulated flatwoods salamander, loss of habitat.

In summary, existing regulatory mechanisms provide little direct protection of reticulated flatwoods salamander habitat, the loss of which is the most significant threat to the species. Reticulated flatwoods salamander breeding sites may in some instances come under the jurisdiction of the Corps, but most often they are provided little regulatory protection. These inadequacies represent range-wide historic and known threats to the reticulated flatwoods salamander on private lands within the range. We consider this threat as imminent because the existing regulations are not protecting against the other imminent threats to the species. Also, this threat is of high magnitude because of the small range of the species, and because 65 percent of populations are not protected from further development because they are located partially or completely on private lands.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Metapopulations are important to the long-term survival of temporary pond breeding amphibians. In these species, such as the reticulated flatwoods salamander, breeding ponds may differ in the frequency of their ability to support amphibian reproduction. As a result, extirpation and colonization rates can be a function of pond spatial arrangement as well as local habitat quality (Marsh and Trenham 2001, p. 41). Of the 20 known reticulated flatwoods salamanders populations, only 6 (30 percent) are supported by more than one breeding pond and only one (5 percent) population (on Eglin-Hurlburt Field) is supported by more than three breeding ponds. For 70 percent (14 out of 20) of the known reticulated flatwoods salamander populations, any one of the many threats that may render a breeding pond unsuitable could cause the extirpation of the affected population.

Invasive plant species, such as cogongrass (*Imperata cylindrica*), threaten to further degrade existing flatwoods habitat. Cogongrass, a perennial grass native to Southeast Asia, is one of the leading threats to the ecological integrity of native herbaceous flora, including that in the longleaf pine ecosystem (Jose *et al.* 2002, p. 43). Cogongrass can displace most of the

existing vegetation except large trees. Especially threatening to the reticulated flatwoods salamander is the ability of cogongrass to outcompete wiregrass, a key vegetative component of flatwoods salamander habitat. Changing the species composition in this way can alter the soil chemistry, nutrient cycling, and hydrology of an infested site (Jose *et al.* 2002, p. 43). Reticulated flatwoods salamander habitat management plans will need to address threats posed by cogongrass and other invasive plant species and include strategies to control them. An integrated management approach to controlling cogongrass is outlined in Jose *et al.* (2002, p. 42).

Pesticides (including herbicides) may pose a threat to amphibians, such as the reticulated flatwoods salamander, because their permeable eggs and skin readily absorb substances from the surrounding aquatic or terrestrial environment (Duellman and Trueb 1986, pp. 199–200). Negative effects that commonly used pesticides and herbicides may have on amphibians include delayed metamorphosis, paralysis, reduced growth rate, and mortality (Bishop 1992, pp. 67–69). In addition, herbicides used near reticulated flatwoods salamander breeding ponds may alter the density and species composition of vegetation surrounding a breeding site and reduce the number of potential sites for egg deposition, larval development, or shelter for migrating salamanders. However, if application by aerial spraying is avoided, the potential for negative effects from pesticide and herbicide use in areas adjacent to breeding ponds would be reduced (Tatum 2004, p. 1047). Herbicides may be a necessary tool to reduce or eliminate woody vegetation or invasive plants when the use of prescribed fire is not possible or effective (Jensen 2007, Wigley 2008). Nevertheless, pesticides should not be used in flatwoods salamander habitat unless no other habitat management tool is available; herbicide label directions should be followed closely; and aerial spraying should never be used as an application technique. Under these conditions, we consider this threat to be of moderate magnitude.

Studies of other ambystomatid species have demonstrated a decline in larval survival in the presence of predatory fish, as mentioned above under Factor C. One of the potential reasons for this decline may be the negative effect resulting from these fish competing with salamander larvae for invertebrate prey. The invertebrates found by Whiles *et al.* (2004, p. 212) in a study of larval frosted and reticulated flatwoods salamander gut contents are typical of freshwater habitats in the Southeast that do not contain predatory fish on a regular basis. The presence of predatory fish has a marked effect on invertebrate communities and alters prey availability for larval salamanders with the potential for negative effects on larval fitness and survival (Semlitsch 1987, p. 481). Wherever connections have been created between permanent water and flatwoods salamander ponds, such as through installation of firebreaks or ditches, this threat from predatory fish exists.

Studies of reticulated flatwoods salamander populations, since the original species listing of flatwoods salamander as threatened (64 FR 15691; April 1, 1999), have been limited due to drought. Data on the numbers of adults within existing populations do not exist. However, given the low number of individuals encountered even when breeding is verified, populations are likely to be very small at any given breeding site. Small populations are at increased threat of extirpation from natural processes (genetic isolation, inbreeding depression, and drought), as well as the manmade threats listed above.

In summary, a variety of other natural or manmade factors historically or currently threaten, or have the potential to threaten, the reticulated flatwoods salamander. The loss of metapopulation structure in the distribution of reticulated flatwoods salamander populations was a range-wide threat that caused historic losses of this species. It continues to be a current threat for 70 percent of the remaining reticulated flatwoods salamander populations. Fire suppression and inadequate habitat management continue to cause the degradation of occupied sites, primarily on private land. Invasive plant species probably did not have much of a historic impact on salamander populations, but they are a range-wide current threat, and they are likely to become more widespread and difficult to control. Range-wide, low densities of individuals in a given population have been a historic threat and continue to be a threat for most reticulated flatwoods salamander populations, particularly due to past and current drought conditions, habitat loss, population fragmentation, and periodic reproductive failures that occur naturally in pond-breeding amphibians. The impact that competing predators may have on the salamander's prey base, and the threat of pesticide and herbicide use, are less clear as historic threats but remain potential localized threats for the species. Therefore, while we have determined that other natural and manmade factors, such as invasive species, pesticides, and competition for the species' prey base may threaten the reticulated flatwoods salamander, the severity and magnitude of these threats are not currently known. Acting in coordination with threats listed above under Factors A through D, the threats under Factor E could increase the severity of the other threats. In addition, small population size is particularly detrimental when combined with habitat loss, the ongoing drought, and the nature of this pond-breeding amphibian to experience periodic reproductive failure.

Determination

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the reticulated flatwoods salamander. In summary, the most significant historical threat to the reticulated flatwoods salamander, as listed above in Factor A, is loss of its habitat. However, a variety of localized threats described under Factors A, C, D, and E continue to impact the remaining reticulated flatwoods salamander populations and their habitat. These include alterations in the hydrology of existing wetland breeding sites (including ''ditching,'' which can result in the introduction of predatory fish), urban development, road construction, incompatible forest management, fire suppression, and disease. The severity and magnitude of threats under Factor E are not currently known. Nevertheless, we have determined that threats under this factor will exacerbate the effects of threats due to habitat loss and drought. As described in Factor E above, small populations are at increased threat of extirpation from natural processes (genetic isolation, inbreeding depression, and drought), as well as the manmade threats listed above. Furthermore, as described in Factor D (above), existing regulatory mechanisms provide little direct protection of reticulated flatwoods salamander habitat, the loss of which is the most significant threat to the species. Reticulated flatwoods salamander breeding sites may in some instances come under the jurisdiction of the Corps, but most often they are provided little regulatory protection. This is likely the reason that two populations were lost recently to development. These inadequacies of existing regulatory mechanisms addressing habitat loss represent range-wide historic and potential threats to the reticulated flatwoods salamander.

Finally, there are potential localized threats from fire ants, pesticides, and invasive plants for which the extent of impact is yet undeterminable, but we believe they are legitimate threats due to both their impact on surrogate species and their prevalence in the types of habitats used by this species.

Only 20 reticulated flatwoods salamander populations are known. Fourteen (70 percent) of these populations are supported by only one breeding site. A population with only one breeding site has a tenuous future just given randomly varying environmental factors without considering the additional threats of habitat destruction and degradation that further threaten these populations. As noted previously, the habitat within the range of the reticulated flatwoods salamander is currently experiencing drought conditions. Palis *et al.* (2006, p. 5–6) studied a frosted flatwoods salamander population in Florida during a drought from 1999–2002. This study documented three consecutive years of reproductive failure and a steady decline in adult immigration to the site for breeding as the drought progressed. Catastrophic reproductive failure occurs even in healthy populations of pond-breeding amphibians. When it does occur, the modeling efforts of Taylor *et al.* (2005, p. 796) showed that each year of reproductive failure raises the threshold of survival required to achieve persistence and imposes the possibility of extirpation even under otherwise favorable environmental conditions. Taylor *et al.* (2005, p. 799) reminds us that, particularly with small populations or low population growth rates (as exists with the reticulated flatwoods salamander), the effects of reproductive failure are made worse by demographic stochasticity. Even in populations with multiple breeding ponds, amphibian populations may be unable to recolonize areas after local extirpations due to their physiological constraints, relatively low mobility, and site fidelity (Blaustein *et al.* 1994, pp. 60, 67–68). In the case of the reticulated flatwoods salamander, 70 percent of populations have only one breeding pond. If the habitat at that site is destroyed, recolonization would be impossible and the population supported by that breeding pond would be extirpated. Since the early 1990s, four reticulated flatwoods salamander populations have been lost, two populations due to urbanization and two populations due to incompatible forest management (Palis 2006, Cooper and LaClaire 2007, Cooper 2008b). The most robust reticulated flatwoods salamander population remaining is located on Eglin. Continued conservation of this locality is imperative because it represents habitat for the only population that is supported by more than three breeding ponds and functions as a metapopulation. In other words, this population has the best chance of surviving demographic and environmental stochasticity given that the distribution of breeding sites is within the dispersal distance of adult reticulated flatwoods salamanders.

Based on the best available scientific and commercial information, we have determined that the reticulated flatwoods salamander is in danger of extinction throughout all or a significant portion of its range. Endangered status reflects the vulnerability of this species to factors that negatively affect the species and its limited and restricted habitat. Habitat loss on private lands is an imminent threat that is compounded by a variety of other factors. Fire suppression on private lands occupied by the reticulated flatwoods salamander represents one of the biggest threats to the species' habitat and the continued existence of the species on these sites. In addition, since 1999 we have lost at least two reticulated flatwoods salamander breeding ponds due to the threat of inadequate existing regulatory mechanisms. We believe the destruction of these ponds was a result of the continuing threat that isolated wetlands are rarely, if ever, under the jurisdiction of the Corps. We believe that, combined, the effect of the historical and ongoing drought; historical, current, and projected habitat loss and degradation; and the exacerbating effects of disease, predation, small population size, and isolation result in the reticulated flatwoods salamander being in danger of extinction throughout all of its range. We believe these threats, in particular the threats from habitat loss and drought, to be imminent and are projected to continue at the current rate or increase in the future. Further, we have determined that these threats are operating on the species and its habitat with a high degree of magnitude in that they affect the species throughout all of its range and with a high degree of severity, as discussed above.

Listing of the Frosted Flatwoods Salamander

History of the Action

The final rule to list the flatwoods salamander as threatened was published on April 1, 1999 (64 FR 15691). On August 13, 2008, we published a proposed rule to reclassify the listing of the species into two distinct species: Frosted flatwoods salamander and reticulated flatwoods salamander due to new taxonomic information (73 FR 47258). In that proposed rule, we provided the analysis of the threats for the reticulated flatwoods salamander and our determination of its endangered status. On September 18, 2008, we published a notice providing supplemental information to the proposed rule that included our analysis and determination to retain threatened status for the frosted flatwoods salamander (73 FR 54125).

Species Information

Taxonomic revision resulting from research done by Pauly *et al.* (2007, pp. 415–429) split the flatwoods salamander into two species—the frosted flatwoods salamander and the reticulated flatwoods salamander. Background information on flatwoods salamanders, a discussion of their taxonomic status, and the five-factor analysis and associated determination of endangered status for the reticulated flatwoods salamander are provided above. Information provided here, and in the analysis that follows, will only address issues specific to the frosted flatwoods salamander.

Based on the best available information, the life-history traits and habitat use of both the frosted flatwoods salamander and the reticulated flatwoods salamander are similar to those previously described for the flatwoods salamander (64 FR 15691, April 1, 1999; 73 FR 47258, August 13, 2008). However, most of our references predate Pauly *et al.* (2007, p. 415) and, therefore, do not distinguish between the two species.

Flatwoods salamanders are endemic to the lower southeastern Coastal Plain and occur in what were historically longleaf pine-wiregrass flatwoods and savannas. The historical range of what is now considered the frosted flatwoods salamander included parts of the States of Florida, Georgia, and South Carolina. This area encompassed the lower Coastal Plain of the southeastern United States along the Gulf Coast east of the Apalachicola-Flint Rivers, across north Florida, south into north-central Florida, and north along the Atlantic Coast through coastal Georgia and South Carolina.

We have compiled 84 historical (pre-1990) records for the frosted flatwoods salamander. Twenty historical records (with supporting locality information) for the frosted flatwoods salamander are known from eight counties in Florida. Frosted flatwoods salamander breeding has been documented at only four (20

percent) of these sites since 1990. Surveys conducted since 1990 by Federal and State agency personnel, as well as private parties, have resulted in the identification of more than 50 additional frosted flatwoods salamander breeding sites, including two sites in Jefferson County, a county that previously was not known to be occupied by the salamander. Most of these new breeding sites are located on the Apalachicola and Osceola National Forests, and on St. Marks National Wildlife Refuge. One site, discovered in 1998 on Tate's Hell State Forest, has been degraded as a result of habitat modification efforts that created a more permanently flooded wetland and flooded the ecotone at the historic breeding pond. The upland habitat is degraded as well with the result that the primary constituent elements (PCEs) on the site are no longer present (Enge 2008). Fifteen populations of the frosted flatwoods salamander are known from Baker, Franklin, Jefferson, Liberty, and Wakulla Counties in Florida.

Thirty-four historical records for the frosted flatwoods salamander are known from 20 counties in Georgia. Frosted flatwoods salamanders have not been seen again at any of these sites in recent years; however, surveys conducted since 1990 have resulted in the discovery of 23 new breeding sites. All but one of these new sites are located on the Fort Stewart Military Installation. The one additional pond was discovered on the Townsend Bombing Range. Currently, these breeding sites support six frosted flatwoods salamander populations in Bryan, Evans, Liberty, and McIntosh Counties, Georgia, all on Department of Defense lands. The frosted flatwoods salamander is assumed to be extirpated from 16 other counties in Georgia where it previously occurred. However, some suitable habitat still remains on the Okefenokee National Wildlife Refuge and the potential exists for the species to occur there.

Thirty historical records for the frosted flatwoods salamander are known from five counties in South Carolina. Since 1990, metamorphic frosted flatwoods salamanders have been documented at six (21 percent) of these sites, and one new breeding site has been discovered. Currently, four populations of the frosted flatwoods salamander are known from Berkeley, Charleston, and Jasper Counties in South Carolina. Two populations are on private land in Jasper County: One population occurs on the Francis Marion National Forest in Berkeley County, and one population occurs on the Santee Coastal Preserve (state-owned and managed) in Charleston County.

The combined data from all survey work completed since 1990 in Florida, Georgia, and South Carolina indicate there are 25 populations of the frosted flatwoods salamander. Some of these populations are inferred from the capture of a single individual. Twenty-two (88 percent) of the known frosted flatwoods salamander populations occur primarily on public land. Sixteen of the populations (64 percent of total populations of the species) on public land represent metapopulations supported by more than one breeding site. A single population occurs on each of the following publicly owned sites: Osceola National Forest in Florida; Townsend Bombing Range in Georgia; and Francis Marion National Forest and Santee Coastal Reserve in South Carolina. In Florida, habitat supports 10 populations on Apalachicola National Forest and 2 populations on St. Marks National Wildlife Refuge. In Georgia, five populations occur on Fort Stewart Military Installation. Three (12 percent) frosted flatwoods salamander populations are solely on private land.

Summary of Factors Affecting the Species (Frosted Flatwoods Salamander)

Section 4 of the Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act 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 endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act. The original listing rule for the flatwoods salamander (64 FR 15691; April 1, 1999), and the supplement to the August 2008 proposed rule (73 FR 54125; September 18, 2008), contain a discussion of these five factors. Only those factors relevant to the frosted flatwoods salamander (*Ambystoma cingulatum* Cope, 1867) are described below:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The major historical threat to the frosted flatwoods salamander was loss of habitat, both its longleaf pine-slash pine flatwoods terrestrial habitat and its isolated, seasonally ponded breeding habitat. Refer above to Factor A under ''Summary of Factors Affecting the Species (Reticulated Flatwoods Salamander)'' for general information on threats to pine flatwoods habitat that also applies to the frosted flatwoods salamander.

Degradation of the remaining frosted flatwoods salamander habitat in Florida, Georgia, and South Carolina is a current, ongoing threat, primarily on private land. Ecologists consider fire suppression the primary reason for the degradation of remaining longleaf pine forest habitat. The disruption affects both the upland forested habitat of adult salamanders and their ponded breeding habitat also required for development of larval salamanders. Alterations of the longleaf pine ecosystem, as a result of incompatible forest practices, have caused the historic loss of most of the original frosted flatwoods salamander habitat. Conversion of native pine flatwoods to plantation forests is not considered a significant threat at this time. However, much of the historic extirpation of frosted flatwoods populations in Florida, Georgia, and South Carolina over the last six decades resulted from habitat degradation on lands managed for timber extraction.

Land use conversions to housing, other development projects, and agriculture eliminated large areas of pine flatwoods in the past (Schultz 1983, pp. 24–47; Stout and Marion 1993, pp. 422–429; Outcalt and Sheffield 1996, pp. 1–5; Outcalt 1997, pp. 1–6). Residential development and conversion to agriculture have resulted in the historical loss of one frosted flatwoods salamander population each from Ben Hill, Berrien, Brooks, Effingham, Emanuel, and Irwin Counties, Georgia (Seyle 1994, pp. 4–5); an additional site has been degraded in Orangeburg County, South Carolina, and the population at this site is also considered extirpated (LaClaire 1994a). State forest inventories completed between 1989 and 1995 indicated that flatwoods losses through land use conversion were still occurring (Outcalt 1997, pp. 3–6); however, further conversions are only likely to impact three of the populations occurring in large part on private lands or only 12 percent of the total frosted flatwoods salamander populations.

In addition to the loss of upland forested habitat, the number and diversity of small wetlands where frosted flatwoods salamanders breed have been substantially reduced. Threats to breeding sites include alterations in hydrology, agricultural and urban development, road construction, incompatible silvicultural practices, shrub encroachment, dumping in or filling of ponds, conversion of wetlands to fish ponds, domestic animal grazing, soil disturbance, and fire suppression

(Vickers *et al.* 1985, pp. 22–26; Palis 1997, p. 58; Ashton and Ashton 2005, p. 72). As described above (see Species Information), the unintentional result of hydrological restoration on Tate's Hell State Forest was the destruction of the ephemeral nature of a reticulated flatwoods salamander breeding site and the extinction of the salamander population on that site.

Drought conditions exacerbate other threats, and although they represent a natural phenomenon, can lower the resiliency of populations to withstand other man-made threats. The U.S. Geological Survey (USGS) has documented multiple drought periods in the southeastern United States since the 1890s (USGS 2000, p. 1). Among significant periods documented in the last three decades are: 1980–1982, 1984–1989, 1998–2002, 2005–2008 (USGS 1991, p. 163; USGS 2000, p. 1; Seager *et al.* 2008, pp. 2, 22). Although drought is a naturally occurring condition, it presents additional complications for a species like the frosted flatwoods salamander, which has been extirpated from most of its historic range. Palis *et al.* (2006, p. 5–6) conducted a study in Florida on a population of the frosted flatwoods salamander during a drought from 1999–2002. This study found 3 consecutive years of reproductive failure and a steadily declining adult immigration to breed at the site as the drought progressed.

Palis *et al.* (2006, p. 6–7) discussed the necessity of protecting clusters of flatwoods salamander breeding sites, especially those with different hydrologic regimes, to guard against population declines at any one breeding site resulting from random events, such as droughts. Currently, 15 populations of the frosted flatwoods salamander, occurring on public land, are supported by multiple breeding sites.

Habitat fragmentation of the longleaf pine ecosystem resulting from habitat conversion is primarily a historical threat to the frosted flatwoods salamander. Large tracts of intact longleaf pine flatwoods habitat are fragmented by pine plantations, roads, and unsuitable habitat. Although the threat of ongoing habitat fragmentation has slowed, the effect of past habitat loss is that many frosted flatwoods salamander populations are widely separated from each other by unsuitable habitat. This has been verified through recent reviews of aerial photography and site visits to localities of historical and current records for the species. Studies have shown that the loss of fragmented populations is common, and recolonization is critical for their regional survival (Fahrig and Merriam 1994, pp. 50–56; Burkey 1995, pp. 527–540). Amphibian populations may be unable to recolonize areas after local extirpations due to their physiological constraints, relatively low mobility, and site fidelity (Blaustein *et al.* 1994, pp. 60, 67–68). In the case of the frosted flatwoods salamander, 36 percent of populations have only one breeding pond. If the habitat at that site is destroyed, recolonization would be impossible (see further discussion of metapopulation dynamics under Factor E).

Roads have contributed to habitat fragmentation by isolating blocks of remaining contiguous habitat. Roads disrupt migration routes and dispersal of individuals to and from breeding sites. Road construction can result in changes in hydrology and destruction of breeding ponds. Highway construction and associated development resulted in the destruction of a historic frosted flatwoods salamander breeding pond in Chatham County, Georgia (Seyle 1994, pp. 3–4). In addition, vehicles may also cause the death of frosted flatwoods salamanders when they are attempting to cross roads (Means 1996, p. 2).

Off-road vehicle (ORV) use within frosted flatwoods salamander breeding ponds and their margins severely degrades the wetland habitat. In the Southeast, ORV use impacts habitat used by frosted flatwoods salamanders, has the potential to cause direct mortality of individual salamanders, and is a threat on both public and private land. On public lands, areas may be designated as off-limits to ORV use (U.S. Forest Service 2007, p. 19), but these restrictions are difficult to enforce. Even a single afternoon of individuals riding their ORVs in a pond can completely destroy the integrity of breeding sites by damaging or killing the herbaceous vegetation and rutting the substrate (Ripley and Printiss 2005, pp. 11–12). There is also the potential for direct injury or mortality of salamanders by ORVs at breeding sites (Ripley and Printiss 2005, p. 12).

In summary, the loss of habitat was a significant historical threat to the frosted flatwoods salamander. This range-wide loss of both upland and wetland habitat occurred primarily due to conversion of flatwoods sites to agriculture, residential development, and intensively managed pine plantations. This historic loss of habitat is presently compounded by current environmental conditions (drought), proposed projects on private land that do not require Corps permits under the Clean Water Act (33 U.S.C. 1251 *et seq.*), and the nature of pond-breeding salamanders to undergo periodic reproductive failure. We consider this threat to be primarily a past and future threat of moderate magnitude because most of the remaining occupied habitat of this species occurs on public lands that are managed to support the native longleaf pine ecosystem. However, 12 percent of frosted flatwoods salamander populations are on private land where habitat continues to be degraded by fire suppression and incompatible management (defined above under summary discussion for reticulated flatwoods salamander). If the remaining frosted flatwoods salamander habitat on public land continues to be protected from fire suppression and other incompatible forest management practices, road construction, and additional habitat fragmentation, the threat of habitat loss should be limited. Localized threats on private lands would include loss or alteration of habitat from agriculture, residential development, road construction, incompatible forest management, ORVs, fire suppression, and ditching or draining wetland breeding sites. As a result, we have determined that the present or threatened destruction, modification, or curtailment of frosted flatwoods salamander habitat and range represents a moderate but significant threat to the species.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization does not appear to be a threat to the frosted flatwoods salamander at this time. There is no evidence of a past or current problem with collection of this species. Consequently, we have determined that the factor of overutilization for commercial, recreational, scientific, or educational purposes is not a threat to the frosted flatwoods salamander at this time.

C. Disease or Predation

Although disease has not been specifically documented in the frosted flatwoods salamander thus far, disease outbreaks with mass mortality in other species of salamanders indicate that disease may be a threat for this species as well (Daszak *et al.* 1999, p. 736). Whiles *et al.* (2004, p. 211) found a parasitic nematode (*Hedruris siredonis*, family Hedruridae) in larvae of the frosted flatwoods salamander from South Carolina and Florida. This parasite has been found in other ambystomatids and can cause individuals to become undersized and thin, thus reducing their fitness (Whiles *et al.* 2004, p. 212). The infestations

were not considered heavy and were probably not having a negative impact on the larvae studied; however, environmental degradation may change the dynamics between salamander populations and normally innocuous parasites (Whiles *et al.* 2004, p. 212). Ranaviruses in the family Iridoviridae and the amphibian chytrid fungus (*Batrachochytrium dendrobatidis*) may be other potential threats, although the susceptibility of the frosted flatwoods salamander to these diseases is unknown. Ranaviruses have been responsible for die-offs of tiger salamanders throughout western North America and spotted salamanders (*A. maculatum*) in Maine (Daszak *et al.* 1999, p. 736). The amphibian chytrid fungus has been discovered and associated with mass mortality in tiger salamanders in southern Arizona and California, and the Santa Cruz long-toed salamander (*A. macrodactylum croceum*) (Vredenburg and Summers 2001, p. 151; Davidson *et al.* 2003, p. 601; Padgett-Flohr and Longcore 2005, p. 50). This fungus has been found at Fort Stewart Military Installation in Georgia, a locality where the frosted flatwoods salamander occurs (Mitchell 2002, p. 191–202). This disease has negatively impacted populations of other ambystomatid salamanders (*A. macrodactylum croceum*) (Vredenburg and Summers 2001, p. 151; Davidson *et al.* 2003, p. 601; Padgett-Flohr and Longcore 2005, p. 50), and it is likely to negatively impact frosted flatwoods salamander populations as well. This discussion of disease in other species of closely related salamanders indicates the potential existence of similar threats to frosted flatwoods salamander populations.

Exposure to increased predation by fish is a threat to the frosted flatwoods salamander when isolated, seasonally ponded wetland breeding sites are changed to or connected to more permanent wetlands inhabited by fish species not typically found in temporary ponds. Red imported fire ants (*Solenopsis invicta*) are also potential predators of flatwoods salamanders, especially in disturbed areas. They have been seen in areas disturbed by the installation of drift fences at known frosted flatwoods salamander breeding sites (Palis 2008). Mortality of amphibians trapped at drift fences has occurred when fire ants were present and traps were not monitored with sufficient frequency (Palis *et al.* 2002, p. 6). The severity and magnitude of effects, as well as the long-term effect, of fire ants on frosted flatwoods salamander populations are currently unknown.

In summary, diseases of amphibians in the southeastern United States remain largely unstudied. However, given the incidence of disease in species in the western United States that could be considered surrogates for flatwoods salamanders, the probability exists for similar infections to occur in frosted flatwoods salamander populations. We consider this to be a potential threat of moderate magnitude. Predation by fish is a historic threat that continues to be a localized problem when ditches, firebreaks, or vehicle ruts provide connections allowing the movement of fish from permanent water bodies into frosted flatwoods salamander breeding sites. Fire ants also have the potential of being a localized threat, particularly in disturbed areas. We consider these threats to be potential threats of moderate magnitude because 88 percent of frosted flatwoods salamander populations occur primarily on public lands where they are relatively protected from habitat destruction.

D. The Inadequacy of Existing Regulatory Mechanisms

Other than the National Forest Management Act and the Sikes Act, there are no existing regulatory mechanisms for the protection of the upland habitats where frosted flatwoods salamanders spend most of their lives. Refer to Factor D under ''Summary of Factors Affecting the Species (Reticulated Flatwoods Salamander)'' for information on the threat of the Inadequacy of Existing Regulatory Mechanisms that also applies to frosted flatwoods salamander.

Longleaf pine habitat management plans that provide conservation benefits to frosted flatwoods salamanders have been written for most of these sites. They include management plans for State- and Federally-owned lands and integrated natural resource management plans (INRMPs) for Department of Defense lands. Most of the plans contain specific goals and objectives regarding habitat management, including prescribed burning, that would benefit frosted flatwoods salamanders if implemented. Multiple-use is the guiding principle on most of these public lands, however, and protection of the frosted flatwoods salamander may be just one of many management goals including timber production and military and recreational use.

At the State and local levels, regulatory mechanisms are limited. The flatwoods salamander is listed as a threatened species in the State of Georgia (Jensen 1999, pp. 92–93). This designation protects the species by preventing its sale, purchase, or possession in Georgia and by prohibiting actions that cause direct mortality of the species or the destruction of its habitat on lands owned by the State of Georgia (Ozier 2008). However, there are no known frosted flatwoods salamander populations on lands owned by the State of Georgia. In 2001, the Florida Fish and Wildlife Conservation Commission (FFWCC) listed the flatwoods salamander (which includes the frosted flatwoods salamander) as a species of special concern (FFWCC 2007, p. 2) and prohibited direct take except through permit. As part of the listing process, a Statewide management plan was developed for the salamander in Florida (FFWCC 2001, p. 1–60); however, Florida regulations offer no protection against the most significant threat to the frosted flatwoods salamander—loss of habitat. In South Carolina, the flatwoods salamander is listed as endangered (South Carolina Department of Natural Resources 2008a). Prohibitions extend only to the direct take of the flatwoods salamander (South Carolina Department of Natural Resources 2008b). These regulations offer no protection against the most significant threat to the flatwoods salamander, which is loss of its habitat.

In summary, although existing regulatory mechanisms provide little direct protection of frosted flatwoods salamanders (beyond the protections afforded by the Act), they do provide a degree of protection for the remaining occupied habitat, primarily on public lands. The record of management on public lands since the original listing of the flatwoods salamander in 1999 indicates that public agencies are actively pursuing longleaf pine ecosystem management programs that benefit the frosted flatwoods salamander. Frosted flatwoods salamander breeding sites on the three private land sites may, in some cases, come under the jurisdiction of the Corps (Refer to Factor D under ''Summary of Factors Affecting the Species (Reticulated Flatwoods Salamander)'' for discussion of section 404 of the Clean Water Act and regulatory wetlands), but most likely they are provided little regulatory protection. We have determined that the threat of inadequate existing regulatory mechanisms is primarily an ongoing threat of moderate magnitude.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Metapopulations are important to the long-term survival of temporary pond

breeding amphibians. Refer to Factor E under ''Summary of Factors Affecting the Species (Reticulated Flatwoods Salamander)'' for additional information on metapopulations. Of the 25 known frosted flatwoods salamanders populations, 16 (64 percent) are supported by more than one breeding pond and may be considered metapopulations. However, 36 percent (9 out of 25) of the known frosted flatwoods salamander populations that have only a single breeding pond, any one of the many threats that may render a breeding pond unsuitable could cause the extirpation of the affected population.

Invasive plant species, such as cogongrass (*Imperata cylindrica*), threaten to further degrade existing flatwoods habitat. Refer to Factor E under ''Summary of Factors Affecting the Species (Reticulated Flatwoods Salamander)'' for additional information on invasive species and the threat they represent, which also applies to the frosted flatwoods salamander. Frosted flatwoods salamander habitat management plans will need to address threats posed by cogongrass and other invasive plant species and include strategies to control them.

Pesticides (including herbicides) may pose a threat to amphibians, such as the frosted flatwoods salamander. Refer to Factor E under ''Summary of Factors Affecting the Species (Reticulated Flatwoods Salamander)'' for additional information on pesticides and the threat they represent, which also applies to the frosted flatwoods salamander. However, herbicides may be a necessary tool to reduce or eliminate woody vegetation or invasive plants when the use of prescribed fire is not possible or effective (Jensen 2007, Wigley 2008). Nevertheless, pesticides should never be used in flatwoods salamander habitat unless no other habitat management tool is available; herbicide label directions should be followed closely and aerial spraying should not be used as an application technique. Under these conditions, we consider this threat to be of moderate magnitude.

Studies of other ambystomatid species have demonstrated a decline in larval survival in the presence of predatory fish, as mentioned above under Factor C. One of the potential reasons for this decline may be the negative effect resulting from these fish competing with salamander larvae for invertebrate prey. The invertebrates found by Whiles *et al.* (2004, p. 212) in a study of larval frosted and reticulated flatwoods salamander gut contents are typical of freshwater habitats in the Southeast that do not contain predatory fish on a regular basis. The presence of predatory fish has a marked effect on invertebrate communities and alters prey availability for larval salamanders with the potential for negative effects on larval fitness and survival (Semlitsch 1987, p. 481). Wherever connections have been created between permanent water and frosted flatwoods salamander ponds, such as through installation of firebreaks or ditches, this threat from predatory fish exists.

Studies of frosted flatwoods salamander populations, since the original species listing of flatwoods salamander as threatened (64 FR 15691; April 1, 1999), have been limited due to drought. Data on the numbers of adults within existing populations do not exist. However, given the low number of individuals encountered even when breeding is verified, populations are likely to be very small at any given breeding site. Small populations are at increased threat of extirpation from natural processes (genetic isolation, inbreeding depression, and drought), as well as the manmade threats described above.

In summary, a variety of natural or manmade factors historically or currently threaten, or have the potential to threaten, the frosted flatwoods salamander. The loss of metapopulation structure in the distribution of frosted flatwoods salamander populations was a range-wide threat that caused historic losses of this species. It continues to be a current threat for 64 percent of the remaining frosted flatwoods salamander populations. Fire suppression and inadequate habitat management continue to cause the degradation of occupied sites, primarily on private land. Invasive plant species probably did not have much of a historic impact on salamander populations, but they are a range-wide current threat, and they are likely to become more widespread and difficult to control. Range-wide, low population densities have been a historic threat and continue to be a threat for most frosted flatwoods salamander populations, particularly due to past and current drought conditions, habitat loss, population fragmentation, and periodic reproductive failures that occur naturally in pond-breeding amphibians. The impact that competing predators may have on the salamanders' prey base, and the threat of pesticide and herbicide use, are less clear as historic threats but remain potential localized threats for the species. Therefore, while we have determined that other natural and manmade factors, such as invasive species, pesticides, and competition for the species' prey base, may threaten the frosted flatwoods salamander, the severity and magnitude of these threats are not currently known. Acting in combination with threats listed above under Factors A through D, the threats under Factor E could increase the severity of the other threats.

Determination

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the frosted flatwoods salamander. In summary, the most significant historical threat to the frosted flatwoods salamander, as listed in Factor A (above), is loss of the majority of its habitat. A variety of localized threats (described under Factors A, C, D, and E) have the potential to impact the remaining frosted flatwoods salamander populations and habitat. These include—alterations in the hydrology of existing wetland breeding sites (including ''ditching'' which results in the introduction of predatory fish); incompatible forest management; ORV use; fire suppression; drought; and disease. The severity and magnitude of the threats under Factor E are not currently known. Nevertheless, we have determined that threats under this factor will exacerbate the effects of threats due to habitat loss and drought. As described in Factor E above, small populations are at increased threat of extirpation from natural processes (genetic isolation, inbreeding depression, and drought), as well as the manmade threats listed above. Finally, there are potential localized threats from fire ants, pesticides, and invasive plants for which the extent of impact is yet undeterminable, but that we believe are legitimate threats due to both their impact on surrogate species and their prevalence in the types of habitats used by this species.

Only 25 frosted flatwoods salamander populations are known. Ten (40 percent) of these populations are supported by only one breeding site. A population with only one breeding site has a tenuous future just given randomly varying environmental factors without considering the additional threats of habitat destruction and degradation that further threaten these populations.

As noted previously, habitat with the range of the frosted flatwoods salamander is currently experiencing drought conditions. Palis *et al.* (2006, pp. 5–6) studied a frosted flatwoods population in Florida during a drought from 1999–2002. This study documented 3 consecutive years of reproductive failure and a steady

decline in adult immigration to the site for breeding as the drought progressed.

Catastrophic reproductive failure occurs even in healthy populations of pond-breeding amphibians. When it does occur, the modeling efforts of Taylor *et al.* (2005, p. 796) showed that each year of reproductive failure raises the threshold of survival required to achieve persistence and imposes the possibility of extirpation even under otherwise favorable environmental conditions. Taylor *et al.* (2005, p. 799) reminds us that particularly with small populations or low population growth rates (as exists with the frosted flatwoods salamander) effects of reproductive failure are made worse by demographic stochasticity. Even in populations with multiple breeding ponds, amphibian populations may be unable to recolonize areas after local extirpations due to their physiological constraints, relatively low mobility, and site fidelity (Blaustein *et al.* 1994, pp. 60, 67–68).

For frosted flatwoods salamander, 40 percent of populations have only one breeding pond. If the habitat at that site is destroyed, recolonization would be impossible and the population supported by that breeding pond would be extirpated.

Habitat loss on private lands is an imminent threat that is compounded by a variety of other factors. Fire suppression on private lands occupied by the frosted flatwoods salamander represents one of the biggest threats to the species' habitat and the continued existence of the species on these sites. However, 60 percent of frosted flatwoods salamander populations have an improved chance of surviving demographic and environmental stochasticity given that the distribution of breeding sites occurs within an adult salamander's dispersal distance.

We believe that, when combining the effects of historical, current, and projected habitat loss and degradation, historical and ongoing drought, and the exacerbating effects of disease, predation, small population size, and isolation, the frosted flatwoods salamander continues to be likely to become an endangered species throughout all of its range within the foreseeable future. We believe these threats, particularly the threats to populations resulting from habitat degradation and fragmentation, small population size, and drought, are current and are projected to continue into the future. We have determined that these threats are operating on the species and its habitat with a moderate degree of magnitude throughout most of its range and with a moderate degree of severity, as discussed above.

Based on the best available scientific and commercial information, we have determined that the preferred action is for the frosted flatwoods salamander to retain its status as a threatened species under the Act. Without the protection of the Act, significant management of threats would likely occur on public lands; however, there is still substantial risk of loss of ponds to drought and disease and, on private lands, a variety of potential threats (for example, introduction of fish, predation, pesticides), and imminent threats (for example, fire suppression, invasive species, and development). As discussed previously, declines resulting from drought can occur within only a few years. In the case of the frosted flatwoods salamander, 40 percent of populations have only one breeding pond. If the habitat at that site is destroyed, recolonization would be impossible and the population supported by that breeding pond would be extirpated. This could occur within a few years given recurring drought conditions and existing threats. While not in immediate danger of extinction, the frosted flatwoods salamander is likely to become an endangered species in the foreseeable future throughout all or a significant portion of its range if the present trends that negatively affect the species, and its limited and restricted habitat, continue. Furthermore, because these threats to the species are of comparable magnitude and severity across all of the species' range, we have determined that an analysis of whether a specific portion of the range might require a different listing status is not warranted at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition of the status, increased priority for research and conservation funding, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies; private organizations; and individuals. The Act provides for possible land acquisition and cooperation with the States, and for conservation actions to be carried out for listed species.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or result in destruction or adverse modification of critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must consult with us under the provisions of section 7(a)(2) of the Act.

Federal agency actions within the species habitat that may require consultation as described in the preceding paragraph include management and any other landscape altering activities on Federal lands administered by the Department of Defense, Fish and Wildlife Service, and U.S. Forest Service; issuance of section 404 Clean Water Act permits by the Corps; construction and management of gas pipeline and power line rights-of-way by the Federal Energy Regulatory Commission; and construction and maintenance of roads or highways by the Federal Highway Administration.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions, codified at 50 CFR 17.21 for endangered wildlife, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import, export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving threatened or endangered wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species. You may obtain permits for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

Critical Habitat

Previous Federal Actions

For information about previous Federal actions regarding designation of

critical habitat for flatwoods salamanders, see our proposed rule (73 FR 47258) published on August 13, 2008. This notice included revisions to the proposed designation of critical habitat published in the **Federal Register** on February 7, 2007 (72 FR 5856), and announced the availability of our draft economic analysis of the proposed critical habitat designation (DEA). On September 18, 2008, we published a notice in the **Federal Register** (73 FR 54125) providing supplemental information on the status of the frosted flatwoods salamander. On October 8, 2008, we published a notice in the **Federal Register** which extended the public comment period on the proposed rule and provided the time, date, and location of our public hearing (73 FR 58922). We held a public hearing on October 22, 2008. The extended public comment period ended on November 3, 2008.

Summary of Comments and Recommendations

As stated above, since the proposed rule addressed both listing and critical habitat, comments received combined these two issues. Therefore, we are presenting the combined comments and responses for these issues, below.

In the 2007 proposed rule, we requested written comments from the public on reasons why we should or should not designate critical habitat for the flatwoods salamander (72 FR 5856). We contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties, and invited them to comment on the proposed rule. We also issued press releases and published legal notices in the *Jasper County Sun, Pensacola News Journal, The DeFuniak Springs Herald-Breeze, Savannah Morning News, Tallahassee Democrat, The Albany Herald, Miller County Liberal, The Berkeley Independent, The Florida Times-Union, The News Herald*, and *The Post and Courier* newspapers. During the open public comment period, we received a request to hold a public hearing, however a public hearing was not held at that time. Due to new information that became available on threats to the flatwoods salamander and the reclassification in the taxonomy of the species, we asked for an extension of our court-ordered deadline on the designation of critical habitat for the flatwoods salamander to include the new information. Subsequently, a new proposed rule was written and published in the **Federal Register** on August 13, 2008 (73 FR 4725).

For the 2008 proposed rule, we requested written comments from the public on known or suspected threats to the frosted flatwoods salamander and the reticulated flatwoods salamander and any information on the need to change the status of either species; reasons why we should or should not designate critical habitat for the two species; and on the DEA (73 FR 47258). We contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties, and invited them to comment on the proposed rule. We also issued press releases and published legal notices in the *Jasper County Sun, Northwest Florida Daily News, Pensacola News Journal, Savannah Morning News, Tallahassee Democrat, The Albany Herald, The Berkeley Independent, The Florida Times-Union, The News Herald*, and *The Post and Courier* newspapers. Based on a request received during the public comment period, we held a public hearing and information meeting on October 22, 2008, at Pensacola Junior College in Pensacola, Florida.

During the comment period for the first proposed rule that opened on February 7, 2007, and closed on April 9, 2007, we received 23 comments directly addressing the original proposed critical habitat designation: five from peer reviewers; three from Federal agencies; three from State agencies; and 12 from organizations or individuals. During the comment period for the second proposed rule that opened on August 13, 2008, and closed on November 3, 2008, we received 79 comments directly addressing the reclassification in the listing of the flatwoods salamander into two species; the proposed designation of the reticulated flatwoods salamander as endangered; the maintenance of the listing of the frosted flatwoods salamander as threatened; the revised proposed critical habitat designation for the two species; and the DEA. Of these latter comments, 44 comments were received either in written form or through the portal at: *http://www.regulations.gov*; three of these were from Federal agencies, none were from State agencies, one was from a local government, and 40 were from organizations or individuals. Thirty-five of the 79 comments were made during the public hearing held on October 22, 2008; one of these was from a Federal agency, one was from a State agency, one was from a state senator, four were from local governments, and 28 were from organizations or individuals.

The following summary statistics are provided on the 23 comments received on the 2007 proposed rule. In total, 7 commenters supported the designation of critical habitat for the flatwoods salamander, 3 opposed the designation, and 13 were neutral regarding the designation. These following summary statistics are provided on the 79 comments received on the 2008 proposed rule. Nine commenters sent comments during the 2008 open comment period and also commented at the public hearing. An individual, group, or agency responding multiple times was only counted once as none of these commenters' opinions of the proposed rule differed between responses. In total, 33 commenters supported the proposed rule, 34 opposed the proposed rule, and 3 were neutral regarding the proposed rule. Comments received were grouped into 7 general issues specifically relating to the subjects in the 2008 proposed rule and the DEA, and are addressed in the following summary. We have incorporated comments into this final rule as appropriate.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), and current Department of the Interior guidance, we solicited expert opinions for both the 2007 and 2008 proposed rules from five knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. We received responses from all five of the peer reviewers on the 2007 proposed rule and from four of the five peer reviewers on the 2008 proposed rule. We reviewed all comments received from the peer reviewers for substantive issues and new information regarding flatwoods salamander critical habitat. We combined peer reviewer comments from both years. The peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve the final critical habitat rule. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Review Comments

(1) *Comment:* Three of the peer reviewers emphasized the importance of the Eglin Air Force Base-Hurlburt Field metapopulation to the survival of the reticulated flatwoods salamander and questioned whether adequate habitat management, especially fire management, could be conducted if the highway proposed for the area was

approved (*see* also Comment 15). They discussed the inclusion or exclusion of military lands which have approved Integrated Natural Resource Management Plans (INRMPs), including these two sites as well as Navy Outlying Landing Field (NOLF) Holley (see also Comment 16). These peer reviewers were concerned about the finite period of the plans and the potential for decreased conservation efforts if INRMPs are revised when renewed. One peer reviewer recommended that NOLF Holley be included in critical habitat because the Navy's natural resources manager and forester had informed him that the Navy no longer had use for the field and that Santa Rosa County was interested in acquiring it. They concurred with the 2008 proposed rule (73 FR 47258) that included these military lands in proposed critical habitat.

Our Response: Eglin Air Force Base (Eglin) has assured the Service that they ''will not allow negative impacts to the salamander habitat'' on the base (DoAF 2008a, p. 1). The Commander of Eglin stated that, ''Eglin will ensure that the proposed Bypass road, and any actions associated with it, will not prevent implementation of the conservation measures identified in the INRMP for the flatwoods salamander'' (DoAF 2008b, p. 1). The Service has reassessed the Eglin INRMP and determined that, with the Air Force's recent assurances, it will provide a conservation benefit for the reticulated flatwoods salamander. The Department of the Navy has assured the Service that the Navy has no intention of transferring ownership of NOLF Holley and the INRMP will continue to be implemented for this site as written (Department of the Navy 2008, p. 2). We conduct annual reviews of the INRMPs for all the military bases with known flatwoods salamander populations and reassess their conservation benefits and implementation. All the involved military bases have assured the Service of their future compliance with their INRMPs (see citations above). As a result of this analysis, Eglin, Hurlburt Field, and NOLF Holley have been removed from the final critical habitat designation for the reticulated flatwoods salamander.

(2) *Comment:* One peer reviewer stated that the locality record used as the basis for proposed critical habitat unit RFS–5 is based on a poor quality photograph of a single larva collected in 1998 and that the larva in the photograph is likely a mole salamander (*Ambystoma talpoideum*). The site of the locality record and at least 100 other wetlands in the area have been surveyed since 2002 during suitable immigration and emigration periods. Many mole salamanders have been captured, but no reticulated flatwoods salamanders. It is the opinion of the peer reviewer that the original identification of the collected larva as a reticulated flatwoods salamander was in error.

Our Response: We agree that there is no verifiable evidence that flatwoods salamanders occupy habitat represented by Unit RFS–5, as originally proposed. Therefore, this unit has been removed and the final critical habitat designation for the reticulated flatwoods salamander has been revised based on this comment.

(3) *Comment:* One peer reviewer stated that habitat within proposed critical habitat unit FFS–2, located on Tate's Hell State Forest, is no longer suitable for the frosted flatwoods salamander. Since an adult flatwoods salamander was discovered there in 1998, hydrological restoration of the likely breeding site has been conducted and altered the site to a more permanently flooded wetland. Surveyors sampled the site in 2002, 2003, and 2004 but were unsuccessful in documenting any flatwoods salamander larvae within the wetland. The peer reviewer believes the wetland restoration project and the historically poor upland management of the area have resulted in the loss of flatwoods salamander habitat at this site on Tate's Hell State Forest.

Our Response: Based on the peer reviewer's comment and the site visit information, we believe Unit FFS–10, as originally proposed, no longer contains the PCEs essential to the conservation of the flatwoods salamander. Therefore, this unit has been removed from the final critical habitat designation.

(4) *Comment:* One peer reviewer stated that maps in the proposed rule are not sufficient for delineating actual boundaries of proposed critical habitat. The peer reviewer suggested using road or topographic maps and aerial photography.

Our Response: The printing standards of the **Federal Register** are not compatible with using road or topographic maps and aerial photography. We constructed the critical habitat units using a Geographic Information System (GIS). The resulting critical habitat GIS shapefiles are available by request from the Mississippi Field Office (see **FOR FURTHER INFORMATION CONTACT**). The shapefiles can be laid over other layers (aerial photography, roads) to get more precise locality information.

(5) *Comment:* One peer reviewer stated that reticulated flatwoods salamander units in southwest Georgia (unit names in 2008 proposed rule (73 FR 47258; August 13, 2008) are RFS–10, subunits A and B, respectively) may have agricultural land that does not contain the primary constituent elements and should be removed.

Our Response: The peer reviewer did not have access to our GIS data when we received this comment. When constructing the units in question, we used aerial photography to verify the presence of the primary constituent elements on the areas and that all agricultural land was excluded from RFS–10, subunits A and B.

Public Comments

General Biological Comments

(6) *Comment:* One commenter cited studies which described flatwoods salamander breeding sites as roadside ditches and borrow pits, as well as natural habitats. This commenter believed that this shows the adaptability of the species and the likelihood that suitable breeding habitat could be created for the salamanders. Several commenters during the public hearing thought that flatwoods salamander habitat could be relocated or constructed elsewhere as an alternative to protecting the existing occupied sites through critical habitat designation. Other commenters at the public hearing stated that this was not possible, as flatwoods salamanders are tied to specific soils and forest–wetland types that need to be present in a landscape context. These commenters expressed support for protecting existing sites.

Our Response: Flatwoods salamanders are known to breed in wetlands that dry on a seasonal basis. The Service is aware of records of flatwoods salamander larvae occurring in ditches and borrow pits. However, whether larvae were successful in developing into adult salamanders at these sites is unknown. The ponded breeding sites must hold water long enough and have a sufficient food source to allow salamander development and metamorphosis. They must also be free of predaceous fish and toxic substances. In addition, there are a number of biotic and abiotic factors that are likely essential for flatwoods salamanders at breeding sites that are currently unknown. Experimental relocations should be an action of last resort for these species and may be explored through the recovery process, if deemed necessary.

Adequacy and Extent of Critical Habitat

(7) *Comment:* Two commenters stated that critical habitat designation on any

lands approved under the Sustainable Forestry Initiative and Sustainable Forestry Certification Program (SFI) is unnecessary and redundant (not warranted). These lands are already recognized as habitat for listed species under the certification program and participants in the program are required to safeguard and protect threatened and endangered species. Participants are expected to implement scientifically based management practices and adaptive management strategies as appropriate. Provisions of this program are not legally binding; however, participants must comply to stay in the program. Therefore, lands under SFI programs should not require special management considerations. The commenters believed designation would not significantly increase or contribute to the likelihood of recovery of the species because the vast majority of lands are either in public ownership or managed according to SFI standards. Therefore, the commenters asserted that critical habitat offers little or no additional management protection and no additional conservation benefit.

Our Response: The criteria for designating sites as critical habitat are whether the sites provide the features essential for the conservation of the species and whether those features may require special management consideration or protection. Under section 4(b)(2) of the Act, the Secretary may exclude an area from critical habitat if the benefits of such exclusion outweigh the benefits of specifying such areas as part of critical habitat. We also consider whether landowners having proposed critical habitat on their lands have developed any conservation plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. Included in this analysis would be whether or not conservation plans have species-specific management prescriptions, or other management approaches, that are coupled with assurances of implementation. The commenter presented a general statement about SFI programs. However, the Service did not receive any comments from specific private landowners within proposed critical habitat that identified themselves as participants in SFI programs nor did we receive any SFI conservation plans for analysis. Therefore, there is no new information indicating that removal of lands under SFI from critical habitat is warranted.

(8) *Comment:* Several commenters stated that private land should be excluded from critical habitat designation. One commenter suggested that the Service should offer incentives, such as voluntary cooperative agreements as a conservation policy for private lands in lieu of critical habitat designation. These commenters stated that it would not be beneficial to flatwoods salamanders to designate critical habitat on private land since designation would be a disincentive for the landowners to continue conservation efforts for this species, would likely increase threats resulting in a net loss of conservation benefit, and eventually result in the extirpation of flatwoods salamanders on private lands.

Our Response: Section 4 of the Act requires the Service to use the best available scientific data in designating critical habitat. Private lands are not exempted from this analysis. Flatwoods salamanders have been listed since 1999 and protection from ''take'' under section 9 has been in effect since that time. The Service knows of no situation where a private landowner has knowingly destroyed or mismanaged flatwoods salamander habitat as a result of this listing. Critical habitat only applies to those lands where there is a Federal nexus (a connection or link to the Federal government). In some cases, private lands may be affected if the landowner is undertaking a project that requires Federal funding or permit. However, the Service believes most application of the protection provided by critical habitat will not affect private lands. Programs are available to provide funds to private landowners for managing habitat for listed species, as well as permits that can be obtained to protect private landowners from the take prohibition when such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Private landowners may contact their local Service field office to obtain information about these programs and permits.

(9) *Comment:* Several commenters expressed concern about the potential for being prosecuted for adverse modification if private properties designated as critical habitat are fire suppressed. The commenter requested a definition for fire suppression and an explanation of practices related to fire suppression that would be problematic. The commenter requested that the Service offer emergency exemptions from adverse modification for human life or property.

Our Response: At this time, the Service is unaware of any Federal actions that would leave a private landowner vulnerable to prosecution for adverse modification due to fire suppression. Federal actions related to fire suppression that might lead to adverse modification would include improper implementation of management plans on Federal lands. If suppression of a wildfire is necessary as an emergency Federal action relating to human health and safety within occupied habitat of a listed species or designated as critical habitat, an after-the-fact consultation can be conducted. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional to serve its intended conservation role for the species. However, when considering fire suppression as a threat, we refer to a Federal action which will lead to elimination of fire as a management tool and allow thick underbrush and mid-story to shade out the herbaceous ground cover. Fire suppression, in this sense, leads to deterioration of flatwoods salamander habitat quality and potentially adverse modification of critical habitat.

(10) *Comment:* One commenter requested that the Service should consider a buffer width less than 1,475 feet (ft) (450 meters (m)) around known breeding ponds when defining and designating critical habitat units and stated that the designation of this distance was arbitrary because it was based on a different salamander species. The commenter suggested a 534 [sic] ft (164 m) buffer width as calculated by Semlitsch (1998, p. 1113). This commenter also references Palis *et al.* (2002, pp. 1–20) that is provided as support for a smaller buffer width around known flatwoods salamander breeding ponds. Another commenter disputed the scientific basis for rounding up the buffer radius to 1,500 ft (457 m) from 1,476 ft (450 m) when constructing critical habitat units. Several commenters requested that the buffer width used in calculating critical habitat units be increased to 5,576 ft (1,700 m), since this is the maximum distance flatwoods salamanders have been reported to disperse and this would create connectivity between known occurrences.

Our Response: Semlitsch (1998, p. 1113) combined movement data in five States for six species of ambystomatid salamanders, which had been collected over a period of several decades. Using these data, we generated a 538-ft (164-m) buffer width from a wetland's edge into the terrestrial habitat, which would create an area that he stated would encompass 95 percent of a population of one of these species. However, Semlitsch (1998, p. 1117) pointed out

that the values used in this calculation probably underestimate the actual buffer needed for some species of salamanders. In addition, he specifically mentioned the flatwoods salamander as one of the species that may require more habitat than the area created by using the 538-ft (164-m) buffer width (Semlitsch 1998, p. 1117). The Service selected a buffer width of 1,475 ft (450 m) from the Semlitsch (1998, p. 1115) paper to use for the flatwoods salamander calculation. This is the maximum value used in his calculations for the marbled salamander. We chose this species because it was recommended by researchers as a model for the flatwoods salamander due to its similar life history (Taylor *et al.* 2005, pp. 792) and because it uses habitat in a similar way. Although adult marbled salamanders occupy hardwood forests rather than pine forests, they breed underground and in temporary ponds. The 1,475 ft (450 m) value corresponded well with data collected over 20 years by Means *et al.* (1996, p. 435) which described estimated movements of flatwoods salamanders of 984 ft (300 m) to 1,640 ft (500 m) between upland habitat and breeding ponds in relatively homogeneous habitat.

The Service used the value of 1,476 ft (450 m) to estimate the size of activity areas used by flatwoods salamanders in the original listing rule. This value also was used originally in draft management guidelines for flatwoods salamanders that the Service wrote in conjunction with the flatwoods salamander recovery team. During review of these draft guidelines, several members of the recovery team (mainly foresters) felt that use of this value was unrealistic. They believed that it was unlikely that a forester in the field would measure such an uneven number. For ease of application, they believed an even number would be easier to work with in the field and recommended rounding the value up to 1,500 ft (457 m). The Service did not use the 5,576 ft (1,700 m) movement distance described in Ashton and Ashton (2005, p. 65) to define the activity area for flatwoods salamanders because we consider this distance to represent the limit of the species dispersal. Therefore, the Service considered breeding sites within twice this distance (rounded to 2 mi (3.2 km)) to be considered part of the same metapopulation. Dr. Semlitsch was a peer reviewer of this proposed rule. In his review of the proposed rule, he stated that the distance the Service used to delineate the activity area around the breeding ponds is well-supported biologically in the literature and based on numerous studies of species in the same genus. Further, he also stated that connecting breeding sites within two miles of each other to protect dispersal habitat is also well-justified in the literature. He stated that neither value used in our calculations is too conservative or excessive, but rather an appropriate balance between the economics of land use and habitat protection. Palis *et al.* (2002, pp. 1–20) provides information on a declining flatwoods salamander population during a drought. A drift fence was set up enclosing the breeding site for this population and three partial drift fences were set into the uplands at 164, 328, and 656 ft (50, 100, and 200 m) from the pond-upland edge. Only one individual provided one travel movement of 328 ft (100 m) from the uplands into the pond, during this 3-year study. Although this paper provides this movement datum of one individual during a drought, the Service does not believe it is conclusive enough to use in defining the activity area of flatwoods salamanders around breeding ponds.

(11) *Comment:* One commenter questioned whether, when proposing critical habitat, we had taken into account wide-scale global climate change and the possibility of inbreeding or natural extinction in the many small, isolated populations of flatwoods salamanders.

Our Response: Extinction is a natural process. Normally, new species develop through a process known as speciation at about the same rate that other species become extinct. However, because of air and water pollution, extensive deforestation, the loss of wetlands, and other human-induced impacts, extinctions are now occurring at a rate far exceeding the speciation rate. The purpose of the Act is to conserve endangered and threatened species and the ecosystems on which they depend. The Service has presented information on threats to the two species of flatwoods salamander elsewhere in this rule. We have no data supporting global climate change as a specific threat; however, flatwoods salamanders have been negatively affected by a recent long-term drought. The many threats that face these species, including the possibility of inbreeding or natural extinction, highlight the importance of metapopulations. These threats were considered and we designated critical habitat for areas occupied by metapopulations whenever possible by providing habitat to connect occupied sites.

(12) *Comment:* One commenter asked if we had population estimates for those populations whose habitat had been used to designate critical habitat. He questioned the use of presence-absence surveys as a basis for designating critical habitat, especially those areas where only one individual flatwoods salamander had been captured. Without population estimates, he did not believe we had sufficient population data to use as a basis for designating critical habitat.

Our Response: Obtaining population estimates from wild populations of animals is frequently a difficult task. The two species of flatwoods salamander are widely distributed across the southeastern United States. Only a few of the populations have been studied in detail. Even in these populations, estimates of the number of salamanders at a site have not been possible. For a pond-breeding amphibian that lives underground for most of its life, the typical method used to monitor a population is to put a fence around a breeding site that captures the adult salamanders that come in to breed and the metamorphic salamanders and adults that leave the pond after the breeding event. At minimum, obtaining a population estimate using this technique needs to be repeated often enough to get values for the number of females breeding in the population, their annual survival and reproductive rates, survival of juvenile salamanders (especially the first year cohort) and the age at first reproduction for females. These values are not known for any flatwoods salamander population. It was impossible, due to constraints of time, money, and fluctuations in weather, to determine the number of individuals in extant populations for use in this rule. The capture of one larva at a particular location does not always indicate low numbers. In many cases, surveyors will simply stop surveying once an individual is documented in order to cover as many different locations as possible within a limited survey time period. The Act requires determinations of critical habitat to be based on the best scientific data available. In this case, data from presence-absence surveys represent the best scientific data available and the Service used these data as a basis for designating critical habitat.

(13) *Comment:* One commenter suggested that flatwoods salamanders may have adapted their lifestyle requirements to a different habitat than that which was designated as critical habitat. He stated that flatwoods salamanders may occur in other breeding habitats than ephemeral ponds and that these habitats have yet to be surveyed.

Our Response: Researchers have been studying flatwoods salamanders for over

20 years and surveys have been conducted on the Apalachicola National Forest in Florida for more than 30 years. Herpetologists have also been studying other species of amphibians in the numerous wetland habitats of the southeast since at least the 1930s. No flatwoods salamander has ever been found outside of historical longleaf pine flatwoods or in wetland areas that do not dry on a cyclic basis.

(14) *Comment:* One commenter asked about how we knew that breeding habitats were ephemeral ponds and not seasonally connected to other wetlands if we do not have long-term hydrologic data.

Our Response: The Service used data from known flatwoods salamander localities to determine occupied areas. The locality data included descriptions of the habitat. The vegetation of ephemeral ponds is distinctive and researchers use it to distinguish between wetland habitat types. In addition, we used aerial photography to look at each area proposed for critical habitat and verify wetland type. Long-term hydrologic data are needed to determine a wetland's hydroperiod but are not necessary to discriminate an ephemeral pond. Under high water conditions, such as those resulting from a hurricane, ephemeral wetlands may become connected to other wetlands. However, under normal weather conditions, they are isolated from other water bodies.

(15) *Comment:* Many commenters requested that habitat within Eglin Air Force Base and Hurlburt Field be removed from critical habitat, mainly due to a perception that designation of critical habitat would stop the construction of the Bypass Road proposed by the Northwest Florida Transportation Corridor on the southern property boundary of Eglin Air Force Base. Other commenters simply wrote in support of the Bypass Road construction without taking any position on any of the actions proposed in the rule. The Department of the Air Force's Eglin Air Force Base requested removal of the Base from critical habitat because they stated that their existing Integrated Natural Resource Management Plan (INRMP) is adequate, and they provided assurance that the proposed Bypass Road would not prevent them from implementing the INRMP. Many other commenters supported retaining Eglin and Hurlburt Field within critical habitat because of the vital importance of this area to the long-term survival of the reticulated flatwoods salamander. These commenters were concerned that habitat management of these areas proposed as critical habitat would not be possible if a road was constructed in the proposed location.

Our Response: In 2007, the Service published a proposed rule designating critical habitat for the flatwoods salamander (72 FR 5856). Within this rule, Eglin was exempted from critical habitat because the Service considered the INRMP for the base to be adequate. After this rule was published, a threat became known to the Service which we considered to be serious enough to question the adequacy of Eglin's INRMP. This new threat was represented by a letter of conceptual approval provided by Eglin to the Northwest Florida Transportation Corridor Authority in October of 2007 for alignment of a road along the southern boundary of the base. The proposed alignment was adjacent or through most of the occupied reticulated flatwoods salamander habitat on Eglin and Hurlburt Field. Due to the threat posed by this road and Eglin's conceptual approval of it, the Service did not believe that Eglin's INRMP was adequate and habitat on Eglin and Hurlburt Field was included in the revised proposed critical habitat designation published in 2008. However, in comments received by the Service during the open comment period for this proposed rule, the Commander of Eglin stated, ''Eglin will ensure the proposed Bypass road, and any actions associated with it, will not prevent implementation of the conservation measures identified in the INRMP for the flatwoods salamander'' (DoAF 2008b, p. 1, see also response to Comment 1). As a result, Eglin and Hurlburt Field have been removed from the final critical habitat designation for the species.

(16) *Comment:* The Department of the Navy has requested that Navy Outlying Landing Field (NOLF) Holley be removed from critical habitat designation. Reasons for removal included that: The INRMP covering NOLF Holley provides a conservation benefit to the reticulated flatwoods salamander, thereby making critical habitat designation unnecessary; the Navy currently has no plans to transfer ownership of NOLF Holley and intends to continue its stewardship of the salamander and its habitat; and NOLF Holley is required to meet current and future military mission needs and as such is considered necessary for national security. One commenter has requested that the Service retain NOLF Holley within the critical habitat designation due to its importance as the only habitat remaining in the area for the reticulated flatwoods salamander and the potential for transfer of ownership from the Department of the Navy to local developers.

Our Response: In 2007, the Service published a proposed rule designating critical habitat for the flatwoods salamander (72 FR 5856). Within this rule, NOLF Holley was exempted from proposed critical habitat because the Service considered its INRMP to be adequate. After the proposed rule was published, the Service received information that the Navy was no longer using this field for military operations and discussions had been initiated with Santa Rosa County to transfer ownership of this property to the county. For this reason, NOLF Holley was included in the 2008 revised proposed rule (73 FR 47258). During the open comment period for the revised proposed rule, the Department of the Navy assured the Service ''that the Navy currently has no plans to transfer ownership of NOLF Holley (DoN 2008, p. 2, see also response to Comment 1). Further, it is the Navy's intent to continue its stewardship of the salamander and its habitat.'' Based on these comments, the Service has reassessed the benefit of their INRMP and concluded that it will continue to be implemented. Therefore, NOLF Holley has been exempted from the final critical habitat designation.

(17) *Comment:* One commenter was concerned with the benefits of INRMPs for the DOD lands in Georgia, Fort Stewart Military Installation and Townsend Bombing Range. This commenter questioned whether the existing INRMPs would meet the standard of ''conservation,'' which would entail using all methods and procedures which would benefit the survival and recovery of the frosted flatwoods salamander. The commenter acknowledged that the Service has concluded that these two INRMPs have met this standard, but questions whether funding is sufficient to ensure conservation measures are implemented. The commenter stated that, at the very least, the Service should continue to review the INRMPs annually to ensure no projects, land use changes, or funding cuts are proposed that will threatened continued protection of the flatwoods salamander or its habitat.

Our Response: The Service will continue to review all INRMPs for habitat occupied by both species of flatwoods salamander on an annual basis to ensure that there is certainty they will be implemented and that no projects or land use changes are proposed that are likely to jeopardize the continued existence of the frosted and reticulated flatwoods salamanders

or result in the destruction or adverse modification of their habitats. The Service has determined that conservation efforts identified in the existing INRMPs for the DOD lands in Georgia, Fort Stewart Military Installation and Townsend Bombing Range, will provide benefits to the frosted flatwoods salamander and the features essential to the species' conservation on these lands.

(18) *Comment:* One commenter identified unoccupied habitat in the general area in the Apalachicola National Forest (ANF) that he believed has the primary constituent elements for the frosted flatwoods salamander but had not been proposed for critical habitat designation. In addition, the commenter stated that designating unoccupied habitat is an essential part of critical habitat for a species and needs to be included in the final critical habitat designation for the flatwoods salamander. The Service received comments from the ANF District Ranger supporting the proposed designation of critical habitat for both species of flatwoods salamander, including that portion of the designation within the boundaries of ANF and Osceola National Forest. In addition, the District Ranger has proposed to create ''salamander conservation areas'' as a part of amending the forest's land management plan. These areas would encompass proposed critical habitat and additional areas not known to be occupied by salamanders but appearing to have potential as flatwoods salamander habitat. These salamander conservation areas will expand to the existing compartment boundaries and provide more buffer area around known ponds, as well as unoccupied potential habitat referred to by the first commenter. This strategy will be implemented on the Osceola National Forest as well as ANF. Expanding conservation areas to the compartment boundaries will ensure that management of unoccupied areas will be conducted in the same manner as, and in conjunction with, those areas currently occupied and proposed for critical habitat.

Our Response: We recognize the value of designating unoccupied habitat as critical habitat in certain situations. Based on the available information, we do not believe that designating unoccupied habitat for frosted and reticulated flatwoods salamanders provides conservation benefit to these species if it is separated from occupied habitat by an area of unsuitable habitat beyond the dispersal distance of the salamanders for two reasons: The likelihood of natural recolonization of these sites is nearly impossible (see also comment 23), and we have determined that this unoccupied habitat and other areas not occupied at the time of listing not already included within this rule are not essential to the conservation of the species. The particular area referenced by the commenters has been combined with those designated as critical habitat into compartments that will be managed in their totality by ANF for conservation of the frosted flatwoods salamander. We will continue to work with the Forest staff to ensure conservation of the species and encourage management for ''salamander conservation areas'' as outlined by the ANF.

(19) *Comment:* One commenter stated that critical habitat, as proposed, will result in a fragmented landscape, with salamander occurrences existing as isolated islands cut off from other salamanders and from the ecosystem process that maintains habitat suitability. In addition, the commenter stated the purpose of critical habitat designation is to aid in the recovery of listed species, not simply to protect isolated individuals or occurrences within a fragmented and disturbed landscape. Several commenters from 2007 provided a general statement that they did not believe we were protecting enough acreage in critical habitat. One commenter asked for the inclusion of areas within Bay and Gulf Counties, in the critical habitat designation.

Our Response: The longleaf pine ecosystem currently exists in the context of a fragmented landscape. The Service has connected occupied flatwoods salamander sites whenever it was possible, according to the method described above in Comment 10. In most cases, however, flatwoods salamander populations are separated from each other by large distances and unsuitable habitat that lacks the PCEs for the species. Surveys totaling hundreds of person-hours have been conducted to search for flatwoods salamanders and potential, unoccupied habitat across the range of both species. The degradation of the existing longleaf pine flatwoods has been extensive. Although new flatwoods salamander localities have been found over the past 15 years, most of these new sites were in the vicinity of known records on the larger public land bases. We believe the recovery of flatwoods salamanders is tied to management on these public lands, where the possibility exists of mimicking natural ecosystem processes through the use of prescribed fire. Outside of these public lands, landscape ecosystem processes have broken down and the potential for linking occupied flatwoods salamander sites by re-establishing longleaf flatwoods habitat on degraded sites is virtually non-existent. There is one historical record for flatwoods salamanders in Gulf County and no historical record for Bay County. There are no known flatwoods salamander populations in either county, no known occupied habitat, and no appropriate unoccupied habitat within an appropriate dispersal distance to allow for natural recolonization. Therefore, we designated no critical habitat in either Bay or Gulf Counties.

(20) *Comment:* One commenter quoted the statement in the original listing rule analysis (64 FR 15691) that any potential benefit from a critical habitat designation would be offset by an increased level of vulnerability to collecting. The commenter inquired about whether the designation of critical habitat for the reticulated and frosted flatwoods salamanders was based on science or pressure from a lawsuit.

Our Response: It is true that we reassessed the need for critical habitat based on a mediated settlement agreement (see ''Previous Federal Actions''). We reviewed the available data on collecting amphibians for the pet trade and on prosecutions for collecting endangered species, and could find no evidence of collecting as a threat to flatwoods salamanders. We reevaluated our original prudency determination and concluded it is prudent to designate critical habitat for the frosted and reticulated flatwoods salamanders. Based on the best scientific information, we are completing this designation under the requirements of the Act and in the best interest of the species, using the best scientific information available.

(21) *Comment:* One commenter quoted a 2003 Government Accounting Office (GAO) report that recommended delaying critical habitat designations until recovery plans are developed. The commenter suggested that this recommendation should be followed and designation of critical habitat should be postponed.

Our Response: The GAO report quoted by the commenter included recommendations to improve the process of designating critical habitat. The report provides recommendations. There have been no regulations promulgated requiring the completion of a recovery plan prior to designation of critical habitat for a listed species. In fact, the Act states that, to the maximum extent prudent and determinable, designation of critical habitat shall be made concurrently with a species' listing determination.

(22) *Comment:* One commenter was under the impression that critical

habitat was based on ''potential, not exact situations.''

Our Response: The Service assumes that the commenter is referring to flatwoods salamander occurrence data in this comment. All the localities used as the basis for designating critical habitat were occupied by either the frosted or reticulated flatwoods salamander at the time of listing or are currently occupied.

(23) *Comment:* One commenter questioned why more critical habitat was not designated on Francis Marion National Forest (FMNF) and other public lands. The commenter urged the Service to work with the Forest Service to expand the critical habitat designation on FMNF.

Our Response: The Service is designating all areas containing the primary constituent elements and occupied by flatwoods salamanders, on the FMNF and other public lands, as critical habitat. As we said in our response to Comment 18, we do not believe that designating unoccupied habitat for frosted and reticulated flatwoods salamanders provides conservation benefit to these species if it is separated from occupied habitat by an area of unsuitable habitat beyond the dispersal distance of the salamanders, because the likelihood of natural recolonization of these sites is nearly impossible.

Reclassifying the Listing of the Flatwoods Salamander Into Two Distinct Species

(24) *Comment:* One commenter asked if the study that reported the split of the flatwoods salamander into two species had a thorough peer review and requested that the publication be presented to the public.

Our Response: Pauly *et al.* (2007, p. 415) recognized two species of flatwoods salamanders in their publication in *Molecular Ecology*, a peer-reviewed journal; therefore, it did undergo a thorough peer-review, as did the proposed rule. If a member of the public would like a copy of any of the literature cited, contact the Mississippi Field Office (*see* **FOR FURTHER INFORMATION CONTACT** above).

Listing Status of Reticulated Flatwoods Salamander

(25) *Comment:* One commenter asked if the Service used population estimates to determine that the reticulated flatwoods salamander was endangered. The commenter did ''not believe that population decline can be derived solely from habitat decline due to both the adaptability and unpredictability of any species will to survive.'' In general, this commenter and several others believed that the Service does not have sufficient data to warrant listing this species as endangered. Many other commenters wrote in support of listing the reticulated flatwoods salamander as endangered.

Our Response: There are no data available on numbers of individual salamanders within any flatwoods salamander population. However, we did not rely solely on declines of suitable habitat to determine the status of the reticulated flatwoods salamander. As required by the Act, we used the best scientific data available to verify existence of historical reticulated flatwoods salamander populations, new populations, and threats to populations. For example, of the 26 historical localities for the reticulated flatwoods salamander, only 5 (19 percent) were still occupied, primarily due to habitat loss and degradation. These data were collected during presence-absence surveys and during other field research unrelated to obtaining population estimates. New data received have been incorporated into this final rule where appropriate. There is no scientific basis for the assertion that flatwoods salamanders may have evolved different habitat and life history requirements from those currently described for the species.

(26) *Comment:* Several commenters stated that the Service had made a determination that the Bypass road on Eglin Air Force Base and Hurlburt Field would threaten the reticulated flatwoods salamander and that the proposed designation of the reticulated flatwoods salamander as endangered was done to stop the road. Other commenters stated that if we changed the designation of the reticulated flatwoods salamander to endangered status this would mean we had in effect said ''no'' to the Bypass road.

Our Response: The determination to uplist the reticulated flatwoods salamander to endangered was based on the best available scientific data on its status and the existing and potential threats to the species. One of the threats we considered was the proposed Bypass road. The flatwoods salamander was originally listed as threatened under the Act in 1999 (64 FR 15691). The Bypass road, as currently envisioned, would be constructed across military lands that are Federal property. The authorization and permitting of this road represents a Federal action which would trigger consultation under section 7 of the Act since the flatwoods salamander is already listed. In addition, the proposed Bypass road crosses jurisdictional wetlands and this action will likely require a section 404 permit(s) per the Clean Water Act. Thus, since the road crosses Federal property and there are Federal permit issues, the effects on the salamander would need to be considered regardless of a change in listing status. In fact, the Service is in the very preliminary stages of an informal consultation on the Bypass road and, therefore, no final determination on the impacts of the Bypass to the flatwoods salamander has been made. In addition, in the event of an adverse modification or jeopardy determination, we would also explore measures to minimize the impacts of a proposed action.

(27) *Comment:* One commenter inquired about whether the uplisting of the reticulated flatwoods salamander was based on science or pressure from a lawsuit.

Our Response: The Service determined to uplist the reticulated flatwoods salamander based on the best scientific data available and not as a result of a lawsuit. For more information, refer above to ''Summary of Factors Affecting the Species (Reticulated Flatwoods Salamander).''

Listing Status of Frosted Flatwoods Salamander

(28) *Comment:* One commenter supported uplisting the frosted flatwoods salamander to endangered since there are only 26 [sic] known populations of this species, these populations occur in isolated clumps that could be extirpated by a localized drought, and none of the populations are grouped closely enough to be a metapopulation.

Our Response: Most land occupied by the frosted flatwoods salamander (88 percent) is owned and managed by State and Federal agencies. The Service has worked closely with these agencies to ensure their management actions provide conservation benefits for the species. Drought is a problem; however, 64 percent of frosted flatwoods salamander populations are supported by more than one breeding pond and do function as metapopulations. Due to the active flatwoods salamander management on public lands and the existing metapopulation structure within the species' populations, we believe the frosted flatwoods salamander does not meet the criteria for listing as an endangered species. Further analysis is presented above under the section ''Summary of Factors Affecting the Species (Frosted Flatwoods Salamander).''

Procedural and Legal Considerations

(29) *Comment:* Many commenters requested that a second public hearing on the proposed rule be held in Okaloosa County, Florida, because this county is within the area where the proposed Eglin Bypass of the Northwest Florida Transportation Corridor is to be constructed. One commenter quoted a *Northwest Florida Daily News* article as saying a Service spokesperson stated that the decision to hold the public hearing in Pensacola was based on its being a central location of the salamander's range. Several commenters stated they did not receive sufficient notice of when and where the public hearing would be held. Several other commenters stated that the notice announcing the public hearing in the **Federal Register** was posted 14 days prior to the public hearing rather than 15 days prior to the hearing as required by Service guidance. One commenter stated that the process of providing information regarding the proposed rule and public hearing needs improvement.

Our Response: A request was submitted to the Service by the Northwest Florida Transportation Corridor Authority on September 24, 2008, for a public hearing with the suggestion that the hearing be held in Fort Walton Beach, Florida. A public hearing was held on October 22, 2008, in Pensacola, Florida. It was announced in a press release that was submitted to over 200 newspapers in Florida, Georgia, and South Carolina on October 8, 2008. The press release was also sent to television stations and radio stations. The hearing announcement published in the **Federal Register** on October 8, 2008 (73 FR 58922). Announcement of the public hearing was mailed to Federal and State representatives in Florida, Georgia, and South Carolina; County Commissioners of occupied counties in these three States; other Federal and State agencies; conservation organizations and other non-governmental organizations; special interest groups; and other interested parties. The Service also purchased legal notices in the following newspapers: *Albany Herald, Northwest Florida Daily News, Jasper County Sun, The News Herald, The Post and Courier, Pensacola News Journal, Savannah Morning News, Tallahassee Democrat*, and *The Florida Times-Union*. The Service placed the notice for the public hearing on public review in the **Federal Register** the day before it was published. As a result, the notice was available to the public for 15 days before the hearing.

The Service is not required to hold a requested public hearing in the exact location provided by the requestor. The Service selected Pensacola as the location for the public hearing because of its central location near major highways and an airport, to give the largest number of people the opportunity to attend. The location and schedule for the public hearing were selected to accommodate the general public, as well as the requestor of the public hearing, as much as possible. Pensacola is not central to the flatwoods salamander's range nor was this statement made in the *Northwest Florida Daily News* article.

Section 4(b)(5) of the Endangered Species Act states, ''[w]ith respect to any regulation proposed by the Secretary to implement a determination, designation, or revision referred to in subsection (a)(1) or (3) [proposed or final rule to list a species as endangered or threatened, or proposed or final rule to designate any habitat of such species to be critical habitat], the Secretary shall * * * promptly hold one public hearing on the proposed regulation if any person files a request for such a hearing within 45 days after the date of publication of general notice.'' We have met the regulatory requirement.

(30) *Comment:* One commenter stated that the notice in the **Federal Register** announcing the public hearing did not provide information on how to obtain reasonable accommodations and this is a violation of American Disabilities Act (ADA) requirements.

Our Response: The notice in the **Federal Register** announcing the public hearing provided information on how to contact the Service for further information including the name, address, telephone number, and fax number of the Field Supervisor of the Mississippi Field Office; and the number of the Federal Information Relay Service to call if a telecommunications device for the deaf was required. We did not receive any requests for additional information regarding how to obtain reasonable accommodations for the public hearing.

(31) *Comment:* One commenter stated that the notice in the **Federal Register** announcing the public hearing was not published in Okaloosa County's local newspaper, the *Northwest Florida Daily News*.

Our Response: The public hearing notice was published in the *Northwest Florida Daily News* on October 10, 2008.

(32) *Comment:* Several commenters suggested there may be members of the public that were denied their right to submit public comments because the online portal for submitting public comments at *www.regulations.gov* was inaccessible for approximately a week beginning on October 14, 2008.

Our Response: The public comment submission portion of the online portal for this proposed rule was inaccessible during the time period from October 14, 2008, through October 22, 2008, due to an administrative error. This occurred because, although the comment period was extended to a date 2 weeks after the public hearing, this information did not immediately reach the portal controller. However, the problem was corrected as soon as the Service knew of it and the portal was operational until the end of the extended comment period on November 3, 2008. Comments could still be received by mail and this option was provided in the proposed rule and the supplemental information (73 FR 54125; September 18, 2008). In addition, because this online system is new, we still accepted comments provided by e-mail, fax, or mail at our Washington office location or received at either the Mississippi or Panama City field offices until November 3, 2008. All comments we received were considered in the preparation of this final rule. The comment period for the proposed rule was open for a total of 83 days, from August 13, 2008, to November 3, 2008. We believe this provided ample opportunity for the public to comment on the proposed rule.

Best Scientific Information

(33) *Comment:* One commenter stated that the proper application of herbicides most commonly used in modern silviculture is unlikely to pose a risk to flatwoods salamanders or cause adverse modification of critical habitat. A peer reviewer from 2007 stated that habitat management to benefit flatwoods salamanders may require herbicide use in dry wetlands or at timber harvest or replanting to improve habitat conditions.

Our Response: Herbicide use in dry wetlands or at timber harvest or re-planting may be compatible with habitat management to benefit flatwoods salamanders. When a property owner has developed management plans that include the use of herbicides at a site known to be occupied by flatwoods salamanders, we recommend coordination with the local Service field office covering the area. We still consider the use of herbicides as a threat due to the potential that improper application will result in toxicity to salamanders.

(34) *Comment:* One commenter encouraged the Service to not overstate the role of modern forest management in

the historical loss and degradation of flatwoods salamander habitat.

Our Response: We described many threats to flatwoods salamander habitat, both past and present. We agree with the commenter that clear-cutting at the turn of the century was not done to standards of modern forestry and that many sites in plantation forestry have been converted from agricultural land rather than forested land. We do not believe conversion of native longleaf pine flatwoods to plantation forests is a significant threat to flatwoods salamanders at this time. Nevertheless, some aspects of modern forestry, such as use of site preparation techniques that remove stumps and alter or destroy below-ground soil structure (such as old root channels), continue to present a threat to flatwoods salamanders. We present further analysis above under ''Summary of Factors Affecting the Reticulated Flatwoods Salamander.''

Economic Impacts and Economic Analysis (EA)

(35) *Comment:* Several commenters stated that the Service should consider the positive economic impacts of critical habitat designation. Designation of critical habitat provides support for maintaining healthy ecosystems which are the foundation of healthy economies.

Response: As indicated in Section 1.3.3 of the EA: ''Rather than rely on economic measures, the Service believes that the direct benefits of the proposed rule are best expressed in biological terms that can be weighed against the expected cost impacts of the rulemaking.''

(36) *Comment:* Several commenters stated that the draft EA failed to assess the potential economic impacts that could occur if the Bypass Road proposed by the Northwest Florida Transportation Corridor Authority is affected by the presence of critical habitat on Eglin Air Force Base (Unit RFS–4, Subunit C in the proposed rule). These comments generally argued that, by not considering the potential impacts to the proposed Bypass Road project, the EA understates the potential costs of designation. These commenters argued that the Bypass Road would: (1) Reduce congestion, (2) provide additional hurricane evacuation alternatives, (3) reduce highway traffic accidents, (4) increase homeland security, (5) improve energy distribution, (6) benefit small businesses, (7) allow access to the international airport opening in Bay County, and (8) substantially increase regional jobs and tax revenue. Lastly, several commenters express concerns that the Northwest Florida Transportation Corridor Authority (NWFTCA) was not a primary source of information for the EA.

Response: In this final rule, areas within Eglin Air Force Base and Hurlburt Field have been removed from the critical habitat designation. Thus, this designation will not impact the proposed Bypass Road project. NWFTCA could not be reached to discuss these impacts prior to the public comment period, and thus was not included as a source in the draft EA (see Section 4.2.1.2). However, to provide greater context for this issue, the final EA describes the benefits that could result from construction of the Bypass Road. The final EA also presents the results of a technical memorandum by HDR/Decision Economics, Inc. (HDR), developed for the NWFTCA, that documents the potential costs of not constructing the Bypass Road.

(37) *Comment:* Several commenters stated that the Service did not consider public lands in the EA of critical habitat designation.

Response: The draft and final EAs do consider potential impacts to publicly owned lands. Specifically, Section 2 describes potential impacts to publicly owned timberlands, and Section 4 describes potential impacts to fire management and species management activities on these lands.

(38) *Comment:* One commenter asked about the cost to taxpayers of elevating the reticulated flatwoods salamander to endangered status.

Response: The purpose of the EA is to describe the potential economic and other impacts that could result from critical habitat designation (see Section 1). The EA is not intended to address the economic impact of a change in the status of a species. In addition, under the Endangered Species Act, the Service does not take into account the economic impacts of listing decisions, only the impact of critical habitat designation. Therefore, an EA of the effects of listing the reticulated flatwoods salamander as endangered has not been conducted.

(39) *Comment:* One commenter stated that excluding Holley Outlying Landing Field could result in additional development in the area, which would be potentially damaging to the local economy. The commenter indicated that negative effects could include a flooded housing market, decreased housing values, or increased insurance rates from building in a hurricane prominent area.

Response: As described in Section 3.2.1 of the final EA, the development analysis evaluates potential impacts to undeveloped land that is currently zoned for future rural, residential, industrial, or privately owned commercial development. Because Holley Outlying Landing Field is not currently zoned for development, the analysis assumes it will not be developed in the future without zoning changes. Absent available information on when or where such zoning changes may occur in future years, the analysis does not quantify either positive or negative impacts of any resulting development. The Final Rule exempts this area from the critical habitat designation.

(40) *Comment:* One commenter stated that Section 3.2.2 of the EA unreasonably assumes that impacts to development activities occur only on parcels that contain wetlands within proposed critical habitat. This commenter stated that future consultations may lead to critical habitat considerations of parcels not containing wetlands. The commenter stated that the EA undervalues the potential for development to be precluded on uplands based on critical habitat designation.

Response: Section 3 of the final EA provided estimates of impacts to any developable parcels that intersect wetlands. Historically, consultations have not occurred in areas without wetlands due to the lack of a Federal nexus (see Section 3.2). Note that the analysis does consider the potential impacts to development activities on the entire parcel, not just that portion that is wetland.

(41) *Comment:* One commenter stated that input-output models should be used to estimate impacts on Federal lands to properly consider impacts to small businesses. This commenter stated that, absent such modeling, the report focuses only on private property values.

Response: Section 1.2.2.2 of the EA indicates that input-output models may provide useful information about the scale and scope of localized economic impacts. For changes in activities on Federal lands designated as critical habitat, the Service does not anticipate regional economic impacts. Note that, although this final rule exempts Eglin Air Force Base from the designation, the final EA presents the results of HDR's regional EA of the proposed Bypass Road, developed for NWFTCA.

(42) *Comment:* One commenter stated that the EA makes the invalid assumption that incremental impacts occur only in the migratory corridor areas, and that this assumption ignores the added review and protection afforded to lands designated as critical habitat that are not located in the migratory corridors. The commenter

also stated that there are other reasons for Federal consultation besides Corps permitting that have been ignored.

Response: As noted in Section 3 of the final EA the only Federal nexus that could be identified within the proposed critical habitat areas is through Section 404 of the Clean Water Act, which directs the Corps to permit dredge and fill activities in wetlands. Aside from additional administrative costs of section 7 consultations, the EA was unable to identify any added costs specifically related to the designation of critical habitat outside of the migratory corridors.

(43) *Comment:* One commenter stated that Section 2.7 of the EA forecasts no section 7 consultations related to development activities.

Response: Section 3 of the final EA estimates impacts to developable lands that intersect wetlands. However, available information does not allow forecasting of either the timing or frequency of development-related consultations in future years. Thus, while addressing the potential for a reduction in the option value of developable lands, the final EA does not estimate the cost of consultations associated with these activities.

(44) *Comment:* One commenter stated that the EA does not estimate the impacts of possible future land-use changes and re-zonings that would accommodate greater levels of development.

Response: As discussed in Section 3.2.1 of the final EA, available information does not allow forecasting of when and where any such re-zonings may take place in future years.

(45) *Comment:* One commenter stated that Section 3.2.1 of the EA makes the unreasonable assumption that existing residential, commercial, and industrial developments are unaffected by salamander conservation and are, therefore, removed from the analysis. The commenter also indicated that redevelopment in these areas may affect salamander habitat conservation efforts, particularly areas with extensive open space.

Response: As stated in Section 3.2.1 of the draft EA, ''[b]ecause the threat to the salamander of development involves disturbance of soil structure and the removal of trees, existing residential, commercial, and industrial developments are assumed to be unaffected by salamander conservation and are therefore removed from the analysis according to available aerial photography.'' Based on this aerial photography, existing residential, commercial and industrial developments were excluded from the analysis; however, all currently open spaces were included in the analysis of developable acreage that may be affected by salamander conservation efforts.

(46) *Comment:* One commenter stated that the EA undervalues the potential for development to be precluded on uplands based on critical habitat designation.

Response: The EA identifies no Federal nexus that would cause the private owners of these acres to modify their behavior, as indicated in the introduction to Section 3 of the EA.

(47) *Comment:* One commenter stated that Section 3.2.3 of the EA utilizes unreasonably low mitigation ratios, which do not accurately reflect current regulatory requirements or costs.

Response: Section 3.2 of the EA quantifies the potential economic impacts to development activities under two scenarios. The low-end scenario uses a mitigation ratio based on past salamander consultations on development projects. The high-end scenario assumes development is entirely precluded. Therefore, we believe we have captured the entire possible range of economic impacts to development activities.

(48) *Comment:* One commenter noted that Apalachicola National Forest has proposed an amendment to their Forest Plan which would provide a higher level of protection to the species. Particular changes include: (1) Creating ''salamander conservation areas'' that encompass proposed critical habitat and other areas offering high potential as flatwoods salamander habitat; (2) no conducting of extensive mechanical site preparation or other actions that cause significant soil disturbance within the primary and secondary zones; and (3) conducting harvests in such a manner that will minimize rutting and not alter hydrology within the primary and secondary zones.

Response: This comment has been noted in the final EA, and costs related to developing the amendment have been incorporated into Section 2 of the analysis. Based on written communication with National Forests in Florida on December 5, 2008, it is unlikely that the amendment will impose additional timber management costs in future years.

Comments From States

Section 4(i) of the Act states, ''the Secretary shall submit to the State agency a written justification for his failure to adopt a regulation consistent with the agency's comments or petition.'' We received no comments on the 2008 proposed rule from State agencies. We did receive comments from two State agency biologists, one employed by Florida Fish and Wildlife Conservation Commission and the other by Georgia Department of Natural Resources; however, they were peer reviewers and their comments are addressed under that section. Comments were received on the 2007 proposed rule from the office of the governor, the State of Florida; the Florida Department of Transportation; and the South Carolina Department of Natural Resources.

Comments From States on 2007 Proposed Rule

(49) *Comment:* The office of the governor, the State of Florida, provided the comment from the Office of Citizen Services that the information on designation of critical habitat was passed on to the Executive Director for the Florida Fish and Wildlife Conservation Commission.

Our Response: We have noted these comments.

(50) *Comment:* The Central Environmental Management Office provided comments on behalf of the Florida Department of Transportation (FDOT). The commenter stated that a flatwoods salamander habitat evaluation model is used by FDOT to assess potential impacts to flatwoods salamander habitat as a result of construction activities on a project by project basis. So far, FDOT believed that this method had been successful as a means of coordination with the Service and developing approved avoidance and minimization measures. FDOT believed designation of critical habitat could affect future projects; however, they will continue to coordinate with the Service to avoid and minimize impacts to flatwoods salamander

Our Response: We have noted these comments.

(51) *Comment:* In comments on the 2007 proposed rule, the South Carolina Department of Natural Resources (SCDNR) requested that the Service remove the Santee Coastal Reserve (SCR), Charleston County, South Carolina, from critical habitat designation. They provided a SCDNR Board approved management plan, dated September 13, 2002, which provided information on the flatwoods salamander and management recommendations derived from the final listing package for the species.

Our Response: In 2007, SCDNR provided the Service with general information and management recommendations reworded from the ''no take'' guidelines presented in the original flatwoods salamander listing

rule from 1999. They did not provide a species-specific management plan for the flatwoods salamander, nor evidence that management actions have been implemented to benefit the species in the past, nor assurances that they will be conducted in the future. Prescribed fire is mentioned as an important component of habitat management for the flatwoods salamander; however, no specifics regarding the use of prescribed fire as a management tool are mentioned. The Service considers this a deficiency in the plan. The Service received no comments from SCDNR on the 2008 proposed rule. The Service does not believe the plan provided by SCDNR in 2007 provides benefits of excluding the SCR from critical habitat designation that outweigh the benefits of inclusion. Therefore, the Service is including SCR in the final critical habitat designation.

Summary of Changes From Proposed Rule

In preparing this final listing rule and critical habitat designation for the frosted flatwoods salamander and the reticulated flatwoods salamander, we reviewed and considered comments from the public on the proposed designation of critical habitat for the flatwoods salamander published on February 7, 2007 (72 FR 5856), and on the proposed determination of endangered status for the reticulated flatwoods salamander, proposed designation of critical habitat for the frosted flatwoods salamander and reticulated flatwoods salamander, and our announcement of the availability of the DEA published on August 13, 2008 (73 FR 47258). We likewise reviewed and considered comments from our notice providing supplemental information on the status of the frosted flatwoods salamander published on September 18, 2008 (73 FR 54125), and from the public hearing held on October 22, 2008. As a result of public comments and peer review, we made changes to our proposed designation of critical habitat for the frosted flatwoods salamander and reticulated flatwoods salamander resulting in a reduction of 3,205 acres (977 hectares). These changes are as follows:

(1) We removed the unit containing occupied reticulated flatwoods salamander habitat on Navy Outlying Landing Field Holley, Santa Rosa County, Florida, because this area meets our criteria for exclusion (*see* Comment 16 and ''Application of Section 4(a)(3) of the Act'' for more information).

(2) We removed the units containing occupied reticulated flatwoods salamander habitat on Eglin Air Force Base and Hurlburt Field, Okaloosa and Santa Rosa Counties, Florida, because these areas meet our criteria for exclusion (see Comment 15 and ''Application of Section 4(a)(3) of the Act'' for more information).

(3) We removed the unit containing portions of Point Washington State Forest, Walton County, Florida, because the data on which the occupancy determination was based are considered to be in error (see Comment 2 for more information).

(4) We removed the unit containing portions of Tate's Hell State Forest, Franklin County, Florida, because the habitat within this unit no longer contains the PCEs (see Comment 3 for more information).

Critical Habitat

Critical habitat is defined in section 3 of the Act as:

(i) 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

(a) Essential to the conservation of the species and

(b) That may require special management considerations or protection; and

(ii) 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.

Conservation, as defined under section 3 of the Act, means the use of all methods and procedures that are necessary to bring any endangered species or threatened species to the point at which the measures provided under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot otherwise be relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7 of the Act requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow government or public access to private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by the private landowner. Where a landowner seeks or requests Federal agency funding or authorization that may affect a listed species or critical habitat, the consultation requirements of Section 7(a)(2) of the Act would apply.

For inclusion in a critical habitat designation, the habitat within the geographic area occupied by the species at the time of listing must contain the physical and biological features that are essential to the conservation of the species, and be included only if those features may require special management consideration or protection. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found those physical and biological features essential to the conservation of the species). Under the Act, we can designate critical habitat in areas outside of the geographical area occupied by the species at the time it is listed only when we determine that those areas are essential for the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), and Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions represent the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When determining which areas should be designated as critical habitat, our primary source of information is generally the listing package for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by section 4(b) of the Act, we used the best scientific data available in determining areas that contain the features that are essential to the conservation of the frosted flatwoods salamander and the reticulated flatwoods salamander. This includes information from the proposed listing rule for the flatwoods salamander (62 FR 65787; December 16, 1997), final listing rule for the flatwoods salamander (64 FR 15691; April 1, 1999), the previous proposed rule for designation of critical habitat for the flatwoods salamander (72 FR 5856; February 7, 2007), site visits, soil and species map coverages, data compiled in the Florida, Georgia, and South Carolina Natural Heritage databases and individual State databases, and data supplied by Eglin Air Force Base, Fort Stewart Military Installation, Hurlburt Field, Townsend Bombing Range, Apalachicola National Forest, Francis Marion National Forest, and St. Marks National Wildlife Refuge.

We also reviewed the available information pertaining to historical and current distribution, ecology, life history, and habitat requirements of the frosted flatwoods salamander and reticulated flatwoods salamander. This material included data in reports submitted by biologists holding section 10(a)(1)(A) recovery permits; research published in peer-reviewed scientific publications; museum records; technical reports and unpublished field observations by Service, State, and other experienced biologists; additional notes and communications with qualified biologists or experts; and regional Geographic Information System (GIS) coverages.

All frosted and reticulated flatwoods salamander occurrence records for sites occupied at the time of listing and subsequently occupied sites (typically breeding ponds) were plotted on maps using ArcMap (Environmental Systems Research Institute, Inc.), a computer GIS program, as the initial step in generating critical habitat units. For purposes of determining occupancy at the time of listing, we have used the original data of listing of the combined species. Polygons were then computer-generated by overlaying these occurrence locations with circles of a 1,500-ft (457-m) radius as a method to estimate the activity area around a breeding pond (see 72 FR 5861 (February 7, 2007) for a further discussion of the rationale for choosing this distance for the activity area). The area circumscribed by a circle of this radius would be 162 ac (66 ha). These polygons were used as a starting point to delineate the amount of wetland and upland habitat occupied by salamanders at each occurrence.

Since we have determined that breeding sites within 2 miles (3.2 km) of each other could be considered part of the same metapopulation (see discussion above under section entitled *Space for Individual and Population Growth and Normal Behavior*), polygons within this distance of each other were combined to create areas containing multiple ponds connected by upland habitat corridors. Research on ambystomatid salamanders indicates that they need high terrestrial survival or immigration to persist (Taylor *et al.* 2005, p. 799). Thus, a flatwoods salamander population requires a sufficient amount of terrestrial habitat to ensure survival of adults in upland habitat, or, if needed, immigration of juveniles to the population from nearby breeding ponds. Combining polygons in the above manner provides a greater probability that habitat within a unit or subunit will support the needs of both species of flatwoods salamander long-term.

After the polygons were constructed, they were overlaid on aerial photography. The aerial photography was analyzed to verify the occurrence of PCEs and their distribution within the polygons. In some cases, site visits were made to determine presence of PCEs. Some polygons were discarded as they lacked the PCEs. In other polygons, we adjusted individual unit boundaries based on the presence or absence of the PCEs. Units constructed by merging polygons were also re-assessed to be sure the connecting habitat contained the PCEs.

Primary Constituent Elements

In accordance with Section 3(5)(A) of the Act and regulations at 40 CFR 424.12, in determining which areas occupied at the time of listing to designate as critical habitat, we consider those physical and biological features that are essential to the conservation of the species to be the primary constituent elements laid out in appropriate quantity and spatial arrangement for conservation of the species, and that may require special management considerations or protection.

These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We derived the specific primary constituent elements required for the frosted flatwoods salamander and the reticulated flatwoods salamander based on their biological needs.

Space for Individual and Population Growth and Normal Behavior

The frosted and reticulated flatwoods salamanders are terrestrial species of the longleaf pine ecosystem. Flatwoods salamanders spend most of their lives underground and occur in forested habitat consisting of fire-maintained, open-canopied, flatwoods and savannas dominated by longleaf pine (*Pinus palustris*), with naturally occurring slash pine (*P. elliotti*) in wetter areas. Historically, fire-tolerant longleaf pine dominated the uplands, whereas slash pine, being less fire-tolerant, was confined principally to wetlands, wetland edges, and the wetter portions of pine flatwoods. Means *et al.* (1996, pp. 434–435) summarized the natural distribution of slash pine in reference to the flatwoods salamander and

concluded that natural slash pine habitats constituted only a minor fraction of the species' upland habitat. Much of the original flatwoods habitat has been converted to pine (often slash pine) plantations and become a closed-canopy forest unsuitable as habitat for the flatwoods salamander. Nevertheless, flatwoods salamanders do occur on some slash and loblolly pine (*P. taeda*) plantation sites. The extent of habitat degradation has been variable among pine plantations. On some plantations, the original hydrology, ground cover, and soil structure have been less severely altered, and these are the areas where remnant frosted and reticulated flatwoods salamander populations still occur.

Pine flatwoods and savannas are typically characterized by low, flat topography, and relatively poorly drained, acidic, sandy soil that becomes seasonally saturated. In the past, this ecosystem was characterized by open pine woodlands maintained by frequent fires. Naturally ignited by lightning during spring and early summer, these flatwoods historically burned at intervals ranging from 1 to 4 years (Clewell 1989, p. 226). In some areas, such as southwest Georgia, the topography of pine flatwoods can vary from nearly flat to gently rolling hills. The ground cover of the pine flatwoods-savanna ecosystem is typically dominated by wiregrass in the Gulf Coastal Plain, which is often joined or replaced by dropseed in the Atlantic Coastal Plain. Many other herbaceous plants are found in the ground cover and plant diversity is usually very high.

During the breeding season, adult frosted and reticulated flatwoods salamanders leave their subterranean retreats and migrate to breeding sites during rains associated with passing cold fronts. Throughout their range, the salamanders breed at ephemeral (seasonally flooded) isolated ponds (not connected to other water bodies) embedded within the mesic (moderate moisture) to intermediate-mesic flatwoods—savanna communities occupied by post-larval and adult salamanders (Palis and Means 2005, pp. 608–609). There are some variations in vegetation, geology, and soils among geographic areas within the range of the salamander (most notably, differences between the Gulf Coast and Atlantic Coastal Plain communities); however, basic characteristics are fairly similar throughout. Both forested uplands and isolated wetlands (see further discussion of isolated wetlands in section ''Sites for breeding, reproduction, and rearing of offspring,'' below) are needed to provide space for individual and population growth and normal behavior.

The distance between the wetland breeding and upland terrestrial habitats of post-larval and adult salamanders can vary considerably. In the final listing rule the Service used an estimate of 1,476 ft (450 m) as the radius of a flatwoods salamander's principal activity area around a breeding pond based on research summarized in Semlitsch (1998, pp. 1115–1117) on this species and other species in its genus (U. S. Fish and Wildlife Service 1999, p. 15697). However, according to Ashton and Ashton (2005, p. 65), flatwoods salamanders have been documented up to 5,576 ft (1,700 m) from breeding ponds. We used this distance (rounding to 1 mile (1.6 km)) as the maximum dispersal distance for flatwoods salamanders. Therefore, breeding sites within twice this distance (2 miles (3.2 km)) could be considered in close enough proximity to be considered part of the same metapopulation (Palis 1997, p. 62).

Food, Water, Air, Light, or Other Nutritional or Physiological Requirements

Post-larval frosted and reticulated flatwoods salamanders eat small invertebrates that share their underground habit. Records exist of earthworms that have been found in the stomachs of dissected adult salamanders (Goin 1950, p. 314). Larval flatwoods salamanders most likely prey on a variety of aquatic invertebrates and perhaps small vertebrates such as other amphibian larvae (Palis and Means 2005, p. 608). Data from a recent study of larval food habits found that freshwater crustaceans dominated stomach contents of preserved, wild-caught individuals from Florida and South Carolina (Whiles *et al.* 2004, p. 208). This indicates a preference for freshwater crustaceans or perhaps is an indication that these invertebrates are the most abundant or most easily captured prey in breeding ponds.

Within the pine uplands, a diverse and abundant herbaceous layer consisting of native species is important to maintain the prey base for adult frosted and reticulated flatwoods salamanders. Wetland water quality is important to maintain the aquatic invertebrate fauna eaten by larval salamanders. An unpolluted wetland with water free of predaceous fish, sediment, pesticides, and the chemicals associated with road runoff, is important to maintain the aquatic invertebrate fauna eaten by larval salamanders.

Cover or Shelter

At wetland sites, developing larval frosted and reticulated flatwoods salamanders hide in submerged herbaceous vegetation during the day (Palis and Means 2005, p. 608) as protection from predators. Thus, an abundant herbaceous community in these ponds is important for cover.

Generally, flatwoods salamander breeding pond and upland habitats are separated by an ecotone (area of transitional habitat) through which salamanders must move during pre- and post-breeding events (Palis 1997, p. 58). The graminaceous (grass-like) ecotone represents a distinct habitat type and is important for maintaining connectivity between aquatic and terrestrial habitats. When the ecotone provides cover and appropriate microclimatic conditions, survival of migratory salamanders is enhanced. Studies of migratory success in post-metamorphic salamanders have demonstrated the importance of high levels of survival of these individuals to population maintenance and persistence (Rothermel 2004, pp. 1544–1545).

Post-larval and adult frosted and reticulated flatwoods salamanders occupy upland flatwoods sites where they live underground in crayfish burrows, root channels, or burrows of their own making (Goin 1950, p. 311; Neill 1951, p. 765; Mount 1975, pp. 98–99; Ashton and Ashton 2005, pp. 63, 65, 68–71). The occurrence of these below-ground habitats is dependent upon protection of the soil structure within flatwoods salamander terrestrial sites.

Sites for Breeding, Reproduction, and Rearing of Offspring

Adult frosted and reticulated flatwoods salamanders move from the uplands to breed in ponds that are typically acidic, tannin-stained, isolated, ephemeral wetlands (marsh-like depressions) (Palis 1997, pp. 53, 58; Safer 2001, pp. 5, 12). Breeding occurs from late September to December when ponds flood due to rainy weather associated with cold fronts. If rainfall is insufficient to result in adequate pond flooding, breeding may not occur or, if larvae do develop, they may die before metamorphosis. Egg development from deposition to hatching occurs in approximately 2 weeks, but eggs do not hatch until they are inundated (Palis 1995, pp. 352, 353). Larval salamanders usually metamorphose in March or April after an 11-to-18-week larval period (Palis 1995, p. 352). Ponds dry shortly thereafter. A cycle of filling and drying is essential for maintaining the appropriate habitat conditions of these wetlands.

The overstory within breeding ponds is typically dominated by pond-cypress (*Taxodium ascendens* [=*T. distichum* var. *imbricarium;* Lickey and Walker 2002, p. 131)], blackgum (*Nyssa sylvatica* var. *biflora*), and slash pine (Palis 1997, pp. 58, 59). An open midstory is often present as well, and dominant species include the myrtle-leaved holly (*Illex myrtifolia*) and other shrubs and small trees (Palis 1997, pp. 58, 59). When they are dry, breeding ponds burn naturally due to periodic wildfires, especially during late spring and summer. Depending on canopy closure and midstory, the herbaceous ground cover of breeding sites can vary considerably (Palis 1997, pp. 58, 59). However, flatwoods salamander larvae are typically found in those portions of breeding sites containing abundant herbaceous vegetation. The ground cover is dominated by graminaceous species. The floor of breeding sites generally consists of relatively firm mud with little or no peat. Burrows of crayfish (primarily genus *Procambarus*) are a common feature of flatwoods salamander breeding sites. Breeding sites are typically encircled by a bunchgrass-dominated (wiregrass or dropseed) graminaceous ecotone (see discussion of ecotone above). Small fish, such as pygmy sunfishes (*Elassoma* spp.), mosquitofish (*Gambusia holbrookii*), and banded sunfish (*Enneacanthus obesus*) may be present, but large predaceous species are absent (Palis 1997, pp. 58, 60).

Primary Constituent Elements for the Frosted Flatwoods Salamander and the Reticulated Flatwoods Salamander

Within the geographical area we know to be occupied by the frosted flatwoods salamander and the reticulated flatwoods salamander, we must identify the PCEs that may require special management considerations or protections.

Based on the needs of the species, as described above, and our current knowledge of the life history, biology, and ecology of the species, we have determined that the frosted flatwoods salamander and reticulated flatwoods salamander PCEs are:

1. *Breeding habitat.* Small (generally less than 1 to 10 acres (ac) (less than 0.4 to 4.0 hectares (ha)), acidic, depressional standing bodies of fresh water (wetlands) that:

(a) Are seasonally flooded by rainfall in late fall or early winter and dry in late spring or early summer;

(b) Are geographically isolated from other water bodies;

(c) Occur within pine flatwoods-savanna communities;

(d) Are dominated by grasses and grass-like species in the ground layer and overstories of pond-cypress, blackgum, and slash pine;

(e) Have a relatively open canopy, necessary to maintain the herbaceous component that serves as cover for flatwoods salamander larvae and their aquatic invertebrate prey; and

(f) Typically have a burrowing crayfish fauna, but, due to periodic drying, the breeding ponds typically lack large, predatory fish (for example, *Lepomis* (sunfish), *Micropterus* (bass), *Amia calva* (bowfin)).

2. *Non-breeding habitat.* Upland pine flatwoods-savanna habitat that is open, mesic woodland maintained by frequent fires and that:

(a) Is within 1,500 ft (457 m) of adjacent and accessible breeding ponds;

(b) Contains crayfish burrows or other underground habitat that the flatwoods salamander depends upon for food, shelter, and protection from the elements and predation;

(c) Has an organic hardpan in the soil profile, which inhibits subsurface water penetration and typically results in moist soils with water often at or near the surface under normal conditions; and

(d) Often have wiregrasses as the dominant grasses in abundant herbaceous ground cover, which supports the herbivorous invertebrates that serve as a food source for the flatwoods salamander.

3. *Dispersal habitat.* Upland habitat areas between non-breeding and breeding habitat that allow for salamander movement between such sites and that is characterized by:

(a) A mix of vegetation types representing a transition between wetland and upland vegetation (ecotone);

(b) An open canopy and abundant native herbaceous species;

(c) Moist soils as described in PCE 2; and

(d) Subsurface structure, such as that created by deep litter cover or burrows, which provides shelter for salamanders during seasonal movements.

This designation is designed for the conservation of the physical and biological features essential to the conservation of the species, which support the life-history functions of the species, through the identification of the appropriate quantity and spatial arrangement of areas containing the PCEs. Even though per the Act, each unit must contain at least one or more PCEs, in this designation all units designated as critical habitat contain all of these PCEs and support multiple life processes.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the occupied areas contain the physical or biological features essential to the conservation of the species, and whether these features may require special management considerations or protection. It is recognized that numerous activities in and adjacent to the unit designated as critical habitat, as described in this final rule, may affect one or more of the PCEs found in that unit. These activities include, but are not limited to, those listed in the Application of the ''Adverse Modification'' Standard (AMS) section as activities that may destroy or adversely modify critical habitat. Special management of the PCEs for the frosted flatwoods salamander and the reticulated flatwoods salamander and their habitat may be required for the following threats: Direct and indirect impacts of land use conversions, primarily urban development and conversion to agriculture and pine plantations; stump removal and other soil-disturbing activities which destroy the below-ground structure within forest soils; fire suppression and low fire frequencies; wetland destruction and degradation; and random effects of drought or floods. Specific details regarding these threats can be found in the proposed listing rule (62 FR 65787), the final listing rule (64 FR 15691), and above in the section entitled, ''Summary of Factors Affecting the Species.'' Due to one or more of the threats described above, and as discussed in more detail in the individual unit descriptions below, we find that all areas occupied at the time of listing that we are designating as critical habitat contain PCEs that may require special management considerations or protections to ensure the conservation of the frosted flatwoods salamander and the reticulated flatwoods salamander.

Criteria Used To Identify Critical Habitat

We began our analysis by evaluating both species of flatwoods salamander in the context of their distribution within their historic range, to determine what portion of their range must be included to ensure conservation of both species. We assessed the critical life-history components of flatwoods salamanders, as they relate to habitat. Flatwoods salamanders require small, acidic, depressional standing bodies of freshwater for breeding, upland pine flatwoods-savanna habitat that is open, mesic and maintained by fire for non-

breeding habitat, and ecotonal habitat areas between non-breeding and breeding habitat that allow for salamander movement. Therefore, all areas meeting these requirements were considered for inclusion.

To determine which areas should be designated as critical habitat, we then evaluated where the necessary physical and biological features of flatwoods salamander habitat occur within areas occupied at the time of listing and for areas unoccupied at listing, whether these areas were essential to the conservation of the species. Detailed data on specific locations are included in the unit description in the Critical Habitat Designation section of this final rule. We considered the following criteria in the selection of areas that contain the essential features for the frosted and reticulated flatwoods salamanders and focused on designating units: (1) Throughout the current geographic and ecological distribution of the species; (2) that retain or provide for connectivity between breeding sites that allows for the continued existence of viable and essential metapopulations (populations at individual ponds that interbreed over time), despite fluctuations in the status of subpopulations; (3) that possess large continuous blocks of occupied habitat, representing source populations or unique ecological characteristics; and (4) that contain sufficient upland habitat around each breeding location to allow for sufficient survival and recruitment to maintain a breeding population over the long term.

We selected areas for the frosted flatwoods salamander and the reticulated salamander that were occupied at the time of listing, based on the best scientific data available, which possess those physical and biological features essential to the conservation of the species that may require special management considerations or protection. In addition, we included two areas subsequently identified as occupied by the frosted flatwoods salamander and essential to the conservation of the species. We found that the two newer (post-listing) occurrence records were in close proximity to areas already known to support the frosted flatwoods salamander. We identified critical habitat units that were occupied at the time of listing based on: (1) Presence of the defined PCEs; (2) density of flatwoods salamander occurrences; and (3) kind, amount, and quality of habitat associated with those occurrences. We identified critical habitat units that were not occupied at the time of listing based on: (1) Density of flatwoods salamander occurrences; (2) kind, amount, and quality of habitat associated with those occurrences; and (3) a determination that these areas are essential to the conservation of the species.

The currently occupied habitat of the frosted flatwoods salamander and the reticulated flatwoods salamander is highly localized and fragmented. Due to several drought events, post-listing observations of salamanders have been made at breeding ponds in only a small portion of their occupied range and no population estimates are currently available. As with many rare species, especially pond-breeding amphibians with underground adult life stages, detection probabilities are low even in ''normal'' weather years (Bailey *et al.* 2004, pp. 2463–2464). Flatwoods salamanders are particularly susceptible to drought, as breeding cannot occur if breeding ponds do not receive adequate rainfall. We know that isolated populations, including those of the frosted and reticulated flatwoods salamanders, are highly susceptible to random events. Protection of a single, isolated, minimally viable population risks the extirpation or extinction of a species as a result of harsh environmental conditions, catastrophic events, or genetic deterioration over several generations (Kautz and Cox 2001, p. 59). To reduce the risk of extinction through these processes, it is important to establish multiple protected subpopulations across the landscape (Soulé and Simberloff 1986, pp. 25–35; Wiens 1996, pp. 73–74). We have determined that all but four of the areas occupied at the time of listing contain the features essential to the conservation of the species; as a result, these four areas were not part of the designation. The two units occupied since the time of listing are essential areas for the conservation of the species and were therefore included in the designation.

We are designating critical habitat on lands that we have determined were occupied at the time of listing and that contain sufficient PCEs to support life-history functions essential for the conservation of the species. In addition, we are designating two areas that we have not been able to determine were occupied at the time of listing (they occur within the same geographical area but were discovered after 1999), and we believe to be essential to the conservation of the species.

The lands designated as critical habitat collectively contain small, and in some cases, isolated, populations of the species. These small populations are at a high risk of extinction due to random events and human-induced threats, such as urban-agricultural development and habitat degradation due to fire suppression and hydrological alterations. Thus, we believe all lands within the critical habitat designation are essential for the persistence and conservation of the frosted flatwoods salamander and the reticulated flatwoods salamander, and meet the criteria as set forth above. We believe that with proper protection and management, the critical habitat within this designation, and those areas exempted due to the Sikes Act, are sufficient to provide for the conservation of the species. We are not designating any areas outside the geographical area presently occupied by these species because we are unaware of any other suitable habitat for these species outside their currently occupied range.

When determining critical habitat boundaries within this final rule, we made every effort to avoid including developed areas such as buildings, paved areas, and other structures that lack PCEs for frosted flatwoods salamander and the reticulated flatwoods salamander. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed areas. Any such structures, and the land under them, inadvertently left inside critical habitat boundaries shown on the maps of this rule have been excluded by text in this final rule and are not designated as critical habitat. Therefore, Federal actions involving these areas would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the primary constituent elements in the adjacent critical habitat.

Critical Habitat Designation

For the reticulated flatwoods salamander, we are designating 8 units, some of which are divided into subunits (for a total of 16 units and subunits), as critical habitat. For the frosted flatwoods salamander, we are designating 6 units, some of which are divided into subunits (for a total of 19 units and subunits), as critical habitat. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the reticulated flatwoods salamander and the frosted flatwoods salamander. We are presenting the data geographically from west to east and thus the critical habitat for the reticulated flatwoods salamander is described first below.

Table 1 shows the occupied units for the reticulated flatwoods salamander.

TABLE 1—OCCUPANCY OF RETICULATED FLATWOODS SALAMANDER (RFS) BY CRITICAL HABITAT UNIT

Unit	Occupied at time of listing	Currently occupied (but not occupied at time of listing)	Size of unit in acres (ac) (hectares (ha))
Florida Units			
RFS–1	X		687 ac (278 ha).
RFS–2, Subunit A	X		162 ac (66 ha).
RFS–2, Subunit B	X		162 ac (66 ha).
RFS–3, Subunit A	X		148 ac (60 ha).
RFS–3, Subunit B	X		57 ac (23 ha).
RFS–6, Subunit A	X		213 ac (86 ha).
RFS–6, Subunit B	X		162 ac (66 ha).
RFS–7, Subunit A	X		162 ac (66 ha).
RFS–7, Subunit B	X		165 ac (67 ha).
RFS–8, Subunit A	X		110 ac (45 ha).
RFS–8, Subunit B	X		358 ac (145 ha).
RFS–8, Subunit C	X		244 ac (99 ha).
RFS–9, Subunit A	X		162 ac (66 ha).
RFS–9, Subunit B	X		877 ac (355 ha).
Georgia Units			
RFS–10, Subunit A	X		162 ac (66 ha).
RFS–10, Subunit B	X		622 ac (252 ha).

TABLE 2—AREAS DETERMINED TO MEET THE DEFINITION OF CRITICAL HABITAT FOR THE RETICULATED FLATWOODS SALAMANDER BUT WERE EXEMPTED FROM FINAL CRITICAL HABITAT DESIGNATION

[Totals may not sum due to rounding]

Geographic area	Definitional areas acres (hectares)	Area exempted from final designation acres (hectares)	Reason
NOLF Holley	289 (117)	289 (117)	INRMP.
Eglin Air Force Base	1,880 ac (761 ha)	1,880 ac (761 ha)	INRMP.
Hurlburt Field	712 ac (288 ha)	712 ac (288 ha)	INRMP.
Total (Okaloosa and Santa Rosa counties, Florida)	2,881 ac (1,166 ha)	2,881 ac (1,166 ha).	

Table 3 provides the approximate area encompassed within each critical habitat unit determined to meet the definition of critical habitat for the reticulated flatwoods salamander. Acre and hectare values were individually computer-generated using GIS software, rounded to nearest whole number, and then summed. Table 4 shows the occupied units for the frosted flatwoods salamander.

TABLE 3—CRITICAL HABITAT UNITS FOR THE RETICULATED FLATWOODS SALAMANDER (RFS)

[Totals may not match due to rounding]

Subunit	Federal ac (ha)	State ac (ha)	Local ac (ha)	Private ac (ha)	Total ac (ha)
Florida Units					
RFS–1		466 ac (186 ha)		221 ac (89 ha)	687 ac (275 ha).
RFS–2, Subunit A				162 ac (66 ha)	162 ac (66 ha).
RFS–2, Subunit B		162 ac (66 ha)			162 ac (66 ha).
RFS–3, Subunit A				148 ac (60 ha)	148 ac (60 ha).
RFS–3, Subunit B			25 ac (10 ha)	32 ac (13 ha)	57 ac (23 ha).
RFS–6, Subunit A				213 ac (86 ha)	213 ac (86 ha).
RFS–6, Subunit B		162 ac (66 ha)			162 ac (66 ha).
RFS–7, Subunit A				162 ac (66 ha)	162 ac (66 ha).
RFS–7, Subunit B				165 ac (67 ha)	165 ac (67 ha).
RFS–8, Subunit A				110 ac (45 ha)	110 ac (45 ha).
RFS–8, Subunit B				358 ac (145 ha)	358 ac (145 ha).

TABLE 3—CRITICAL HABITAT UNITS FOR THE RETICULATED FLATWOODS SALAMANDER (RFS)—Continued

[Totals may not match due to rounding]

Subunit	Federal ac (ha)	State ac (ha)	Local ac (ha)	Private ac (ha)	Total ac (ha)
RFS–8, Subunit C				244 ac (99 ha)	244 ac (99 ha).
RFS–9, Subunit A				162 ac (66 ha)	162 ac (66 ha).
RFS–9, Subunit B				877 ac (355 ha)	877 ac (355 ha).
Georgia Units					
RFS–10, Subunit A		162 ac (66 ha)			162 ac (66 ha).
RFS–10, Subunit B				622 ac (252 ha)	622 ac (252 ha).
Total	0 ac (0 ha)	952 ac (397 ha)	25 ac (10 ha)	3,476 ac (1,396 ha)	4,453 ac (1,803 ha).

TABLE 4—OCCUPANCY OF FROSTED FLATWOODS SALAMANDER (FFS) BY CRITICAL HABITAT UNIT

Unit	Occupied at time of listing	Currently occupied (but not occupied at time of listing)	Size of unit in acres (hectares)
Florida Units			
FFS–1, Subunit A	X		2,285 ac (925 ha).
FFS–1, Subunit B	X		733 ac (296 ha).
FFS–1, Subunit C	X		972 ac (393 ha).
FFS–1, Subunit D	X		568 ac (230 ha).
FFS–1, Subunit E	X		3,679 ac (1,489 ha).
FFS–1, Subunit F	X		162 ac (66 ha).
FFS–1, Subunit G	X		5,373 ac (2,175 ha).
FFS–1, Subunit H		X	887 ac (359 ha).
FFS–1, Subunit I		X	162 ac (66 ha).
FFS–1, Subunit J	X		593 ac (240 ha).
FFS–3, Subunit A	X		3,078 ac (1,245 ha).
FFS–3, Subunit B	X		1,804 ac (730 ha).
FFS–3, Subunit C	X		163 ac (66 ha).
FFS–4, Subunit A	X		550 ac (223 ha).
FFS–4, Subunit B	X		162 ac (66 ha).
South Carolina Units			
FFS–5, Subunit A	X		154 ac (63 ha).
FFS–5, Subunit B	X		183 ac (74 ha).
FFS–6	X		1,300 ac (526 ha).
FFS–7	X		162 ac (66 ha).

TABLE 5—AREAS DETERMINED TO MEET THE DEFINITION OF CRITICAL HABITAT FOR THE FROSTED FLATWOODS SALAMANDER BUT WERE EXEMPTED FROM FINAL CRITICAL HABITAT DESIGNATION

[Totals may not sum due to rounding]

Geographic area	Definitional areas acres (hectares)	Area exempted from final designation acres (hectares)	Reason
Fort Stewart Military Installation	5,121 (2,072)	5,121 (2,072)	INRMP.
Townsend Bombing Range	162 (66)	162 (66)	INRMP.
Total (Georgia)	5,283 (2,137)	5,283 (2,137)	

Table 6 provides the approximate area encompassed within each critical habitat unit determined to meet the definition of critical habitat for the frosted flatwoods salamander. Acre and hectare values were individually computer-generated using GIS software, rounded to nearest whole number, and then summed.

TABLE 6—CRITICAL HABITAT UNITS FOR THE FROSTED FLATWOODS SALAMANDER (FFS)

[Totals may not match due to rounding]

Subunit	Federal ac (ha)	State ac (ha)	Local ac (ha)	Private ac (ha)	Total ac (ha)
Florida Units					
FFS–1, Subunit A	1,976 ac (800 ha)			309 ac (125 ha)	2,285 ac (925 ha).
FFS–1, Subunit B	695 ac (281 ha)			38 ac (15 ha)	733 ac (296 ha).
FFS–1, Subunit C	972 ac (393 ha)				972 ac (393 ha).
FFS–1, Subunit D	568 ac (230 ha)				568 ac (230 ha).
FFS–1, Subunit E	3,473 ac (1,406 ha)			206 ac (83 ha)	3,679 ac (1,489 ha).
FFS–1, Subunit F	162 ac (66 ha)				162 ac (66 ha).
FFS–1, Subunit G	5,277 ac (2,136 ha)			96 ac (39 ha)	5,373 ac (2,175 ha).
FFS–1, Subunit H	861 ac (348 ha)	22 ac (9 ha)		4 ac (2 ha)	887 ac (359 ha).
FFS–1, Subunit I	162 ac (66 ha)				162 ac (66 ha).
FFS–1, Subunit J	593 ac (240 ha)				593 ac (240 ha).
FFS–3, Subunit A	1,456 ac (589 ha)			1,622 ac (656 ha)	3,078 ac (1,245 ha).
FFS–3, Subunit B	593 ac (240 ha)			1,211 ac (490 ha)	1,804 ac (730 ha).
FFS–3, Subunit C		85 ac (34 ha)		78 ac (32 ha)	163 ac (66 ha).
FFS–4, Subunit A	550 ac (223 ha)				550 ac (223 ha).
FFS–4, Subunit B				162 ac (66 ha)	162 ac (66 ha).
South Carolina Units					
FFS–5, Subunit A				154 ac (62 ha)	154 ac (62 ha).
FFS–5 Subunit B				183 ac (74 ha)	183 ac (74 ha).
FFS–6	1,176 ac (476 ha)			124 ac (50 ha)	1,300 ac (526 ha).
FFS–7		162 ac (66 ha)		0.32 ac (0.13 ha)	162 ac (66 ha).
Total	18,514 ac (7,494 ha)	269 ac (109 ha)	0 ac (0 ha)	4,187 ac (1,694 ha)	22,970 ac (9,297 ha).

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for the reticulated flatwoods salamander and the frosted flatwoods salamander below. Unit descriptions are presented separately by species. All threats apply equally to all PCEs in each unit description.

Reticulated Flatwoods Salamander (RFS)

Unit RFS–1

Unit RFS–1 encompasses 687 ac (278 ha) in Santa Rosa County, Florida. Within this unit, 466 ac (189 ha) consist of State land in the Garcon Point Water Management Area managed by the Northwest Florida Water Management District (NWFLWMD) and in the Yellow River Marsh State Buffer Preserve (YRMSBP); 221 ac (89 ha) are in private ownership. Unit RFS–1 is bisected by Hwy. 191 and occurs within an extensive wet prairie. Since the majority of this unit, which was occupied at the time of listing, is owned by NWFLWMD and YRMSBP, it is likely protected from most agricultural and urban development. Threats to reticulated flatwoods salamander habitat that may require special management of the PCEs include potential fire suppression and potential hydrologic changes resulting from the adjacent highway that could alter the ecological functioning of the breeding pond and surrounding terrestrial habitat. Ditches associated with highways can drain water from a site and result in ponds with shorter hydroperiods and drier terrestrial habitat. Alternatively, ditches can connect isolated wetlands with permanent water sites that increase the hydroperiod of ponds and facilitate the introduction of predaceous fish into breeding ponds. In addition, run-off from highways can introduce toxic chemicals into breeding sites. All lands designated as critical habitat contain all PCEs and support multiple reticulated flatwoods salamander life processes.

Unit RFS–2

Unit RFS–2 is comprised of two subunits encompassing 324 ac (131 ha) in Santa Rosa County, Florida. Within this unit, which was occupied at the time of listing, there are 162 ac (66 ha) on State land managed by NWFLWMD and Blackwater River State Forest (BRSF); and 162 ac (66 ha) are in private ownership.

Subunit A

Unit RFS–2, Subunit A encompasses 162 ac (66 ha) on private land in Santa Rosa County, Florida. This subunit is located northeast of Milton, Florida. Threats to the reticulated flatwoods salamander and its habitat that may require special management of the PCEs include agricultural and urban development, potential detrimental alterations in forestry practices that could destroy the below-ground soil structure, potential hydrological alterations to the habitat, and the potential for fire suppression. All lands designated as critical habitat contain all PCEs and support multiple reticulated flatwoods salamander life processes.

Subunit B

Unit RFS–2, Subunit B encompasses 162 ac (66 ha) in Santa Rosa County, Florida. Within this unit, there are 32 ac (13 ha) on State land managed by NWFLWMD and 130 ac (53 ha) on State land managed by BRSF. This subunit is located south of Interstate 10 and near the Santa Rosa-Okaloosa County border. A small county road bisects the unit and a power line crosses the eastern edge of the breeding pond. Threats to the reticulated flatwoods salamander and its habitat that may require special management of the PCEs include the potential for fire suppression, potential detrimental alterations in forestry practices that could destroy the below-ground soil structure, and potential hydrologic changes resulting from the road and power line that could alter the ecology of the breeding pond and surrounding terrestrial habitat. In addition, run-off from highways can introduce toxic chemicals into breeding sites. All lands designated as critical habitat contain all PCEs and support

multiple reticulated flatwoods salamander life processes.

Unit RFS–3

Unit RFS–3 is comprised of two subunits encompassing 205 ac (83 ha) in Santa Rosa County, Florida. Within this unit, which was occupied at the time of listing, 180 ac (73 ha) are on private land and 25 ac (10 ha) are on property owned by the Santa Rosa County School Board.

Subunit A

Unit RFS–3, Subunit A encompasses 148 ac (60 ha) on private land in Santa Rosa County, Florida. This subunit is located near a rapidly developing section of Federal Hwy. 98 between Navarre and Gulf Breeze, Florida. Threats to the reticulated flatwoods salamander and its habitat that may require special management of the PCEs include the potential for fire suppression, potential detrimental alterations in forestry practices that could destroy the below-ground soils structure, potential hydrologic changes resulting from the highway that could alter the ecology of the breeding pond and surrounding terrestrial habitat, and potential habitat destruction due to urban and commercial development nearby. All lands designated as critical habitat contain all PCEs and support multiple reticulated flatwoods salamander life processes.

Subunit B

Unit RFS–3, Subunit B encompasses 57 ac (23 ha) in Santa Rosa County, Florida. This subunit is located near a rapidly developing section of U.S. Hwy. 98 between Navarre and Gulf Breeze, Florida. Within this subunit, 32 ac (13 ha) are on private land and 25 ac (10 ha) are on property owned by the Santa Rosa County School Board. Threats to the reticulated flatwoods salamander habitat that may require special management of the existing PCEs include the potential for fire suppression, potential detrimental alterations in forestry practices that could destroy the below-ground soils structure, potential hydrologic changes resulting from adjacent roads that could alter the ecology of the breeding pond and surrounding terrestrial habitat, and future habitat destruction due to urban and commercial development. All lands designated as critical habitat contain all PCEs and support multiple reticulated flatwoods salamander life processes.

Unit RFS–6

Unit RFS–6 is composed of two subunits encompassing 375 ac (152 ha) in Walton and Washington Counties, Florida. Within this unit (which was occupied at the time of listing), 213 ac (86 ha) are on private land in Walton County, Florida, and 162 ac (66 ha) are located on Pine Log State Forest (managed by the State of Florida's Division of Forestry) in Washington County, Florida.

Subunit A

Unit RFS–6, Subunit A encompasses 213 ac (86 ha) on private land in Walton County, Florida. This subunit is bisected by State Hwy. 81 near Bruce, Florida. Threats to the reticulated flatwoods salamander and its habitat that may require special management of the PCEs include the potential for fire suppression, potential detrimental alterations in forestry practices that could destroy the below-ground soil structure, potential hydrologic changes resulting from adjacent roads that could alter the ecology of the breeding pond and surrounding terrestrial habitat, and future habitat destruction due to urban and commercial development. In addition, run-off from highways can introduce toxic chemicals into breeding sites. All lands designated as critical habitat contain all PCEs and support multiple reticulated flatwoods salamander life processes.

Subunit B

Unit RFS–6, Subunit B encompasses 162 ac (66 ha) on Pine Log State Forest (managed by the State of Florida's Division of Forestry) in Washington County, Florida. Since the lands located within this subunit are owned by the State of Florida, they are likely protected from direct agricultural and urban development; however, threats remain to the reticulated flatwoods salamander and its habitat that may require special management of the PCEs. They include the potential for fire suppression and potential detrimental alterations in forestry practices that could destroy the below-ground soil structure. All lands designated as critical habitat contain all PCEs and support multiple reticulated flatwoods salamander life processes.

Unit RFS–7

Unit RFS–7, which was occupied at the time of listing, is comprised of two subunits encompassing 327 ac (132 ha) on private land in Holmes and Washington Counties, Florida.

Subunit A

Unit RFS–7, Subunit A encompasses 162 ac (66 ha) on private land in Holmes County, Florida. This subunit is located approximately 2 mi (3.2 km) east of State Hwy. 79 and approximately 5.5 mi (8.8 km) north of Bonifay, Florida. Threats to the reticulated flatwoods salamander and its habitat that may require special management of the PCEs include the potential for fire suppression, potential expansion of agriculture into the unit, potential detrimental alterations in forestry practices that could destroy the below-ground soil structure, and potential hydrologic changes resulting from adjacent roads that could alter the ecology of the breeding pond and surrounding terrestrial habitat. All lands designated as critical habitat contain all PCEs and support multiple reticulated flatwoods salamander life processes.

Subunit B

Unit RFS–7, Subunit B encompasses 165 ac (67 ha) on private land in Washington County, Florida. This subunit is located less than a mile (1.6 km) northwest of State Hwy. 79 and approximately 4 mi (6.4 km) west of Vernon, Florida. Threats to the reticulated flatwoods salamander and its habitat that may require special management of the PCEs include the potential for fire suppression, potential expansion of agriculture into the unit, potential detrimental alterations in forestry practices that could destroy the below-ground soil structure, and potential hydrologic changes resulting from adjacent roads that could alter the ecology of the breeding pond and surrounding terrestrial habitat. All lands designated as critical habitat contain all PCEs and support multiple reticulated flatwoods salamander life processes.

Unit RFS–8

Unit RFS–8, which was occupied at the time of listing, is composed of three subunits encompassing 712 ac (288 ha) on private land in Jackson County, Florida.

Subunit A

Unit RFS–8, Subunit A encompasses 110 ac (45 ha) on private land in western Jackson County, Florida near the Jackson-Washington County line. This subunit is located just south of U.S. Hwy. 90 and west of State Hwy. 231 approximately 10 mi (16 km) west of Marianna, Florida. Threats to the reticulated flatwoods salamander and its habitat that may require special management of the PCEs include the potential for fire suppression, potential expansion of agriculture and residential development into the unit, potential detrimental alterations in forestry practices that could destroy the below-ground soil structure, and potential hydrologic changes resulting from adjacent roads that could alter the

ecology of the breeding pond and surrounding terrestrial habitat. In addition, run-off from highways can introduce toxic chemicals into breeding sites. All lands designated as critical habitat contain all PCEs and support multiple reticulated flatwoods salamander life processes.

Subunit B

Unit RFS–8, Subunit B encompasses 358 ac (145 ha) on private land in Jackson County, Florida. This subunit is located just east of State Hwy. 71 and south of U.S. Hwy. 90, between Old Spanish Trail and the CSX railroad. This locality is approximately 4 mi (6.4 km) southeast of Marianna, Florida. Threats to the reticulated flatwoods salamander and its habitat that may require special management of the PCEs include the potential for fire suppression, potential expansion of agriculture and residential development into the unit, potential detrimental alterations in forestry practices that could destroy the below-ground soil structure, and potential hydrologic changes resulting from adjacent roads that could alter the ecology of the breeding pond and surrounding terrestrial habitat. In addition, run-off from highways can introduce toxic chemicals into breeding sites. All lands designated as critical habitat contain all PCEs and support multiple reticulated flatwoods salamander life processes.

Subunit C

Unit RFS–8, Subunit C encompasses 244 ac (99 ha) on private land in Jackson County, Florida. This currently occupied subunit is bisected by State Hwy. 275 south of Interstate 10 near Wolf Slough. Threats to the reticulated flatwoods salamander and its habitat that may require special management of the PCEs include the potential for fire suppression, potential expansion of agriculture and residential development into the unit, potential detrimental alterations in forestry practices that could destroy the below-ground soil structure, and potential hydrologic changes resulting from adjacent roads that could alter the ecology of the breeding pond and surrounding terrestrial habitat. In addition, run-off from highways can introduce toxic chemicals into breeding sites. All lands designated as critical habitat contain all PCEs and support multiple reticulated flatwoods salamander life processes.

Unit RFS–9

Unit RFS–9, which was occupied at the time of listing, is comprised of two subunits encompassing 1,039 ac (421 ha) on private land in Calhoun County, Florida.

Subunit A

Unit RFS–9, Subunit A encompasses 162 ac (66 ha) on private land in Calhoun County, Florida. This subunit is bisected by an unnamed road near Broad Branch, is approximately 2.5 mi (4 km) west of State Hwy. 73, and is approximately 4 mi (6.4 km) west of Kinard, Florida. Threats to the reticulated flatwoods salamander and its habitat that may require special management of the PCEs include the potential for fire suppression, potential expansion of agriculture and residential development into the unit, potential detrimental alterations in forestry practices that could destroy the below-ground soil structure, and potential hydrologic changes resulting from adjacent roads that could alter the ecology of the breeding pond and surrounding terrestrial habitat. In addition, run-off from highways can introduce toxic chemicals into breeding sites. All lands designated as critical habitat contain all PCEs and support multiple reticulated flatwoods salamander life processes.

Subunit B

Unit RFS–9, Subunit B encompasses 877 ac (355 ha) on private land in Calhoun County, Florida. This subunit is bisected by an unnamed road running east of and parallel to State Hwy. 71, and is located approximately 13 mi (20.8 km) south of Scotts Ferry, Florida. Threats to the reticulated flatwoods salamander and its habitat that may require special management of the PCEs include the potential for fire suppression, potential expansion of agriculture and residential development into the unit, potential detrimental alterations in forestry practices that could destroy the below-ground soil structure, and potential hydrologic changes resulting from adjacent roads that could alter the ecology of the breeding pond and surrounding terrestrial habitat. In addition, run-off from highways can introduce toxic chemicals into breeding sites. All lands designated as critical habitat contain all PCEs and support multiple reticulated flatwoods salamander life processes.

Unit RFS–10

Unit RFS–10, which was occupied at the time of listing, is comprised of two subunits encompassing 784 ac (317 ha) in Baker and Miller counties, Georgia. Within RFS–10, 162 ac (66 ha) are located on Mayhaw Wildlife Management Area (managed by the State of Georgia) in Miller County, Georgia, and 622 ac (252 ha) are located on private land adjacent to, and running south of, State Highway 200 in southwestern Baker County, Georgia.

Subunit A

Unit RFS–10, Subunit A encompasses 162 ac (66 ha) on Mayhaw Wildlife Management Area (managed by the State of Georgia) in Miller County, Georgia. Since this subunit is owned by the State of Georgia, it is likely protected from most agricultural and urban development (Ozier 2008). Threats to the reticulated flatwoods salamander and its habitat that may require special management of the PCEs include the potential for fire suppression, potential detrimental alterations in forestry practices that could destroy the below-ground soil structure, and potential hydrologic changes resulting from adjacent highways and roads that could alter the ecology of the breeding pond and surrounding terrestrial habitat. All lands designated as critical habitat contain all PCEs and support multiple reticulated flatwoods salamander life processes.

Subunit B

Unit RFS–10, Subunit B encompasses 622 ac (252 ha) on private land adjacent to, and south of, State Highway 200 in southwestern Baker County, Georgia. Threats to the reticulated flatwoods salamander and its habitat that may require special management of the PCEs include the potential for fire suppression, potential detrimental alterations in forestry practices that could destroy the below-ground soil structure, and potential hydrologic changes resulting from adjacent highways and roads that could alter the ecology of the breeding pond and surrounding terrestrial habitat. In addition, run-off from highways can introduce toxic chemicals into breeding sites. All lands designated as critical habitat contain all PCEs and support multiple reticulated flatwoods salamander life processes.

Frosted Flatwoods Salamander (FFS)

Unit FFS–1

Unit FFS–1 is comprised of 10 subunits in Liberty and Franklin Counties, Florida. These subunits are comprised primarily of U.S. Forest Service land lying within the Apalachicola National Forest. The combined acreage of these subunits is 15,414 ac (6,238 ha). Of these acres, 14,614 ac (5,914 ha) are on the Apalachicola National Forest, 22 ac (9 ha) are under State management, and 778 ac (315 ha) are in private

ownership. Subunits A through G and subunit J (14,365 ac (5,813 ha)) were occupied at the time of listing and are currently occupied; subunits H and I (1,049 ac (425 ha)) were not occupied at the time of listing, but are currently occupied.

Subunit A

Unit FFS–1, Subunit A encompasses 2,285 ac (925 ha) in Liberty County, Florida. Within this subunit, 1,976 ac (800 ha) are in the Apalachicola National Forest and 309 ac (125 ha) are in private ownership. Lands within this subunit owned by the U.S. Forest Service are likely protected from direct agricultural and urban development; however, threats remain to the frosted flatwoods salamander and its habitat that may require special management of the PCEs. This subunit requires special management to address threats including the potential for fire suppression, potential detrimental alterations in forestry practices that could destroy the below-ground soil structure, and potential hydrologic changes resulting from adjacent highways and roads that could alter the ecology of the breeding pond and surrounding terrestrial habitat. All lands designated as critical habitat contain all PCEs and support multiple frosted flatwoods salamander life processes.

Subunit B

Unit FFS–1, Subunit B encompasses 733 ac (296 ha) in Liberty County, Florida. Within this subunit, 695 ac (281 ha) are in the Apalachicola National Forest and 38 ac (15 ha) are in private ownership. Lands within this subunit owned by the U.S. Forest Service are protected from direct agricultural and urban development (Griep 2008); however, threats remain to the frosted flatwoods salamander and its habitat that may require special management of the PCEs. This subunit requires special management to address threats including the potential for fire suppression, potential detrimental alterations in forestry practices that could destroy the below-ground soil structure, and potential hydrologic changes resulting from adjacent highways and roads that could alter the ecology of the breeding pond and surrounding terrestrial habitat. All lands designated as critical habitat contain all PCEs and support multiple frosted flatwoods salamander life processes.

Subunit C

Unit FFS–1, Subunit C encompasses 972 ac (393 ha) in Liberty County, Florida. All of this subunit is within the Apalachicola National Forest. Lands within this subunit are owned by the U.S. Forest Service and are likely protected from direct agricultural and urban development; however, threats remain to the frosted flatwoods salamander and its habitat that may require special management of the PCEs. This subunit requires special management to address threats including the potential for fire suppression, potential detrimental alterations in forestry practices that could destroy the below-ground soil structure, and potential hydrologic changes resulting from adjacent highways and roads that could alter the ecology of the breeding pond and surrounding terrestrial habitat. All lands designated as critical habitat contain all PCEs and support multiple frosted flatwoods salamander life processes.

Subunit D

Unit FFS–1, Subunit D encompasses 568 ac (230 ha) in Liberty County, Florida. All of this subunit is within the Apalachicola National Forest. Lands within this subunit are owned by the U.S. Forest Service and are likely protected from direct agricultural and urban development; however, threats remain to the frosted flatwoods salamander and its habitat that may require special management of the PCEs. This subunit requires special management to address threats including the potential for fire suppression, potential detrimental alterations in forestry practices that could destroy the below-ground soil structure, and potential hydrologic changes resulting from adjacent highways and roads that could alter the ecology of the breeding pond and surrounding terrestrial habitat. All lands designated as critical habitat contain all PCEs and support multiple frosted flatwoods salamander life processes.

Subunit E

Unit FFS–1, Subunit E encompasses 3,679 ac (1,489 ha) in Liberty County, Florida. Within this subunit, 3,473 ac (1,406 ha) are in the Apalachicola National Forest and 206 ac (83 ha) are in private ownership. Lands within this subunit owned by the U.S. Forest Service are likely protected from direct agricultural and urban development; however, threats remain to the frosted flatwoods salamander and its habitat that may require special management of the PCEs. This subunit requires special management to address threats including the potential for fire suppression, potential detrimental alterations in forestry practices that could destroy the below-ground soil structure, potential hydrologic changes resulting from adjacent highways and roads that could alter the ecology of the breeding pond and surrounding terrestrial habitat, as well as agricultural and urban development. All lands designated as critical habitat contain all PCEs and support multiple frosted flatwoods salamander life processes.

Subunit F

Unit FFS–1, Subunit F encompasses 162 ac (66 ha) in Liberty County, Florida. All of this subunit is within the Apalachicola National Forest. Lands within this subunit are owned by the U.S. Forest Service and are likely protected from direct agricultural and urban development; however, threats remain to the frosted flatwoods salamander and its habitat that may require special management of the PCEs. This subunit requires special management to address threats including the potential for fire suppression, potential detrimental alterations in forestry practices that could destroy the below-ground soil structure, and potential hydrologic changes resulting from adjacent highways and roads that could alter the ecology of the breeding pond and surrounding terrestrial habitat. All lands designated as critical habitat contain all PCEs and support multiple frosted flatwoods salamander life processes.

Subunit G

Unit FFS–1, Subunit G encompasses 5,373 ac (2,175 ha) in Liberty County, Florida. Within this subunit, 5,277 ac (2,136 ha) are in the Apalachicola National Forest and 96 ac (39 ha) are in private ownership. Lands within this subunit owned by the U.S. Forest Service are likely protected from direct agricultural and urban development; however, threats remain to the frosted flatwoods salamander and its habitat that may require special management of the PCEs. This subunit requires special management to address threats including the potential for fire suppression, potential detrimental alterations in forestry practices that could destroy the below-ground soil structure, potential hydrologic changes resulting from adjacent highways and roads that could alter the ecology of the breeding pond and surrounding terrestrial habitat, as well as agricultural and urban development. All lands designated as critical habitat contain all PCEs and support multiple frosted flatwoods salamander life processes.

Subunit H

Unit FFS–1, Subunit H encompasses 887 ac (359 ha) in Liberty County, Florida. Within this subunit, 861 ac (348

ha) are in the Apalachicola National Forest, 22 ac (9 ha) are under State management, and 4 ac (2 ha) are in private ownership. This subunit was not occupied at the time of listing, but is currently occupied. The currently occupied habitat of the flatwoods salamander is highly localized and fragmented. Flatwoods salamanders are particularly susceptible to drought, as breeding cannot occur if breeding ponds do not receive adequate rainfall. These small populations are at a high risk of extinction due to random events such as drought, and human-induced threats such as urban-agricultural development and habitat degradation due to fire suppression and hydrological alterations. Thus, to ensure the persistence and conservation of this species throughout its current geographic and ecological distribution despite fluctuations in the status of subpopulations, we have determined that this subunit, although not occupied at the time of listing, is essential for the conservation of the species. Lands within this subunit owned by the U.S. Forest Service are likely protected from direct agricultural and urban development. All lands designated as critical habitat contain all PCEs and support multiple frosted flatwoods salamander life processes.

Subunit I

Unit FFS–1, Subunit I encompasses 162 ac (66 ha) within the Apalachicola National Forest in Liberty County, Florida. This subunit was not occupied at the time of listing, but is currently occupied. The currently occupied habitat of the flatwoods salamander is highly localized and fragmented. Flatwoods salamanders are particularly susceptible to drought, as breeding cannot occur if breeding ponds do not receive adequate rainfall. These small populations are at a high risk of extinction due to random events such as drought, and human-induced threats such as urban-agricultural development and habitat degradation due to fire suppression and hydrological alterations. Thus, to ensure the persistence and conservation of this species throughout its current geographic and ecological distribution despite fluctuations in the status of subpopulations, we have determined that this subunit is essential for the conservation of the species. Lands within this subunit are owned by the U.S. Forest Service and are likely protected from direct agricultural and urban development. All lands designated as critical habitat contain all PCEs and support multiple frosted flatwoods salamander life processes.

Subunit J

Unit FFS–1, Subunit J encompasses 593 ac (240 ha) in Franklin County, Florida. All of this subunit is within the Apalachicola National Forest. Lands within this subunit are owned by the U.S. Forest Service and are likely protected from direct agricultural and urban development; however, threats remain to the frosted flatwoods salamander and its habitat that may require special management of the PCEs. This subunit requires special management to address threats including the potential for fire suppression, potential detrimental alterations in forestry practices that could destroy the below-ground soil structure, and potential hydrologic changes resulting from adjacent highways and roads that could alter the ecology of the breeding pond and surrounding terrestrial habitat. All lands designated as critical habitat contain all PCEs and support multiple frosted flatwoods salamander life processes.

Unit FFS–3

Unit FFS–3, which was occupied at the time of listing, is comprised of three subunits encompassing 5,045 ac (2,042 ha) in Jefferson and Wakulla Counties, Florida. Within this unit, 2,049 ac (829 ha) are on St. Marks National Wildlife Refuge (NWR) (managed by the Service), 85 ac (34 ha) are in the Aucilla Wildlife Management Area managed by the State of Florida, and 2,911 ac (1,178 ha) are in private ownership.

Subunit A

Unit FFS–3, Subunit A encompasses 3,078 ac (1,245 ha) on Federal and private land in Wakulla County, Florida. This subunit is located south of U.S. Hwy. 98 and southeast of the town of Newport, Florida. Within this subunit, 1,456 ac (589 ha) are in the St. Marks NWR and 1,622 ac (656 ha) are in private ownership. Portions of this subunit that are within Federal ownership are likely protected from direct agricultural and urban development; however, threats remain to the frosted flatwoods salamander and its habitat that may require special management of the PCEs. This subunit requires special management to address threats including the potential for fire suppression, potential detrimental alterations in forestry practices that could destroy the below-ground soil structure, and potential hydrologic changes resulting from adjacent highways and roads that could alter the ecology of the breeding pond and surrounding terrestrial habitat. In addition, run-off from highways can introduce toxic chemicals into breeding sites. Special management is needed to address the threats of agricultural and urban development on portions of the unit within private ownership. All lands designated as critical habitat contain all PCEs and support multiple frosted flatwoods salamander life processes.

Subunit B

Unit FFS–3, Subunit B encompasses 1,804 ac (730 ha) on Federal and private land. This subunit is located south of U.S. Hwy. 98 in southeastern Wakulla and southwestern Jefferson counties. Within this subunit, 593 ac (240 ha) are in the St. Marks NWR and 1,211 ac (490 ha) are in private ownership. Portions of this subunit that are within Federal ownership are likely protected from direct agricultural and urban development; however, threats remain to the frosted flatwoods salamander and its habitat that may require special management of the PCEs. This subunit requires special management to address threats including the potential for fire suppression, potential detrimental alterations in forestry practices that could destroy the below-ground soil structure, and potential hydrologic changes resulting from adjacent highways and roads that could alter the ecology of the breeding pond and surrounding terrestrial habitat. In addition, run-off from highways can introduce toxic chemicals into breeding sites. Special management is needed to address the threats of agricultural and urban development on portions of the unit within private ownership. All lands designated as critical habitat contain all PCEs and support multiple frosted flatwoods salamander life processes.

Subunit C

Unit FFS–3, Subunit C encompasses 163 ac (66 ha) in Jefferson County, Florida. Within this subunit, 85 ac (34 ha) are in the Aucilla Wildlife Management Area managed by the State of Florida and 78 ac (32 ha) are in private ownership. This subunit is bisected by State Hwy. 59, 5.3 mi (8.4 km) north of U.S. Hwy. 98, and approximately 2 mi (3.2 km) east of the Jefferson-Wakulla County line. Portions of this subunit that are within State ownership are likely protected from direct agricultural and urban development; however, threats remain to the frosted flatwoods salamander and its habitat that may require special management of the PCEs. This subunit requires special management to address threats including the potential for fire suppression, potential detrimental alterations in forestry practices that could destroy the below-ground soil

structure, and potential hydrologic changes resulting from adjacent highways and roads that could alter the ecology of the breeding pond and surrounding terrestrial habitat. In addition, run-off from highways can introduce toxic chemicals into breeding sites. Special management is needed to address the threats of agricultural and urban development on portions of the unit within private ownership. All lands designated as critical habitat contain all PCEs and support multiple frosted flatwoods salamander life processes.

Unit FFS–4

Unit FFS–4 is comprised of two subunits encompassing 712 ac (288 ha) in Baker County, Florida. Within this unit, which was occupied at the time of listing, 550 ac (223 ha) are on Osceola NF and 162 ac (66 ha) are in private ownership.

Subunit A

Unit FFS–4, Subunit A encompasses 550 ac (223 ha) on the Osceola National Forest in Baker County, Florida. This subunit is located adjacent and south of Interstate 10 in the southwestern corner of Baker County between State Highways 250 and 229. Portions of this subunit within Federal ownership are likely protected from direct agricultural and urban development; however, threats remain to the frosted flatwoods salamander and its habitat that may require special management of the PCEs. This subunit requires special management to address threats including the potential for fire suppression, potential detrimental alterations in forestry practices that could destroy the below-ground soil structure, and potential hydrologic changes resulting from adjacent highways and roads that could alter the ecology of the breeding pond and surrounding terrestrial habitat. In addition, run-off from highways can introduce toxic chemicals into breeding sites. All lands designated as critical habitat contain all PCEs and support multiple frosted flatwoods salamander life processes.

Subunit B

Unit FFS–4, Subunit B encompasses 162 ac (66 ha) on private land in Baker County, Florida. This subunit occurs approximately 2 mi (3.2 km) south of State Hwy. 229 and 3.5 mi (5.6 km) north of Interstate 10. This subunit requires special management to address threats including the potential for fire suppression, potential detrimental alterations in forestry practices that could destroy the below-ground soil structure, and potential hydrologic changes resulting from adjacent highways and roads that could alter the ecology of the breeding pond and surrounding terrestrial habitat, as well as agricultural and urban development. In addition, run-off from highways can introduce toxic chemicals into breeding sites. All lands designated as critical habitat contain all PCEs and support multiple frosted flatwoods salamander life processes.

Unit FFS–5

Unit FFS–5 is comprised of two subunits encompassing 337 ac (136 ha) on privately owned land in Jasper County, South Carolina. Both subunits were occupied at the time of listing and are currently occupied.

Subunit A

Unit FFS–5, Subunit A encompasses 154 ac (62 ha) on private land in Jasper County, South Carolina. This subunit is bisected by State Hwy. 46 and occurs near a rapidly developing area of Jasper County. Within this subunit, threats to the frosted flatwoods salamander and its habitat that may require special management of the PCEs include the potential for fire suppression, potential expansion of agriculture and residential development into the unit, potential detrimental alterations in forestry practices that could destroy the below-ground soils structure, potential hydrologic changes resulting from adjacent roads that could alter the ecology of the breeding pond and surrounding terrestrial habitat, and future habitat destruction due to urban and commercial development. In addition, run-off from highways can introduce toxic chemicals into breeding sites. All lands designated as critical habitat contain all PCEs and support multiple frosted flatwoods salamander life processes.

Subunit B

Unit FFS–5, Subunit B encompasses 183 ac (74 ha) on private land in Jasper County, South Carolina. This subunit is bisected by a county road, approximately 1 mi (1.6 km) west of U.S. Hwy. 321, northwest of Hardeeville, South Carolina. Within this subunit, threats to the frosted flatwoods salamander and its habitat that may require special management of the PCEs include the potential for fire suppression, potential expansion of agriculture and residential development into the unit, potential detrimental alterations in forestry practices that could destroy the below-ground soils structure, potential hydrologic changes resulting from adjacent roads that could alter the ecology of the breeding pond and surrounding terrestrial habitat, and future habitat destruction due to urban and commercial development. In addition, run-off from highways can introduce toxic chemicals into breeding sites. All lands designated as critical habitat contain all PCEs and support multiple frosted flatwoods salamander life processes.

Unit FFS–6

Unit FFS–6, occupied at the time of listing, encompasses 1,300 ac (526 ha) on Federal and private land in Berkeley County, South Carolina. This unit is bisected by State Highway 41 approximately 10 mi (16 km) south of the town of Huger. Within this unit, 1,176 ac (476 ha) are in the Francis Marion National Forest and 124 ac (50 ha) are on private land. Land within this subunit owned by the U.S. Forest Service is protected from agricultural and urban development; however, threats remain to frosted flatwoods salamander habitat that may require special management of the PCEs. These threats include the potential for fire suppression, potential detrimental alterations in forestry practices that could destroy the below-ground soil structure, and potential hydrologic changes resulting from adjacent highways and roads that could alter the ecological functioning of the breeding pond and surrounding terrestrial habitat. Special management of the PCEs may also be required for the threats posed by agricultural and urban development on the lands in private ownership. All lands designated as critical habitat contain all PCEs and support multiple frosted flatwoods salamander life processes.

Unit FFS–7

Unit FFS–7 encompasses 162 ac (66 ha) on the Santee Coastal Reserve (managed by the State of South Carolina) in Charleston County, South Carolina. Approximately 0.32 ac (0.13 ha) on private land are also included within this unit. Since most of this unit, which was occupied at the time of listing, is owned by the State of South Carolina, it is likely protected from direct agricultural and urban development; however, threats remain to the frosted flatwoods salamander and its habitat that may require special management of the PCEs. Threats include the potential for fire suppression, potential detrimental alterations in forestry practices that could destroy the below-ground soil structure, and potential hydrologic changes resulting from adjacent highways and roads that could alter the ecology of the breeding pond and

surrounding terrestrial habitat. All lands designated as critical habitat contain all PCEs and support multiple frosted flatwoods salamander life processes.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7 of the Act requires Federal agencies to ensure that actions they fund, authorize, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify designated critical habitat. Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F. 3d 1059 (9th Cir 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service, et al.,* 245 F.3d 434, 442F (5th Cir 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the PCEs to be functionally established) to serve its intended conservation role for the species.

Under section 7(a)(2) of the Act, if a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that are likely to adversely affect listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define ''Reasonable and prudent alternatives'' at 50 CFR 402.02 as alternative actions identified during consultation that:

- Can be implemented in a manner consistent with the intended purpose of the action,
- Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,
- Are economically and technologically feasible, and
- Would, in the Director's opinion, avoid jeopardizing the continued existence of the listed species or destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Federal activities that may affect the frosted flatwoods or reticulated flatwoods salamanders or their designated critical habitat will require section 7(a)(2) consultation under the Act. Activities on State, tribal, local, or private lands requiring a Federal permit (such as a permit from the Corps under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from us under section 10(a)(1)(B) of the Act) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) are examples of agency actions that may be subject to the section 7(a)(2) consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local or private lands that are not federally funded, authorized, or permitted, do not require section 7(a)(2) consultations.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, or would retain its current ability for the primary constituent elements to be functionally established. Activities that may destroy or adversely modify critical habitat are those that alter the physical and biological features to an extent that appreciably reduces the conservation value of critical habitat for the reticulated flatwoods salamander and the frosted flatwoods salamander. Generally, the conservation role of reticulated flatwoods salamander and frosted flatwoods salamander critical habitat units is to support viable core areas for the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore should result in consultation for the reticulated flatwoods salamander and the frosted flatwoods salamander include, but are not limited to:

(1) Actions that would significantly alter water chemistry in reticulated flatwoods salamander or frosted flatwoods salamander breeding ponds. Such activities could include, but are not limited to, the release of chemicals, biological pollutants, or sedimentation into the surface water or connected groundwater at a point source or by dispersed release (non-point source) via road construction, urban and agricultural development, ditching, timber harvest, off-road vehicle use, and other watershed disturbances. These activities could alter the condition of the water beyond the tolerances of the reticulated flatwoods salamander and frosted flatwoods salamander and their respective food bases, resulting in direct or cumulative adverse effects to individuals and their life cycles.

(2) Actions that would significantly alter the hydroperiod and vegetation of a reticulated flatwoods salamander or a frosted flatwoods salamander breeding pond. Such activities could include, but are not limited to, road construction; urban and agricultural development; dredging, ditching, or filling ponds; fire suppression; and timber harvesting and replanting. These activities could alter the hydrologic timing, duration, or water flows of a pond basin, as well as alter the constituent vegetation. They could also increase the connectivity of breeding ponds to more permanent waters, which would allow the invasion of predatory fish. As a result, the habitat necessary for reticulated flatwoods salamander or frosted flatwoods

salamander reproduction and the growth and development of eggs and juvenile salamanders would be reduced or eliminated.

(3) Actions that would significantly alter the terrestrial forested habitat of the reticulated flatwoods salamander or the frosted flatwoods salamander. Such activities could include, but are not limited to, road construction, urban and agricultural development, dredging, ditching, fire suppression, and timber harvesting and replanting. These activities may lead to changes in soil moisture, soil below-ground structure, soil temperatures, and vegetation that would degrade or eliminate the terrestrial habitat of the reticulated flatwoods salamander or frosted flatwoods salamander.

Please see ''Special Management Considerations or Protection'' section for a more detailed discussion on the impacts of these actions to the listed species.

Exemptions and Exclusions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resource management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

- An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;
- A statement of goals and priorities;
- A detailed description of management actions to be implemented to provide for these ecological needs; and
- A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

We consult with the military on the development and implementation of INRMPs for installations with listed species. The Service reviewed each of the INRMPs described below prior to their finalization and has provided input into strategies for monitoring and management of endangered species including the reticulated flatwoods salamander and frosted flatwoods salamander. Each military facility has been conducting surveys and habitat management to benefit the reticulated flatwoods salamander or the frosted flatwoods salamander and reporting the results of their efforts to the Service. Cooperation between the military facilities and the Service on specific conservation measures continues. INRMPs developed by military installations located within the range of the critical habitat designation for the reticulated flatwoods salamander and the frosted flatwoods salamander were analyzed for exemption under the authority of 4(a)(3) of the Act.

Approved INRMPs

Navy Outlying Landing Field Holley (NOLF Holley)

NOLF Holley is located in Santa Rosa County, Florida, and has approximately 289 ac (117 ha) of habitat with features essential to the conservation of the reticulated flatwoods salamander. In 2006, the U.S. Department of the Navy (DoN) drafted a revision of its 2001 INRMP for Naval Air Station Whiting Field Complex, of which NOLF Holley is a part (DoN 2006, pp. 5–68, 5–70, 5–73, 5–76, 5–77, 6–22, 6–23, A–16). The revised INRMP outlines management for 5 years (2007–2011). We have examined this document and determined that it does provide conservation measures for the reticulated flatwoods salamander, as well as for the management of important wetland and upland habitats at NOLF Holley. The area of NOLF Holley where reticulated flatwoods salamander habitat is located has been designated as a Protected Area. The INRMP outlines a Special Management Initiative for the reticulated flatwoods salamander, which includes a prescribed burning program, strategies to identify salamander distribution and habitat, control of invasive species, enforcement of restrictions on off-road vehicle use, and forest management consistent with recommendations in the final listing rule (64 FR 15691; April 1, 1999). Although we had received information in 2007 that the Navy was considering selling NOLF Holley and as a result were concerned about implementation of the INRMP, the Navy has assured us that it has no plans to transfer ownership of the site and it intends to continue stewardship of the salamander and its habitat (DoN 2008, p. 2).

Based on the above considerations, and consistent with the direction provided in section 4(a)(3)B)(i) of the Act, we have determined that conservation efforts identified in the INRMP will provide benefits to the reticulated flatwoods salamander and the features essential to the species' conservation occurring on NOLF Holley. In our analyses, we have taken into consideration that the INRMP does not protect the habitat from future destruction or modification associated with development, however, we know of no such potential threat at this time. Therefore, this installation is exempt from critical habitat designation under section 4(a)(3) of the Act. We are not including approximately 289 ac (117 ha) of habitat in the final critical habitat designation for the reticulated flatwoods salamander because of this exemption.

Hurlburt Field

Hurlburt Field is located in Okaloosa County, Florida, and has approximately 712 ac (288 ha) of habitat with features essential to the conservation of the reticulated flatwoods salamander. The U.S. Department of Defense-Air Force finalized a revision to the INRMP for Hurlburt Field in 2008 (DoD 2008, pp. 1–152). The INRMP will continue to be reviewed annually to monitor the effectiveness of the plan, and be reviewed every five years to develop revisions and updates as necessary. We have examined this document and determined that it does outline conservation measures for the reticulated flatwoods salamander, as well as management plans for important wetland and upland habitats at Hurlburt Field. The INRMP outlines goals and objectives for the reticulated flatwoods salamander and its habitat that include a prescribed burning program, strategies to identify and monitor salamander distribution and habitat, control of invasive species, and forest management consistent with recommendations in the final listing rule (DoD 2008, pp. 61, 79, 133–151).

Based on the above considerations, and consistent with the direction

provided in section 4(a)(3)(B)(i) of the Act, we have determined that conservation efforts identified in the INRMP will provide a benefit to the reticulated flatwoods salamander and the features essential to the species' conservation occurring in habitats within Hurlburt Field. Therefore, this installation is exempt from critical habitat designation under section 4(a)(3) of the Act. We are not including approximately 712 ac (288 ha) of habitat in this final designation of critical habitat because of this exemption.

Eglin Air Force Base (Eglin)

Eglin is located in Okaloosa and Santa Rosa counties, Florida, and has approximately 1,880 ac (761 ha) of habitat with features essential to the conservation of the reticulated flatwoods salamander. The Department of Defense completed the update of its INRMP for Eglin in 2007 (DoD 2007, pp. 124–126, 181). This INRMP covers a period of 5 years from 2007 through 2011. A separate threatened and endangered species component plan has been written and contains specific monitoring and management actions for the reticulated flatwoods salamander (DoD 2006a, pp. 53–64, 240–242). The INRMP and component plan outline a management direction for the reticulated flatwoods salamander that includes a prescribed burning program, strategies to identify and monitor salamander distribution and habitat, control of invasive species, and forest management consistent with recommendations in the final listing rule (64 FR 15691; April 1, 1999). In 2007, it came to our attention (Arnold 2007) that a road had been proposed which could cross Eglin within the habitat with features essential to the conservation of the reticulated flatwoods salamander. However, during the open comment period Eglin assured us that it will not allow negative impacts to the salamander's habitat and that it will continue to ensure the conservation of the reticulated flatwoods salamander.

Based on the above considerations, and consistent with the direction provided in section 4(a)(3)(B)(i) of the Act, we have determined that the INRMP will provide a benefit to the reticulated flatwoods salamander and the features essential to the species' conservation occurring on Eglin. Therefore, approximately 1,880 ac (761 ha) of habitat on Eglin with features essential to the conservation of the reticulated flatwoods salamander are exempt from this final critical habitat designation under section 4(a)(3) of the Act.

Fort Stewart Military Installation (Fort Stewart)

Fort Stewart, U.S. Army installation, is located in Bryan, Evans, Liberty, Long, and Tattnall Counties, Georgia and has approximately 5,121 ac (2,072 ha) of habitat with features essential to the conservation of the frosted flatwoods salamander. The first INRMP (INRMP I) for Fort Stewart was completed in 2001 and updated in 2005 (DoD 2005, pp. 1, 22, 34, 76–77). Each INRMP covers a period of 5 years with a subsequent review and update every 5 years. Additionally, an annual review of management implementation is conducted and, if necessary, the INRMP is adapted to address needed improvements. The management direction from INRMP I is being continued in the review. We have examined this document and determined that it does provide conservation measures for the frosted flatwoods salamander, as well as for the management of important wetland and upland habitats at Fort Stewart. The INRMP outlines management activities to be conducted for the frosted flatwoods salamander (DoD 2005, p. 22). These include a prescribed burning program, strategies to identify and monitor frosted flatwoods salamander distribution and habitat, control of invasive species, and forest management consistent with recommendations in the final listing rule (64 FR 15691; April 1, 1999). At this time, we know of no proposed projects outside the scope of the INRMP which would threaten the frosted flatwoods salamander or its habitat.

Based on the above considerations, and consistent with the direction provided in section 4(a)(3)(B)(i) of the Act, we have determined that conservation identified in the INRMP will provide benefits to the frosted flatwoods salamander and the features essential to the species' conservation occurring on Fort Stewart Military Installation. In our analyses, we have taken into consideration that the INRMP does not protect the habitat from future destruction or modification associated with development, however, we know of no such potential threat at this time. Therefore, approximately 5,121 ac (2,072 ha) of habitat with features essential to the conservation of the frosted flatwoods salamander within Fort Stewart Military Installation are exempt from this final designation of critical habitat for the frosted flatwoods salamander under section 4(a)(3) of the Act.

Townsend Bombing Range (Townsend)

Townsend is located in McIntosh County, Georgia, and contains approximately 162 ac (66 ha) of habitat with features essential to the conservation of the frosted flatwoods salamander. The property is owned by the U.S. Department of the Navy and the land is managed by Marine Corps Air Station, Beaufort, South Carolina (MCAS Beaufort). The original INRMP written in 2001 for Townsend has been renewed to cover the period November 2006 through October 2011 (DoD 2006b, pp. ES–1, ES–2, 1–3, 1–8, 1–9, 1–10, 3–15, 4–4, 4–8, 4–9, 4–10, 4–11, 4–19, 4–20, 4–22, 4–23, 4–27, 4–28, 4–29). We have examined this document and determined that it does provide conservation measures for the frosted flatwoods salamander, as well as for the management of important wetland and upland habitats at Townsend. The INRMP includes activities to maintain or increase the salamander's population on Townsend through improvement of terrestrial habitat through use of prescribed fire and improvement of water quality and hydrologic regime of the breeding ponds. The INRMP provides biological goals and objectives, measures of success, provisions for annual monitoring and adaptive management, and provisions for reporting. The INRMP outlines projects that would benefit the frosted flatwoods salamander including a prescribed burning program, strategies to identify and monitor salamander distribution and habitat, control of invasive species, and forest management consistent with recommendations in the final listing rule (64 FR 15691; April 1, 1999).

Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that conservation efforts identified in the INRMP will provide benefits to the frosted flatwoods salamander and the features essential to the species' conservation occurring in habitats within or adjacent to the Townsend Bombing Range. In our analyses, we have taken into consideration that the INRMP does not protect the habitat from future destruction or modification associated with development, however, we know of no such potential threat at this time. Therefore, approximately 162 ac (66 ha) of habitat with features essential to the conservation of the frosted flatwoods salamander on Townsend are exempt from final critical habitat designation under section 4(a)(3) of the Act.

Application of Exclusions Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate and revise critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute as well as the legislative history are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, in considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If based on this analysis we determine that the benefits of exclusion would outweigh the benefits of inclusion of an area, then we can exclude the area only if such exclusions would not result in the extinction of the species.

Under section 4(b)(2) of the Act, we must consider all relevant impacts, including economic impacts. We consider a number of factors in a section 4(b)(2) analysis. For example, we consider whether there are lands owned or managed by the Department of Defense where a national security impact might exist. We also consider whether landowners having proposed critical habitat on their lands have developed any conservation plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any Tribal issues, and consider the government-to-government relationship of the United States with Tribal entities. We also consider any social or other impacts that might occur because of the designation.

In the proposed rule, we requested comments regarding information supporting or opposing possible exclusion of units within National Forests from critical habitat in the final designation. In this instance, we have examined all comments submitted and evaluated the Forest Management Plans for Francis Marion, Osceola, and Apalachicola National Forests with respect to providing adequate protection and management for the flatwoods salamander. None of these Plans provide sufficient protection and management to satisfy the criteria necessary for exclusion from final critical habitat.

On the other hand, we have determined that the lands designated as critical habitat for the frosted and reticulated flatwoods salamanders are not currently included in habitat conservation plans (HCPs) for these species and that the designation does not include any Tribal lands or trust resources. We anticipate no impact to national security, Tribal lands, partnerships, or HCPs from this critical habitat designation.

Economic Analysis (EA)

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. In compliance with section 4(b)(2) of the Act, we have prepared an EA of this final designation of critical habitat for the frosted and reticulated flatwoods salamanders.

The final EA (Industrial Economics 2008b) considers the potential economic effects of actions relating to the conservation of the frosted and reticulated flatwoods salamanders, including costs associated with sections 4, 7, and 10 of the Act, and including those attributable to designating critical habitat. It further considers the economic effects of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation for the frosted and reticulated flatwoods salamanders in essential habitat areas. The EA considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the ''opportunity costs'' associated with the commitment of resources to comply with habitat protection measures (for example, lost economic opportunities associated with restrictions on land use).

The EA also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on small entities and the energy industry. This information can be used by decision-makers to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, the EA considers those costs that may occur in the 20 years following a designation of critical habitat.

Pre-critical-habitat designation (or pre-designation) (1999–2008) costs associated with species conservation activities are estimated at $2.08 million discounted at 7 percent (Industrial Economics 2008b, p. B–4). Potential post-critical-habitat designation (or post-designation) (2009–2028) costs are estimated to range between $3.88 and $6.40 million at a 3 percent discount rate and between $2.49 and $4.38 million at a 7 percent discount rate (Industrial Economics 2008b, p. B–5). In annualized terms, potential post-designation costs are expected to range from $261,000 to $430,000 annualized at 3 percent and $235,000 to $413,000 annualized at 7 percent (Industrial Economics 2008b, p. B–5).

Because our EA did not identify any disproportionate costs that are likely to result from the designation, we did not consider excluding any areas from this designation of critical habitat for the frosted or reticulated flatwoods salamanders based on economic impacts.

A copy of the final EA with supporting documents is included in our administrative record and may be obtained by contacting U.S. Fish and Wildlife Service, Branch of Endangered Species (see **FOR FURTHER INFORMATION CONTACT**) or by downloading from the Internet at *www.regulations.gov/*.

Therefore, there are no areas excluded from this final critical habitat designation under section 4(b)(2).

Required Determinations

Regulatory Planning and Review (Executive Order 12866)

The Office of Management and Budget (OMB) has determined that this rule is not significant under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act

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

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as 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 consider the types of activities that might trigger regulatory impacts under this rule, as well as the 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 final designation of critical habitat for the frosted and reticulated flatwoods salamanders could significantly affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (for example, housing development, grazing, oil and gas production, timber harvesting). We considered each industry or category individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by the designation of critical habitat. Designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies; non-Federal activities are not affected by the designation. Typically, when final critical habitat designations are made final, Federal agencies must consult with us if their activities may affect that designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

The EA for the frosted and reticulated flatwoods salamanders evaluated the potential for economic impacts related to several categories, including (1) timber management; (2) development; (3) other activities, including road construction, species management, fire management and recreation (Industrial Economics 2008b, p. A–2). Based on our analysis, only small business entities that rely on land development are expected to be affected by conservation efforts for the frosted and reticulated flatwoods salamanders. Therefore, the screening analysis focused on incremental impacts to development activities. Six small businesses may be affected with an average high-end potential per business impact of $46,100 (Industrial Economics 2008b, p. A–6) for both species. Potential high-end incremental impacts per landowner range from $6,770 in FFS–1 to $102,000 in RFS–3. Potentially affected developable acres in the final critical habitat designation are small relative to the total number of developable acres in these counties. Regional businesses that support or are supported by development (such as construction companies, hardware suppliers, or lumberyards) in these counties are not expected to be measurably affected by salamander conservation (Industrial Economics 2008b, p. A–6). In addition, ''downstream'' impacts are not measurable due to the small proportion of all developable lands that are projected to be impacted by salamander conservation measures (as measured at the county level) (Industrial Economics 2008b, p. A–3).

In summary, we have considered whether this final designation of critical habitat would result in a significant economic effect on a substantial number of small entities. We have determined, for the above reasons and based on currently available information, that it is not likely to affect a substantial number of small entities. Therefore, we certify that this final regulation will not result in a significant economic impact on a substantial number of small business entities. Please refer to our EA of this designation for a more detailed discussion of potential economic impacts.

Unfunded Mandates Reform Act

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

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

The designation of critical habitat does not impose a legally binding duty

on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments because it is not likely to produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. Most lands being designated as critical habitat are Federal or State properties. In addition, the designation of critical habitat imposes no obligations on State or local governments. Therefore, a Small Government Agency Plan is not required.

Takings

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the reticulated flatwoods salamander and the frosted flatwoods salamander in a takings implications assessment. The takings implications assessment concludes that this designation of critical habitat for the reticulated flatwoods salamander and the frosted flatwoods salamander does not pose significant takings implications for lands within or affected by the designation.

Federalism

In accordance with E.O. 13132 (Federalism), this final rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this final critical habitat designation with appropriate State resource agencies in Florida, Georgia, and South Carolina. The designation of critical habitat in areas currently occupied by the reticulated flatwoods salamander and the frosted flatwoods salamander imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments because the areas that contain the physical and biological features essential to the conservation of the species are more clearly defined, and the PCEs necessary to support the life processes of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have designated critical habitat in accordance with the provisions of the Act. This final rule uses standard property descriptions and identifies physical and biological features essential to the conservation of the species within the designated areas to assist the public in understanding the habitat needs of the reticulated flatwoods salamander and the frosted flatwoods salamander.

Paperwork Reduction Act of 1995

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA)

It is our position that, outside the jurisdiction of the United States Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld by the United States Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. We have determined that there are no tribal lands occupied at the time of listing that contain the features essential for the conservation, and no tribal lands that are essential for the conservation, of the reticulated flatwoods salamander and the frosted flatwoods salamander. Therefore, we have no final critical habitat for the reticulated flatwoods salamander and the frosted flatwoods salamander on tribal lands.

Energy Supply, Distribution, or Use

On May 18, 2001, the President issued an Executive Order (E.O. 13211; Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this final rule to designate critical habitat for the reticulated flatwoods salamander and frosted flatwoods salamander is a significant regulatory action under E.O. 12866 in that it may raise novel legal and policy issues, we do not expect it to significantly affect energy supplies, distribution, or use. Based on our draft EA (Industrial Economics Inc. 2008a, p. A–8), none of the nine outcomes that

may constitute ''a significant adverse effect'' exist for this final rule. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Ray Aycock, Mississippi Fish and Wildlife Office (*see* **FOR FURTHER INFORMATION CONTACT**).

Author(s)

The primary author of this document is the Staff of the U.S. Fish and Wildlife Service, Mississippi Fish and Wildlife Service Field Office (*see* **FOR FURTHER INFORMATION CONTACT**).

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; Public Law 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. In § 17.11(h) remove the entry for ''Salamander, flatwoods'', and add entries for ''Salamander, frosted flatwoods'' and ''Salamander, reticulated flatwoods'' in alphabetical order under ''AMPHIBIANS,'' to the List of Threatened and Endangered Wildlife, to read 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						
*	*	*	*	*	*		*
AMPHIBIANS							
*	*	*	*	*	*		*
Salamander, frosted flatwoods.	*Ambystoma cingulatum.*	U.S.A. (FL, GA, SC)	Entire	T	658	17.95(d)	NA
*	*	*	*	*	*		*
Salamander, reticulated flatwoods.	*Ambystoma bishopi*	U.S.A. (FL, GA)	Entire	E		17.95(d)	NA
*	*	*	*	*	*		*

3. In § 17.95, amend paragraph (d) by adding entries for ''Frosted flatwoods salamander (*Ambystoma cingulatum*)'' and ''Reticulated flatwoods salamander (*Ambystoma bishopi*)'' in the same alphabetical order that these species appear in the table at § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(d) *Amphibians.*

* * * * *

Frosted Flatwoods Salamander (*Ambystoma cingulatum*)

(1) Critical habitat units are depicted for Baker, Franklin, Jefferson, Liberty, and Wakulla Counties in Florida; and Berkeley, Charleston, and Jasper Counties in South Carolina on the maps below.

(2) The primary constituent elements of critical habitat for the frosted flatwoods salamander are:

(i) *Breeding habitat.* Small (generally less than 1 to 10 ac (less than 0.4 to 4.0 ha)), acidic, depressional standing bodies of freshwater (wetlands) that:

(A) Are seasonally flooded by rainfall in late fall or early winter and dry in late spring or early summer;

(B) Are geographically isolated from other water bodies;

(C) Occur within pine flatwoods-savanna communities;

(D) Are dominated by grasses and grass-like species in the ground layer and overstories of pond-cypress, blackgum, and slash pine;

(E) Have a relatively open canopy, necessary to maintain the herbaceous component that serves as cover for flatwoods salamander larvae and their aquatic invertebrate prey; and

(F) Typically have a burrowing crayfish fauna, but, due to periodic drying, the breeding ponds typically lack large, predatory fish (for example, *Lepomis* (sunfish), *Micropterus* (bass), *Amia calva* (bowfin)).

(ii) *Non-breeding habitat.* Upland pine flatwoods-savanna habitat that is open, mesic woodland maintained by frequent fires and that:

(A) Is within 1,500 ft (457 m) of adjacent and accessible breeding ponds;

(B) Contains crayfish burrows or other underground habitat that the flatwoods salamander depends upon for food, shelter, and protection from the elements and predation;

(C) Has an organic hardpan in the soil profile, which inhibits subsurface water penetration and typically results in moist soils with water often at or near the surface under normal conditions; and

(D) Often has wiregrasses as the dominant grasses in the abundant herbaceous ground cover, which supports the rich herbivorous invertebrates that serve as a food source for the frosted flatwoods salamander.

(iii) *Dispersal habitat.* Upland habitat areas between nonbreeding and breeding habitat that allows for salamander movement between such sites and that is characterized by:

(A) A mix of vegetation types representing a transition between wetland and upland vegetation (ecotone);

(B) An open canopy and abundant native herbaceous species;

(C) Moist soils as described in paragraph (2)(ii); and

(D) Subsurface structure, such as that provided by deep litter cover or burrows, that provides shelter for salamanders during seasonal movements.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they

are located existing within the legal boundaries on the effective date of this rule.

(4) *Critical habitat map units.* Data layers defining map units were created on a base of USGS 7.5′ quadrangles, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(5) *Note:* Index map of critical habitat for the frosted flatwoods salamander follows:

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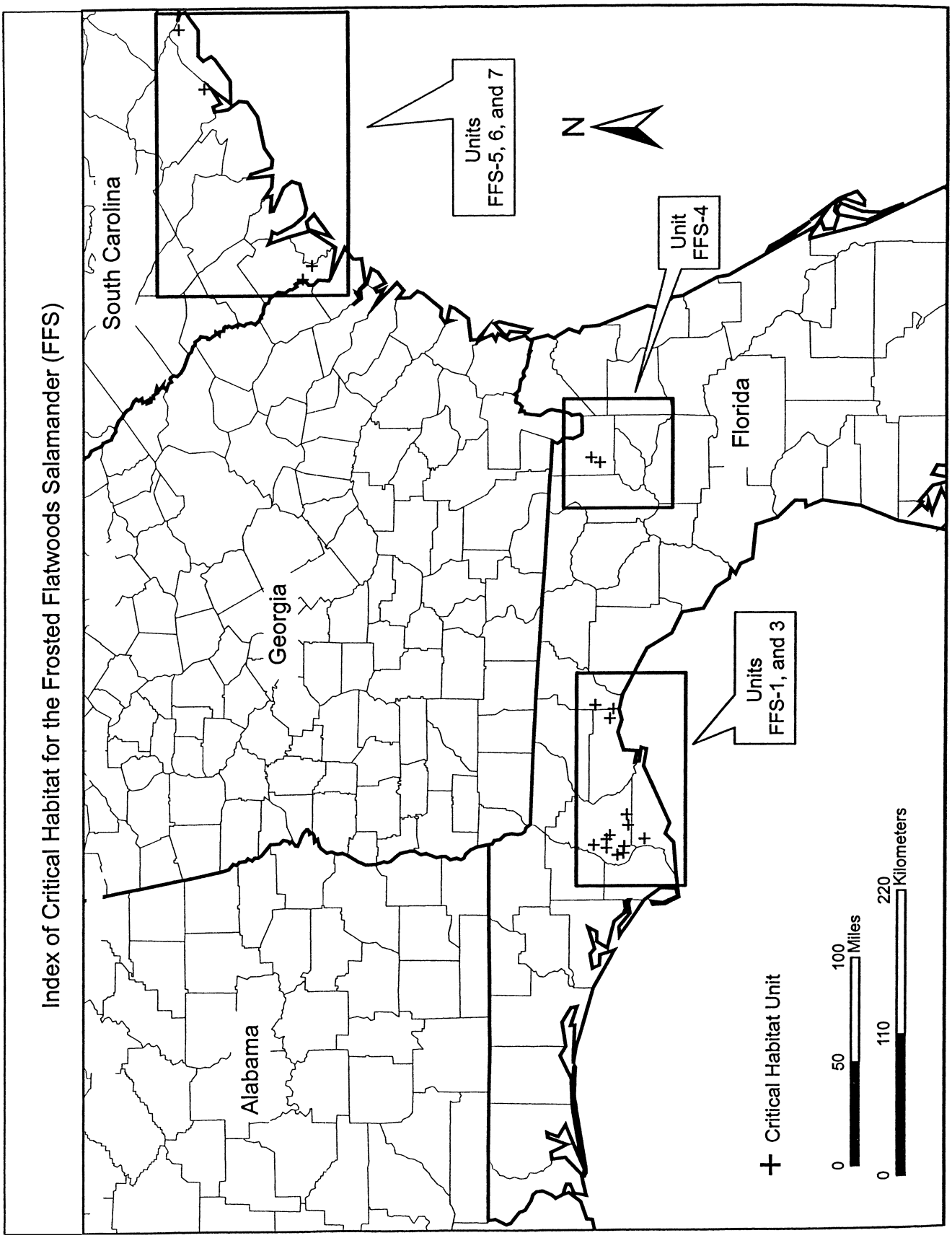

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(6) Frosted flatwood salamander—Baker, Franklin, Jefferson, Liberty, and Wakulla Counties, Florida.

(i) Unit FFS–1, Subunit A—Liberty County, Florida. From USGS 1:24,000 scale quadrangle maps Estiffanulga and Woods, Florida.

(A) Land bounded by the following UTM Zone 16N NAD83 coordinates, (E, N): 691617.99, 3350707.71; 693095.71, 3348233.03; 692983.53, 3348209.57; 692897.48, 3348210.76; 692828.41, 3348229.52; 692759.43, 3348248.25; 692691.40, 3348292.76; 692639.72, 3348326.57; 690393.30, 3350136.47; 690313.39, 3350218.63; 690268.29, 3350291.92; 690230.96, 3350400.29; 690221.36, 3350485.81; 690241.25, 3350627.47; 690274.03, 3350707.04; 690333.43, 3350797.24; 690401.06, 3350865.47; 690279.29, 3350935.03; 690182.82, 3351040.66; 690111.95, 3351227.14; 690119.70, 3351398.31; 690131.84, 3352855.50; 690169.32, 3352993.56; 690267.58, 3353133.94; 690384.46, 3353216.42; 690549.65, 3353261.95; 690664.14, 3353256.77; 690773.74, 3353223.27; 690871.58, 3353163.57; 690968.05, 3353057.95; 692565.25, 3351422.56; 692602.62, 3351378.97; 692634.23, 3351331.03; 692669.80, 3351252.67; 692690.04, 3351169.02; 693379.09, 3348814.26; 693399.33, 3348730.61; 693403.55, 3348644.66; 693391.58, 3348559.43; 693363.86, 3348477.96; 693321.37, 3348403.12; 693265.60, 3348337.58; 693174.08, 3348268.59; 693095.71, 3348233.03.

(B) *Note:* Map depicting Unit FFS–1, Subunit A is provided at paragraph (6)(x)(B) of this entry.

(ii) Unit FFS–1, Subunit B—Liberty County, Florida. From USGS 1:24,000 scale quadrangle map Orange, Florida.

(A) Land bounded by the following UTM Zone 16N NAD83 coordinates, (E, N): 689802.94, 3340960.90; 689428.14, 3339447.54; 689123.11, 3339393.72; 688873.13, 3339525.49; 688743.74, 3339836.26; 688831.13, 3340169.91; 689917.07, 3342147.02; 690004.49, 3342326.33; 690240.38, 3342481.91; 690522.67, 3342469.12; 690726.97, 3342316.32; 690843.40, 3342033.33; 690847.40, 3341805.94; 690741.36, 3341604.76; 689705.63, 3339902.63; 689617.94, 3339656.89; 689428.14, 3339447.54.

(B) *Note:* Map depicting Unit FFS–1, Subunit B is provided at paragraph (6)(x)(B) of this entry.

(iii) Unit FFS–1, Subunit C—Liberty County, Florida. From USGS 1:24,000 scale quadrangle map Wilma, Florida.

(A) Land bounded by the following UTM Zone 16N NAD83 coordinates, (E, N): 695595.00, 3340429.07; 695320.75, 3338608.68; 695308.16, 3338582.86; 695293.97, 3338557.88; 695278.24, 3338533.84; 695261.04, 3338510.84; 695242.42, 3338488.97; 695222.47, 3338468.30; 695201.27, 3338448.93; 695178.88, 3338430.93; 695155.41, 3338414.37; 695130.95, 3338399.31; 695105.59, 3338385.83; 695079.43, 3338373.95; 695052.58, 3338363.76; 695025.14, 3338355.26; 694997.23, 3338348.50; 694968.94, 3338343.51; 694940.40, 3338340.31; 694911.71, 3338338.90; 694882.99, 3338339.30; 694854.35, 3338341.50; 694825.90, 3338345.50; 694797.76, 3338351.27; 694770.05, 3338358.80; 694742.85, 3338368.06; 694709.40, 3338382.20; 694683.58, 3338394.79; 694658.61, 3338408.98; 694634.57, 3338424.71; 694611.57, 3338441.91; 694589.69, 3338460.52; 694569.03, 3338480.47; 694549.66, 3338501.69; 694531.66, 3338524.07; 694515.10, 3338547.54; 694500.05, 3338572.01; 694486.56, 3338597.37; 694474.69, 3338623.53; 694464.49, 3338650.38; 694455.99, 3338677.82; 694449.24, 3338705.74; 694444.25, 3338734.03; 694441.05, 3338762.57; 694439.64, 3338791.26; 694440.04, 3338819.98; 694442.24, 3338848.63; 694446.23, 3338877.07; 694452.01, 3338905.21; 694459.53, 3338932.93; 694468.79, 3338960.12; 694479.73, 3338986.68; 695846.37, 3342195.36; 695866.57, 3342249.11; 695909.07, 3342323.95; 695944.89, 3342368.83; 696008.43, 3342426.87; 696081.72, 3342471.97; 696134.73, 3342494.04; 696218.37, 3342514.28; 696304.32, 3342518.50; 696399.96, 3342505.83; 696481.43, 3342478.10; 696532.23, 3342451.33; 696601.14, 3342399.78; 696659.17, 3342336.24; 696716.14, 3342236.78; 696741.60, 3342154.57; 696751.20, 3342069.05; 696748.60, 3342011.68; 696738.84, 3341955.10; 696711.11, 3341873.63; 695320.75, 3338608.68.

(B) *Note:* Map depicting Unit FFS–1, Subunit C is provided at paragraph (6)(x)(B) of this entry.

(iv) Unit FFS–1, Subunit D—Liberty County, Florida. From USGS 1:24,000 scale quadrangle map Wilma, Florida.

(A) Land bounded by the following UTM Zone 16N NAD83 coordinates, (E, N): 698315.71, 3338507.25; 697480.52, 3338897.39; 697508.44, 3338904.15; 699107.25, 3339112.64; 699249.88, 3339101.68; 699357.17, 3339061.36; 699491.10, 3338954.46; 699566.06, 3338832.62; 699600.72, 3338636.16; 699571.97, 3338496.02; 699501.32, 3338371.62; 699419.16, 3338291.70; 699319.85, 3338227.75; 699161.66, 3338161.88; 697647.47, 3337884.31; 697505.31, 3337868.36; 697338.62, 3337908.06; 697240.79, 3337967.76; 697160.88, 3338049.93; 697093.71, 3338176.24; 697068.86, 3338317.12; 697081.23, 3338431.07; 697135.72, 3338563.34; 697197.51, 3338669.79; 697283.19, 3338784.36; 697400.08, 3338866.83; 697480.52, 3338897.39.

(B) *Note:* Map depicting Unit FFS–1, Subunit D is provided at paragraph (6)(x)(B) of this entry.

(v) Unit FFS–1, Subunit E—Liberty County, Florida. From USGS 1:24,000 scale quadrangle maps Orange and Kennedy Creek, Florida.

(A) Land bounded by the following UTM Zone 16N NAD83 coordinates, (E, N): 686367.53, 3332295.84; 686431.12, 3334276.72; 686521.73, 3334038.23; 686486.41, 3333905.93; 686456.16, 3333792.66; 686384.37, 3333673.40; 686529.54, 3333545.42; 686684.99, 3333670.42; 686821.64, 3333712.74; 686964.68, 3333710.75; 689322.67, 3333980.79; 689576.20, 3334009.24; 689736.59, 3333948.97; 689863.53, 3333833.87; 689945.95, 3333652.21; 689948.95, 3333480.88; 689888.68, 3333320.48; 689773.58, 3333193.53; 688133.75, 3332060.68; 687963.85, 3331956.15; 687770.73, 3331922.03; 687750.83, 3331780.36; 687652.31, 3331606.91; 687435.02, 3331473.21; 686480.70, 3331191.98; 686369.22, 3331102.34; 685860.73, 3329667.19; 685722.17, 3329523.69; 685535.70, 3329452.84; 685421.11, 3329450.84; 685283.06, 3329488.34; 685142.70, 3329586.62; 685038.17, 3329756.51; 684075.02, 3330678.79; 683908.10, 3330788.01; 683825.64, 3330904.90; 683780.13, 3331070.10; 683798.63, 3331240.45; 683861.33, 3331369.02; 685068.99, 3333929.17; 685144.99, 3334113.61; 685267.82, 3334233.07; 685426.00, 3334298.93; 685697.77, 3334272.20; 685864.11, 3334411.77; 686057.99, 3334458.69; 686253.39, 3334418.58; 686431.12, 3334276.72.

(B) *Note:* Map depicting Unit FFS–1, Subunit E is provided at paragraph (6)(x)(B) of this entry.

(vi) Unit FFS–1, Subunit F—Liberty County, Florida. From USGS 1:24,000 scale quadrangle map Kennedy Creek, Florida.

(A) Land bounded by the following UTM Zone 16N NAD83 coordinates, (E, N): 686994.66, 3327715.03; 687031.71, 3327259.31; 687003.02, 3327257.90; 686974.30, 3327258.30; 686945.66, 3327260.51; 686917.22, 3327264.50; 686889.08, 3327270.28; 686861.36, 3327277.81; 686834.17, 3327287.06; 686781.80, 3327310.60; 686756.83, 3327324.79; 686718.31, 3327349.17; 686687.92, 3327376.34; 686647.89, 3327417.50; 686629.89, 3327439.88; 686598.28, 3327487.82; 686584.79, 3327513.18; 686562.73, 3327566.19; 686547.48, 3327621.55; 686539.29, 3327678.38; 686538.28, 3327735.79; 686544.48, 3327792.87; 686557.79,

3327848.73; 686577.99, 3327902.48; 686604.76, 3327953.27; 686627.73, 3327993.87; 686676.26, 3328042.84; 686697.47, 3328062.21; 686719.85, 3328080.21; 686767.79, 3328111.82; 686819.30, 3328137.17; 686873.59, 3328155.87; 686929.80, 3328167.62; 686987.03, 3328172.22; 687072.83, 3328165.62; 687128.68, 3328152.32; 687182.43, 3328132.12; 687233.22, 3328105.34; 687280.26, 3328072.41; 687342.16, 3328012.63; 687391.77, 3327942.31; 687417.12, 3327890.79; 687435.81, 3327836.50; 687447.56, 3327780.29; 687450.76, 3327751.75; 687451.76, 3327694.34; 687445.57, 3327637.25; 687432.26, 3327581.40; 687423.01, 3327554.21; 687385.28, 3327476.86; 687352.35, 3327429.82; 687292.58, 3327367.91; 687222.26, 3327318.30; 687143.89, 3327282.75; 687116.45, 3327274.26; 687088.54, 3327267.50; 687060.25, 3327262.51; 687031.71, 3327259.31.

(B) *Note:* Map depicting Unit FFS–1, Subunit F is provided at paragraph (6)(x)(B) of this entry.

(vii) Unit FFS–1, Subunit G—Liberty County, Florida. From USGS 1:24,000 scale quadrangle maps Kennedy Creek and Sumatra, Florida.

(A) Land bounded by the following UTM Zone 16N NAD83 coordinates, (E, N): 692743.43, 3325970.41; 690511.49, 3328333.04; 690352.62, 3327300.27; 690398.82, 3327359.05; 690435.78, 3327418.40; 690476.94, 3327458.44; 690522.80, 3327492.99; 690572.10, 3327512.25; 690653.06, 3327552.10; 690737.82, 3327567.04; 690852.31, 3327561.85; 690961.91, 3327528.34; 691036.74, 3327485.83; 691102.27, 3327430.06; 691139.64, 3327386.47; 691184.74, 3327313.17; 691206.80, 3327260.16; 691226.10, 3327181.87; 691285.53, 3327253.00; 691352.60, 3327306.93; 691428.57, 3327347.33; 691510.78, 3327372.78; 691596.30, 3327382.38; 691653.66, 3327379.78; 691709.33, 3327370.19; 691748.27, 3327399.19; 691798.09, 3327427.72; 691851.10, 3327449.80; 691906.46, 3327465.04; 691963.28, 3327473.24; 691991.97, 3327474.64; 692049.33, 3327472.04; 692105.91, 3327462.27; 692160.82, 3327445.48; 692197.42, 3327442.46; 692254.00, 3327432.70; 692315.34, 3327416.01; 692284.77, 3327496.45; 692273.03, 3327552.66; 692268.42, 3327609.90; 692271.03, 3327667.26; 692288.33, 3327751.56; 692308.53, 3327805.31; 692351.03, 3327880.14; 692388.83, 3327927.78; 692448.61, 3327989.69; 692518.93, 3328039.30; 692570.45, 3328064.66; 692624.74, 3328083.35; 692709.48, 3328098.30; 692766.90, 3328099.31; 692823.98, 3328093.10; 694135.90, 3328069.14; 694193.26, 3328066.53; 694249.84, 3328056.76; 694304.75, 3328039.98; 694357.13, 3328016.44; 694406.14, 3327986.52; 694451.01, 3327950.70; 694491.04, 3327909.54; 694525.60, 3327863.68; 694554.14, 3327813.85; 694576.20, 3327760.84; 694591.45, 3327705.48; 694596.44, 3327677.19; 694601.05, 3327619.96; 694598.45, 3327562.59; 694588.68, 3327506.01; 694571.89, 3327451.10; 694548.36, 3327398.72; 694518.44, 3327349.71; 693770.98, 3326221.08; 693868.81, 3326161.37; 693948.72, 3326079.20; 694005.68, 3325979.75; 694036.11, 3325869.25; 694038.12, 3325754.65; 695152.74, 3325675.90; 695209.97, 3325680.51; 695267.33, 3325677.91; 695323.91, 3325668.13; 695378.82, 3325651.35; 695431.20, 3325627.81; 695480.21, 3325597.89; 695525.08, 3325562.07; 695565.11, 3325520.90; 695581.45, 3325500.59; 695608.30, 3325493.29; 695629.02, 3325486.24; 695635.41, 3325556.71; 695657.97, 3325639.76; 695695.70, 3325717.11; 695728.63, 3325764.15; 695767.20, 3325806.69; 695810.79, 3325844.06; 695864.85, 3325870.66; 695911.78, 3325893.76; 695964.54, 3325919.72; 696020.74, 3325931.47; 696077.98, 3325936.07; 696135.33, 3325933.47; 696219.63, 3325916.16; 696273.38, 3325895.96; 696324.17, 3325869.18; 696371.21, 3325836.25; 696413.74, 3325797.68; 696467.67, 3325730.61; 697336.67, 3324321.07; 697362.02, 3324269.54; 697380.72, 3324215.25; 697392.46, 3324159.04; 697397.07, 3324101.80; 697394.46, 3324044.44; 697384.69, 3323987.86; 697367.90, 3323932.94; 697344.37, 3323880.57; 697314.45, 3323831.55; 697258.68, 3323766.01; 697215.08, 3323728.64; 697167.14, 3323697.03; 697115.63, 3323671.68; 697061.33, 3323652.99; 697005.13, 3323641.24; 696947.90, 3323636.64; 696890.54, 3323639.24; 696806.24, 3323656.54; 696752.49, 3323676.75; 696677.66, 3323719.26; 695425.27, 3324601.45; 694686.48, 3324259.64; 694636.66, 3324231.10; 694583.65, 3324209.03; 694528.29, 3324193.78; 694471.46, 3324185.59; 694414.05, 3324184.59; 694356.97, 3324190.79; 694304.17, 3324203.26; 694297.65, 3324123.23; 694284.34, 3324067.37; 694264.14, 3324013.62; 694237.37, 3323962.82; 694185.82, 3323893.91; 694144.65, 3323853.88; 694084.93, 3323810.79; 694067.06, 3323750.57; 694043.52, 3323698.19; 694010.56, 3323625.86; 693968.05, 3323551.04; 693932.23, 3323506.16; 693868.68, 3323448.13; 693820.75, 3323416.52; 693769.23, 3323391.17; 693714.94, 3323372.47; 693658.74, 3323360.73; 693601.51, 3323356.12; 693544.15, 3323358.72; 693487.56, 3323368.50; 693432.65, 3323385.28; 693380.29, 3323408.82; 693331.27, 3323438.74; 693286.40, 3323474.56; 693246.37, 3323515.72; 693224.54, 3323543.55; 693210.13, 3323497.41; 693186.60, 3323445.03; 693156.69, 3323396.02; 693120.86, 3323351.14; 693079.70, 3323311.11; 693033.84, 3323276.55; 692984.02, 3323248.02; 692931.01, 3323225.95; 692875.65, 3323210.70; 692818.82, 3323202.51; 692761.42, 3323201.50; 692704.33, 3323207.71; 692648.47, 3323221.01; 692608.55, 3323235.51; 692570.41, 3323187.10; 692529.25, 3323147.06; 692458.93, 3323097.45; 692407.41, 3323072.10; 692325.20, 3323046.65; 692268.37, 3323038.46; 692210.96, 3323037.46; 692125.74, 3323049.44; 692070.83, 3323066.22; 692011.40, 3323093.76; 691923.51, 3323089.22; 691866.43, 3323095.42; 691810.57, 3323108.73; 691731.01, 3323141.52; 691682.00, 3323171.44; 691637.13, 3323207.26; 691597.10, 3323248.43; 691562.54, 3323294.28; 691534.00, 3323344.11; 691503.44, 3323424.56; 691491.70, 3323480.77; 691487.09, 3323538.00; 691489.70, 3323595.37; 691507.00, 3323679.67; 691539.79, 3323759.24; 692318.77, 3325166.83; 692288.21, 3325247.29; 692273.27, 3325332.04; 692269.31, 3326096.13; 692212.73, 3326105.90; 692165.53, 3326127.24; 692126.83, 3326144.74; 692092.01, 3326160.48; 692049.42, 3326179.73; 692011.56, 3326211.96; 691971.53, 3326253.13; 691936.98, 3326298.98; 691908.44, 3326348.81; 691872.05, 3326393.76; 691837.49, 3326439.61; 691816.22, 3326475.77; 691767.03, 3326455.43; 691711.68, 3326440.18; 691654.84, 3326431.99; 691626.16, 3326430.59; 691568.79, 3326433.19; 691512.21, 3326442.96; 691457.31, 3326459.75; 691390.25, 3326491.62; 691353.93, 3326429.48; 691298.16, 3326363.94; 691231.09, 3326310.01; 691155.11, 3326269.60; 691072.90, 3326244.15; 689760.49, 3325296.16; 689712.55, 3325264.55; 689661.04, 3325239.20; 689606.75, 3325220.50; 689550.54, 3325208.76; 689493.31, 3325204.15; 689407.51, 3325210.75; 689324.46, 3325233.31; 689247.12, 3325271.04; 689157.55, 3325342.54; 689103.62, 3325409.61; 689063.22, 3325485.59; 689044.52, 3325539.88; 689032.78, 3325596.09; 689028.17, 3325653.33; 689034.77, 3325739.13; 689233.31, 3327105.96; 689637.00, 3328600.37; 689861.46, 3329635.49; 689894.25, 3329715.06; 689924.16, 3329764.07; 689959.98, 3329808.95; 690001.15, 3329848.98; 690047.00, 3329883.54; 690096.82, 3329912.08; 690149.83, 3329934.15; 690205.19, 3329949.40;

690262.02, 3329957.59; 690319.43, 3329958.59; 690404.65, 3329946.62; 690457.17, 3329926.88; 690511.93, 3329906.30; 690560.94, 3329876.39; 690626.48, 3329820.61; 690663.84, 3329777.02; 690695.45, 3329729.08; 690720.81, 3329677.56; 690739.50, 3329623.27; 690751.25, 3329567.06; 690755.85, 3329509.83; 690749.26, 3329424.02; 690735.95, 3329368.16; 690529.29, 3328448.39; 690524.80, 3328388.90; 690511.49, 3328333.04.

(B) *Note:* Map depicting Unit FFS–1, Subunit G is provided at paragraph (6)(x)(B) of this entry.

(viii) Unit FFS–1, Subunit H—Liberty County, Florida. From USGS 1:24,000 scale quadrangle maps Sumatra and Owens Bridge, Florida.

(A) Land bounded by the following UTM Zone 16N NAD83 coordinates, (E, N): 705290.30, 3325041.96; 706646.10, 3324321.38; 706503.21, 3324314.39; 704109.35, 3324557.65; 703953.05, 3324627.90; 703833.59, 3324750.75; 703782.98, 3324853.59; 703758.14, 3324994.48; 703787.30, 3325163.35; 703857.96, 3325287.74; 703940.13, 3325367.66; 704025.87, 3325418.40; 704016.83, 3325569.76; 704034.13, 3325654.07; 704096.85, 3325782.66; 704196.22, 3325885.57; 704322.53, 3325952.74; 704463.41, 3325977.58; 704605.08, 3325957.68; 706601.96, 3325223.59; 706713.46, 3325197.03; 706859.72, 3325107.75; 706949.37, 3324996.25; 707005.16, 3324834.22; 707007.16, 3324719.61; 706989.86, 3324635.31; 706942.88, 3324530.75; 706871.37, 3324441.17; 706796.16, 3324398.25; 706728.31, 3324346.84; 706646.10, 3324321.38.

(B) *Note:* Map depicting Unit FFS–1, Subunit H is provided at paragraph (6)(x)(B) of this entry.

(ix) Unit FFS–1, Subunit I—Liberty County, Florida. From USGS 1:24,000 scale quadrangle map Owens Bridge, Florida.

(A) Land bounded by the following UTM Zone 16N NAD83 coordinates, (E, N): 712262.72, 3326181.63; 712356.33, 3325733.94; 712270.80, 3325724.34; 712213.44, 3325726.95; 712129.13, 3325744.25; 712101.94, 3325753.51; 712024.58, 3325791.24; 711977.54, 3325824.17; 711955.67, 3325842.79; 711915.63, 3325883.96; 711881.07, 3325929.82; 711852.53, 3325979.66; 711830.47, 3326032.67; 711815.21, 3326088.04; 711807.02, 3326144.87; 711805.62, 3326173.57; 711808.22, 3326230.94; 711817.99, 3326287.52; 711834.78, 3326342.44; 711858.32, 3326394.82; 711888.24, 3326443.84; 711905.44, 3326466.84; 711944.01, 3326509.39; 711965.23, 3326528.76; 711987.61, 3326546.76; 712011.09, 3326563.32; 712060.92, 3326591.86; 712087.08, 3326603.73; 712113.93, 3326613.93; 712169.29, 3326629.18; 712226.13, 3326637.37; 712254.82, 3326638.78; 712312.18, 3326636.17; 712368.77, 3326626.40; 712423.68, 3326609.61; 712476.06, 3326586.07; 712525.08, 3326556.15; 712590.62, 3326500.37; 712644.55, 3326433.30; 712684.96, 3326357.30; 712703.65, 3326303.01; 712715.40, 3326246.79; 712720.00, 3326189.55; 712717.40, 3326132.18; 712707.63, 3326075.60; 712700.10, 3326047.87; 712674.07, 3325977.60; 712653.11, 3325943.32; 712601.56, 3325874.40; 712560.39, 3325834.36; 712538.01, 3325816.36; 712514.54, 3325799.80; 712464.71, 3325771.26; 712411.69, 3325749.19; 712356.33, 3325733.94.

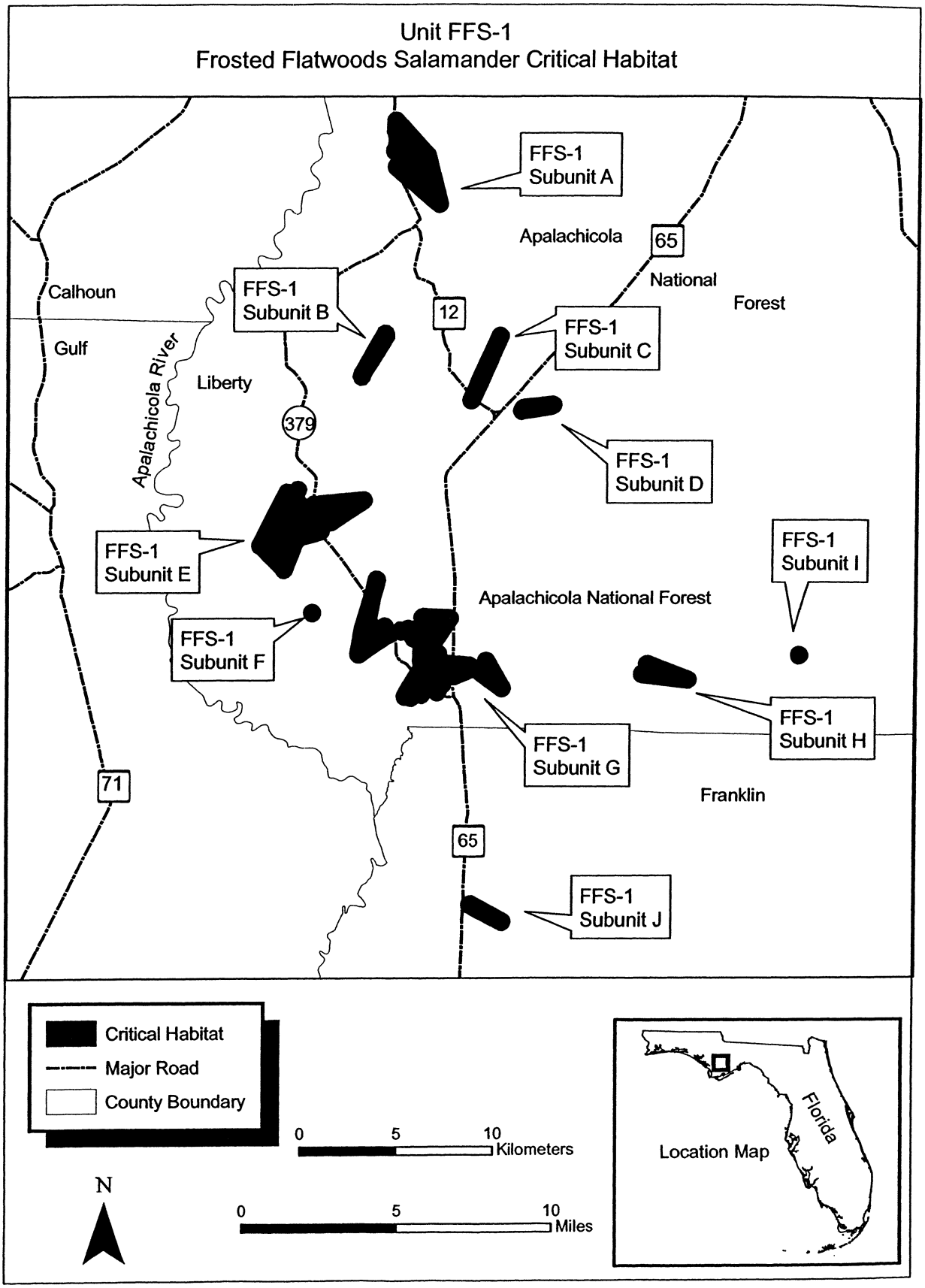
(B) *Note:* Map depicting Unit FFS–1, Subunit I is provided at paragraph (6)(x)(B) of this entry.

(x) Unit FFS–1, Subunit J—Franklin County, Florida. From USGS 1:24,000 scale quadrangle map Fort Gadsen, Florida.

(A) Land bounded by the following UTM Zone 16N NAD83 coordinates, (E, N): 696448.29, 3312586.05; 697417.53, 3311729.38; 697304.09, 3311713.04; 697218.29, 3311719.64; 697135.24, 3311742.21; 697057.90, 3311779.94; 695449.24, 3312550.89; 695396.87, 3312574.43; 695324.87, 3312621.56; 695282.33, 3312660.13; 695228.41, 3312727.20; 695188.01, 3312803.20; 695162.57, 3312885.41; 695152.98, 3312970.93; 695159.58, 3313056.74; 695182.15, 3313139.79; 695219.88, 3313217.14; 695271.43, 3313286.05; 695335.05, 3313350.76; 695405.38, 3313400.37; 695456.90, 3313425.72; 695511.18, 3313444.41; 695595.94, 3313459.35; 695710.43, 3313454.14; 695820.03, 3313420.63; 697427.52, 3312615.68; 697509.40, 3312574.69; 697581.41, 3312527.56; 697643.31, 3312467.77; 697706.40, 3312372.08; 697743.71, 3312263.71; 697752.89, 3312149.46; 697733.38, 3312036.51; 697686.39, 3311931.97; 697653.45, 3311884.93; 697593.67, 3311823.03; 697523.35, 3311773.42; 697417.53, 3311729.38.

(B) *Note:* Map of Unit FFS–1 follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(xi) Unit FFS–3, Subunit A—Wakulla County, Florida. From USGS 1:24,000 scale quadrangle maps St. Marks and St. Marks NE, Florida.

(A) Land bounded by the following UTM Zone 16N, NAD83 coordinates (E, N): 775789.22, 3340665.92; 778066.61, 3340484.87; 777670.88, 3338778.31; 777533.15, 3338184.41; 777525.56, 3338156.70; 777516.42, 3338129.40; 777505.42, 3338102.83; 777492.86, 3338076.99; 777478.74, 3338052.00; 777471.13, 3338040.27; 777482.70, 3338036.35; 777509.30, 3338025.48; 777535.17, 3338012.93; 777560.12, 3337998.80; 777584.24, 3337982.99; 777607.24, 3337965.82; 777629.12, 3337947.29; 777649.88, 3337927.29; 777669.21, 3337906.14; 777687.24, 3337883.74; 777703.84, 3337860.31; 777714.90, 3337842.39; 777724.48, 3337852.29; 777745.69, 3337871.69; 777768.09, 3337889.78; 777791.49, 3337906.35; 777815.99, 3337921.39; 777841.30, 3337934.91; 777867.51, 3337946.89; 777894.35, 3337957.11; 777921.81, 3337965.57; 777949.70, 3337972.38; 777978.02, 3337977.42; 777990.29, 3337977.52; 778007.58, 3337977.78; 778035.40, 3337978.19; 778064.31, 3337978.62; 778092.26, 3337979.03; 778121.08, 3337975.61; 778149.29, 3337969.88; 778177.06, 3337962.38; 778204.20, 3337953.08; 778230.80, 3337942.21; 778256.67, 3337929.67; 778281.62, 3337915.43; 778305.74, 3337899.73; 778328.75, 3337882.56; 778350.72, 3337863.93; 778371.38, 3337844.03; 778390.82, 3337822.89; 778408.84, 3337800.49; 778425.45, 3337776.95; 778440.53, 3337752.59; 778454.00, 3337727.19; 778465.95, 3337700.97; 778476.17, 3337674.16; 778484.68, 3337646.75; 778491.46, 3337618.85; 778496.52, 3337590.46; 778499.75, 3337561.92; 778501.16, 3337533.22; 778500.82, 3337504.47; 778498.66, 3337475.90; 778494.65, 3337447.40; 778488.90, 3337419.29; 778481.41, 3337391.48; 778472.17, 3337364.28; 778461.27, 3337337.71; 778448.71, 3337311.87; 778434.49, 3337286.88; 778418.81, 3337262.74; 778401.64, 3337239.78; 778383.01, 3337217.89; 778363.09, 3337197.19; 778341.88, 3337177.80; 778319.48, 3337159.70; 778296.08, 3337143.13; 778271.58, 3337128.08; 778246.27, 3337114.46; 778220.05, 3337102.59; 778193.21, 3337092.37; 778165.75, 3337083.80; 778137.85, 3337077.10; 778109.53, 3337072.05; 778080.97, 3337068.78; 778052.27, 3337067.39; 778023.61, 3337067.77; 777994.91, 3337069.93; 777966.46, 3337073.87; 777938.25, 3337079.59; 777910.58, 3337087.10; 777883.34, 3337096.29; 777856.73, 3337107.26; 777830.96, 3337119.82; 777805.91, 3337133.94; 777781.88, 3337149.75; 777758.79, 3337166.92; 777736.91, 3337185.45; 777716.25, 3337205.45; 777696.81, 3337226.60; 777678.79, 3337249.00; 777662.19, 3337272.43; 777651.12, 3337290.35; 777641.54, 3337280.46; 777620.33, 3337261.06; 777598.03, 3337242.96; 777574.53, 3337226.39; 777550.03, 3337211.35; 777524.72, 3337197.84; 777498.59, 3337185.86; 777471.75, 3337175.64; 777444.29, 3337167.07; 777416.30, 3337160.37; 777410.25, 3337159.33; 777411.85, 3337145.51; 777413.25, 3337116.80; 777412.92, 3337088.06; 777410.75, 3337059.38; 777406.74, 3337030.88; 777400.99, 3337002.77; 777393.49, 3336975.07; 777384.25, 3336947.76; 777373.35, 3336921.19; 777360.79, 3336895.35; 777346.57, 3336870.36; 777330.87, 3336846.33; 777313.71, 3336823.27; 777295.07, 3336801.38; 777275.15, 3336780.69; 777253.94, 3336761.29; 777231.63, 3336743.20; 777208.13, 3336726.63; 777183.73, 3336711.59; 777158.32, 3336698.08; 777132.19, 3336686.10; 777105.35, 3336675.88; 777077.88, 3336667.42; 777049.99, 3336660.62; 777021.67, 3336655.58; 776993.11, 3336652.30; 776964.40, 3336650.92; 776935.65, 3336651.30; 776907.05, 3336653.46; 776878.50, 3336657.40; 776850.38, 3336663.13; 776822.61, 3336670.64; 776795.47, 3336679.83; 776768.87, 3336690.81; 776742.99, 3336703.36; 776718.05, 3336717.49; 776693.93, 3336733.19; 776670.93, 3336750.37; 776648.95, 3336769.01; 776628.29, 3336788.90; 776608.85, 3336810.16; 776590.83, 3336832.56; 776574.23, 3336856.00; 776570.11, 3336862.66; 776553.01, 3336856.13; 776525.55, 3336847.67; 776497.65, 3336840.87; 776469.33, 3336835.83; 776440.77, 3336832.56; 776412.07, 3336831.17; 776383.32, 3336831.56; 776354.72, 3336833.72; 776326.26, 3336837.66; 776298.05, 3336843.39; 776270.38, 3336850.90; 776243.14, 3336860.09; 776216.54, 3336871.08; 776190.67, 3336883.63; 776165.72, 3336897.76; 776141.60, 3336913.46; 776118.60, 3336930.63; 776096.72, 3336949.28; 776075.97, 3336969.17; 776056.63, 3336990.43; 776038.52, 3337012.83; 776021.92, 3337036.27; 776006.84, 3337060.74; 775993.38, 3337086.03; 775981.43, 3337112.25; 775971.21, 3337139.07; 775962.71, 3337166.48; 775955.93, 3337194.49; 775950.88, 3337222.77; 775947.66, 3337251.31; 775946.17, 3337280.01; 775946.60, 3337308.76; 775948.78, 3337337.32; 775952.69, 3337365.83; 775958.44, 3337394.04; 775965.94, 3337421.74; 775975.19, 3337448.94; 775986.10, 3337475.51; 775998.66, 3337501.34; 776012.79, 3337526.33; 776028.58, 3337550.47; 776045.74, 3337573.53; 776064.28, 3337595.41; 776084.30, 3337616.11; 776105.42, 3337635.50; 776127.82, 3337653.48; 776151.32, 3337670.16; 776175.72, 3337685.20; 776201.13, 3337698.71; 776227.26, 3337710.57; 776244.06, 3337717.09; 776242.57, 3337718.94; 776232.10, 3337713.35; 776205.89, 3337701.38; 776179.04, 3337691.16; 776151.58, 3337682.70; 776123.69, 3337675.90; 776095.37, 3337670.86; 776066.81, 3337667.59; 776038.11, 3337666.20; 776009.36, 3337666.59; 775980.76, 3337668.76; 775952.31, 3337672.70; 775924.10, 3337678.43; 775896.43, 3337685.94; 775869.20, 3337695.13; 775842.60, 3337706.12; 775816.73, 3337718.67; 775791.78, 3337732.80; 775767.66, 3337748.50; 775744.67, 3337765.68; 775722.70, 3337784.32; 775702.04, 3337804.22; 775682.61, 3337825.48; 775664.59, 3337847.77; 775648.00, 3337871.32; 775632.92, 3337895.68; 775619.36, 3337921.08; 775607.52, 3337947.30; 775597.30, 3337974.11; 775588.70, 3338001.52; 775581.93, 3338029.42; 775576.97, 3338057.81; 775573.65, 3338086.36; 775572.26, 3338115.06; 775572.59, 3338143.80; 775574.77, 3338172.37; 775578.78, 3338200.87; 775584.54, 3338228.98; 775592.03, 3338256.79; 775601.19, 3338283.98; 775612.19, 3338310.55; 775624.75, 3338336.39; 775638.88, 3338361.37; 775654.57, 3338385.51; 775671.73, 3338408.46; 775690.37, 3338430.46; 775710.29, 3338451.15; 775731.50, 3338470.54; 775753.90, 3338488.52; 775777.31, 3338505.09; 775801.80, 3338520.24; 775827.21, 3338533.75; 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775510.45, 3340235.09; 775168.35, 3339961.10; 775144.54, 3339940.36; 775091.43, 3339897.57; 774949.30, 3339783.09; 774965.89, 3339759.65; 774980.97, 3339735.17; 774994.43, 3339709.77; 775006.36, 3339683.66; 775016.58, 3339656.74; 775025.08, 3339629.33; 775031.95, 3339601.43; 775036.90, 3339573.15; 775039.60, 3339549.86; 775040.22, 3339544.61; 775041.61, 3339515.91; 775041.27, 3339487.16; 775041.13, 3339484.94; 775057.54, 3339480.47; 775084.67, 3339471.27; 775111.27, 3339460.29; 775137.13, 3339447.74; 775162.17, 3339433.61; 775186.18, 3339417.90; 775209.27, 3339400.73; 775231.15, 3339382.08; 775251.80, 3339362.18; 775271.23, 3339340.93; 775289.24, 3339318.63; 775305.83, 3339295.08; 775321.00, 3339270.72; 775334.47, 3339245.32; 775346.40, 3339219.21; 775356.62, 3339192.29; 775365.12, 3339164.87; 775371.89, 3339136.97; 775376.94, 3339108.70; 775380.17, 3339080.04; 775381.66, 3339051.34; 775381.32, 3339022.71; 775379.14, 3338994.03; 775375.13, 3338965.53; 775369.38, 3338937.42; 775361.88, 3338909.61; 775352.63, 3338882.42; 775341.73, 3338855.85; 775329.16, 3338830.02; 775315.04, 3338805.03; 775299.35, 3338780.89; 775282.09, 3338757.94; 775263.54, 3338735.95; 775243.62, 3338715.26; 775222.41, 3338695.86; 775200.01, 3338677.88; 775176.51, 3338661.32; 775152.11, 3338646.17; 775126.70, 3338632.67; 775100.58, 3338620.80; 775073.74, 3338610.48; 775046.28, 3338602.03; 775018.39, 3338595.22; 774990.07, 3338590.19; 774961.52, 3338586.92; 774932.82, 3338585.54; 774904.08, 3338585.82; 774875.38, 3338588.09; 774846.93, 3338592.04; 774818.83, 3338597.77; 774791.06, 3338605.29; 774763.83, 3338614.48; 774737.24, 3338625.35; 774711.37, 3338638.02; 774686.43, 3338652.15; 774662.31, 3338667.86; 774639.71, 3338684.71; 774638.37, 3338684.57; 774609.67, 3338683.18; 774582.28, 3338683.50; 774581.67, 3338680.60; 774574.17, 3338652.89; 774564.92, 3338625.59; 774554.01, 3338599.02; 774541.45, 3338573.19; 774527.32, 3338548.21; 774511.63, 3338524.18; 774494.37, 3338501.12; 774475.82, 3338479.24; 774455.89, 3338458.55; 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773731.67, 3338998.98; 773745.80, 3339023.97; 773761.50, 3339047.99; 773778.76, 3339071.05; 773797.31, 3339092.93; 773817.23, 3339113.62; 773838.44, 3339133.01; 773860.84, 3339151.10; 773884.34, 3339167.66; 773908.74, 3339182.80; 773934.15, 3339196.31; 773960.27, 3339208.16; 773987.11, 3339218.38; 774014.57, 3339226.94; 774042.46, 3339233.74; 774070.77, 3339238.77; 774099.33, 3339242.04; 774128.03, 3339243.42; 774155.42, 3339242.99; 774156.02, 3339246.00; 774163.52, 3339273.71; 774172.77, 3339301.01; 774174.22, 3339304.59; 774174.02, 3339304.92; 774162.19, 3339331.03; 774151.88, 3339357.85; 774143.38, 3339385.37; 774136.61, 3339413.27; 774131.56, 3339441.55; 774128.34, 3339470.09; 774126.85, 3339498.79; 774127.29, 3339527.54; 774129.37, 3339556.21; 774133.39, 3339584.61; 774139.14, 3339612.82; 774146.65, 3339640.52; 774150.33, 3339651.49; 774130.27, 3339662.97; 774106.16, 3339678.68; 774083.17, 3339695.85; 774061.21, 3339714.39; 774040.56, 3339734.40; 774021.14, 3339755.55; 774003.13, 3339777.95; 773986.54, 3339801.39; 773971.46, 3339825.87; 773957.91, 3339851.27; 773945.98, 3339877.38; 773935.76, 3339904.19; 773927.27, 3339931.72; 773926.18, 3339936.26; 773926.14, 3339936.25; 773920.50, 3339959.62; 773915.45, 3339987.90; 773912.23, 3340016.44; 773910.75, 3340045.14; 773910.93, 3340060.90; 773909.63, 3340058.87; 773892.47, 3340035.81; 773873.92, 3340013.93; 773853.91, 3339993.24; 773832.70, 3339973.85; 773810.39, 3339955.76; 773786.90, 3339939.20; 773777.78, 3339933.61; 773777.91, 3339933.62; 773762.40, 3339924.06; 773737.09, 3339910.55; 773710.97, 3339898.70; 773684.04, 3339888.48; 773656.68, 3339879.92; 773628.70, 3339873.12; 773600.38, 3339868.09; 773571.83, 3339864.83; 773543.13, 3339863.45; 773514.39, 3339863.73; 773485.80, 3339865.90; 773476.45, 3339867.03; 773476.45, 3339867.18; 773457.35, 3339869.96; 773429.15, 3339875.70; 773401.39, 3339883.21; 773374.17, 3339892.41; 773347.58, 3339903.29; 773321.81, 3339915.85; 773296.78, 3339930.09; 773272.67, 3339945.80; 773249.68, 3339962.98; 773227.82, 3339981.52; 773207.07, 3340001.53; 773187.65, 3340022.68; 773169.64, 3340045.08; 773153.05, 3340068.52; 773137.98, 3340093.00; 773124.43, 3340118.29; 773112.50, 3340144.51; 773102.29, 3340171.33; 773093.80, 3340198.74; 773086.93, 3340226.64; 773081.99, 3340255.03; 773078.67, 3340283.58; 773077.28, 3340312.28; 773077.63, 3340341.02; 773079.81, 3340369.59; 773083.82, 3340398.09; 773089.48, 3340426.30; 773096.99, 3340454.00; 773106.24, 3340481.19; 773117.15, 3340507.76; 773129.71, 3340533.59; 773143.94, 3340558.68; 773159.63, 3340582.71; 773176.80, 3340605.77; 773195.44, 3340627.64; 773215.36, 3340648.33; 773236.57, 3340667.72; 773240.54, 3340670.93; 774190.69, 3341600.54; 774207.73, 3341623.69; 774226.19, 3341645.71; 774245.99, 3341666.54; 774267.06, 3341686.08; 774289.32, 3341704.26; 774312.67, 3341721.00; 774337.03, 3341736.25; 774362.30, 3341749.94; 774388.38, 3341762.01; 774415.16, 3341772.42; 774442.55, 3341781.13; 774470.43, 3341788.10; 774498.69, 3341793.31; 774527.22, 3341796.73; 774555.91, 3341798.36; 774584.65, 3341798.18; 774613.32, 3341796.20; 774641.80, 3341792.42; 774670.00, 3341786.86; 774697.79, 3341779.54; 774725.06, 3341770.48; 774751.71, 3341759.74; 774777.64, 3341747.34; 774802.74, 3341733.34; 774826.90, 3341717.79; 774850.05, 3341700.75; 774872.07, 3341682.30; 774892.90, 3341662.49; 774912.44, 3341641.42; 775378.58, 3341173.26; 775544.57, 3341006.80; 777609.30, 3341044.76; 777638.03, 3341044.58; 777666.70, 3341042.60; 777680.70, 3341040.35; 777695.19, 3341038.82; 777723.39, 3341033.26; 777751.18, 3341025.93; 777778.45, 3341016.88; 777805.10, 3341006.14; 777831.03, 3340993.74; 777856.13, 3340979.74; 777880.29, 3340964.19; 777903.44, 3340947.15; 777925.47, 3340928.69; 777946.29, 3340908.89; 777965.83, 3340887.82; 777984.01, 3340865.56; 778000.76, 3340842.21; 778016.00, 3340817.85; 778029.69, 3340792.58; 778041.76, 3340766.50; 778052.18, 3340739.71; 778060.89, 3340712.33; 778067.86, 3340684.45; 778073.07, 3340656.19;

778076.49, 3340627.65; 778078.11, 3340598.96; 778077.93, 3340570.22; 778075.95, 3340541.55; 778072.17, 3340513.07; 778066.61, 3340484.87.

(B) *Note:* Map depicting Unit FFS–3, Subunit A is provided at paragraph (6)(xiii)(B) of this entry.

(xii) Unit FFS–3, Subunit B—Wakulla and Jefferson Counties, Florida. From USGS 1:24,000 scale quadrangle map St. Marks NE, Florida.

(A) Land bounded by the following UTM Zone 16N, NAD83 coordinates (E, N): 781813.02, 3338564.97; 780854.75, 3336748.56; 780826.19, 3336745.28; 780797.49, 3336743.88; 780768.74, 3336744.25; 780751.83, 3336745.48; 780740.73, 3336730.55; 780722.10, 3336708.66; 780702.18, 3336687.96; 780680.97, 3336668.56; 780658.57, 3336650.57; 780635.18, 3336633.88; 780610.68, 3336618.83; 780585.37, 3336605.31; 780559.15, 3336593.44; 780532.31, 3336583.21; 780504.85, 3336574.63; 780476.95, 3336567.82; 780448.63, 3336562.88; 780420.07, 3336559.60; 780391.36, 3336558.20; 780362.71, 3336558.58; 780334.01, 3336560.73; 780305.55, 3336564.66; 780277.43, 3336570.38; 780249.66, 3336577.88; 780222.42, 3336587.17; 780195.81, 3336598.03; 780170.02, 3336610.69; 780144.97, 3336624.81; 780120.94, 3336640.51; 780097.94, 3336657.67; 780075.95, 3336676.31; 780055.29, 3336696.20; 780035.94, 3336717.45; 780017.82, 3336739.85; 780001.31, 3336763.28; 779986.22, 3336787.75; 779972.64, 3336813.14; 779960.79, 3336839.25; 779950.56, 3336866.06; 779941.95, 3336893.58; 779935.16, 3336921.48; 779930.20, 3336949.76; 779926.96, 3336978.30; 779925.49, 3337005.78; 779913.72, 3337013.47; 779890.72, 3337030.63; 779868.74, 3337049.27; 779848.07, 3337069.16; 779828.63, 3337090.41; 779810.60, 3337112.81; 779794.09, 3337136.24; 779779.00, 3337160.71; 779765.43, 3337186.11; 779753.58, 3337212.21; 779743.35, 3337239.02; 779734.74, 3337266.54; 779727.96, 3337294.44; 779722.99, 3337322.72; 779719.76, 3337351.26; 779718.26, 3337379.96; 779718.68, 3337408.71; 779720.84, 3337437.39; 779724.75, 3337465.89; 779730.49, 3337494.00; 779738.08, 3337521.71; 779747.22, 3337548.90; 779758.21, 3337575.59; 779770.77, 3337601.43; 779784.89, 3337626.42; 779800.67, 3337650.46; 779817.83, 3337673.53; 779836.46, 3337695.42; 779856.38, 3337716.12; 779877.58, 3337735.52; 779899.88, 3337753.51; 779923.38, 3337770.08; 779947.87, 3337785.24; 779973.18, 3337798.76; 779999.40, 3337810.63; 780026.23, 3337820.86; 780046.61, 3337827.26; 780031.54, 3337835.75; 780007.52, 3337851.45; 779984.42, 3337868.61; 779962.53, 3337887.25; 779941.87, 3337907.14; 779922.43, 3337928.39; 779904.40, 3337950.79; 779887.80, 3337974.22; 779872.71, 3337998.69; 779859.23, 3338024.09; 779859.02, 3338024.55; 779847.29, 3338050.19; 779837.06, 3338077.00; 779828.54, 3338104.52; 779821.76, 3338132.42; 779816.70, 3338160.70; 779813.46, 3338189.24; 779812.06, 3338217.94; 779812.38, 3338246.69; 779814.55, 3338275.37; 779818.54, 3338303.87; 779824.29, 3338331.98; 779831.78, 3338359.69; 779841.02, 3338386.88; 779851.91, 3338413.57; 779864.56, 3338439.41; 779878.68, 3338464.40; 779894.36, 3338488.43; 779911.61, 3338511.51; 779930.15, 3338533.40; 779950.16, 3338554.10; 779971.36, 3338573.50; 779993.66, 3338591.49; 780017.15, 3338608.07; 780041.65, 3338623.23; 780066.95, 3338636.74; 780093.17, 3338648.62; 780120.00, 3338658.84; 780147.46, 3338667.42; 780175.35, 3338674.13; 780203.67, 3338679.18; 780232.22, 3338682.46; 780260.92, 3338683.85; 780289.67, 3338683.48; 780318.27, 3338681.32; 781659.28, 3338623.11; 783371.06, 3341075.49; 783388.08, 3341098.65; 783406.52, 3341120.69; 783426.31, 3341141.53; 783447.37, 3341161.09; 783469.61, 3341179.28; 783492.96, 3341196.05; 783517.31, 3341211.31; 783542.57, 3341225.02; 783568.64, 3341237.11; 783595.42, 3341247.54; 783622.80, 3341256.27; 783650.68, 3341263.26; 783678.94, 3341268.49; 783707.47, 3341271.93; 783736.16, 3341273.58; 783764.90, 3341273.42; 783793.57, 3341271.45; 783822.06, 3341267.69; 783850.26, 3341262.15; 783878.06, 3341254.85; 783905.34, 3341245.82; 783932.00, 3341235.09; 783957.94, 3341222.71; 783983.05, 3341208.72; 784007.23, 3341193.19; 784030.38, 3341176.17; 784052.42, 3341157.73; 784073.27, 3341137.94; 784092.82, 3341116.88; 784111.02, 3341094.63; 784127.78, 3341071.29; 784143.04, 3341046.94; 784156.75, 3341021.68; 784168.84, 3340995.61; 784179.27, 3340968.83; 784188.00, 3340941.45; 784194.99, 3340913.57; 784200.22, 3340885.31; 784203.67, 3340856.78; 784205.31, 3340828.09; 784205.15, 3340799.35; 784203.19, 3340770.67; 784199.43, 3340742.18; 784193.88, 3340713.98; 784186.58, 3340686.19; 784177.55, 3340658.90; 784166.82, 3340632.24; 784154.44, 3340606.31; 784140.46, 3340581.20; 784124.92, 3340557.02; 782277.60, 3337914.11; 782294.12, 3337890.57; 782309.21, 3337866.10; 782322.78, 3337840.82; 782334.64, 3337814.60; 782344.88, 3337787.79; 782353.40, 3337760.27; 782360.19, 3337732.38; 782365.26, 3337704.10; 782368.50, 3337675.56; 782369.91, 3337646.86; 782369.59, 3337618.11; 782367.34, 3337589.43; 782363.44, 3337561.03; 782357.70, 3337532.81; 782350.22, 3337505.10; 782340.98, 3337477.90; 782330.00, 3337451.33; 782317.45, 3337425.48; 782303.24, 3337400.49; 782287.56, 3337376.34; 782270.41, 3337353.37; 782251.78, 3337331.48; 782231.86, 3337310.77; 782210.66, 3337291.37; 782188.27, 3337273.26; 782164.78, 3337256.68; 782140.38, 3337241.63; 782114.97, 3337228.11; 781683.92, 3337059.84; 780938.43, 3336768.89; 780910.97, 3336760.31; 780883.08, 3336753.50; 780854.75, 3336748.56.

(B) *Note:* Map depicting Unit FFS–3, Subunit B is located at paragraph (6)(xiii)(B) of this entry.

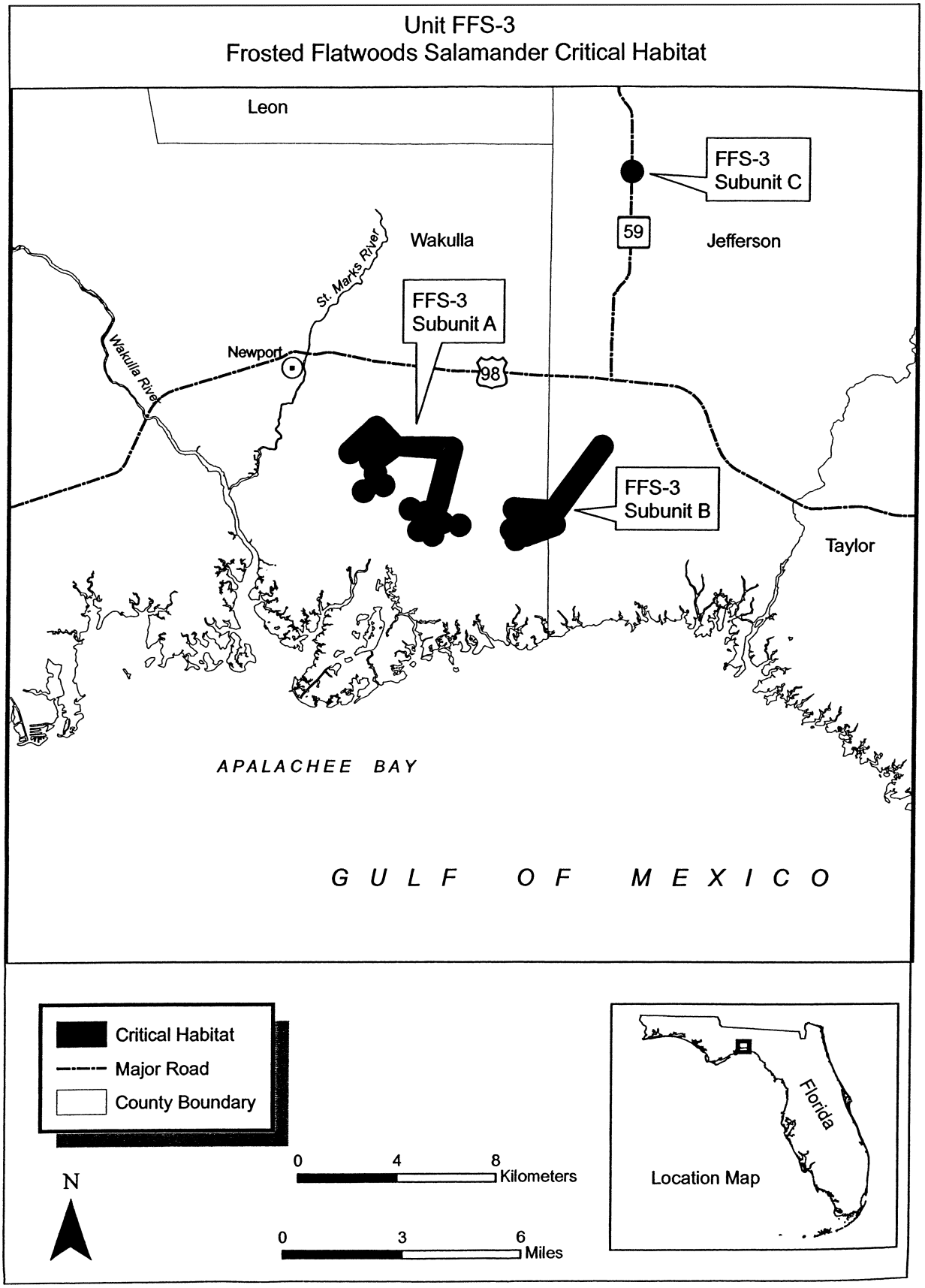
(xiii) Unit FFS–3, Subunit C—Jefferson County, Florida. From USGS 1:24,000 scale quadrangle map Cody, Florida.

(A) Land bounded by the following UTM Zone 16N, NAD83 coordinates (E, N): 784571.80, 3351736.64; 784608.07, 3351280.60; 784579.36, 3351279.22; 784554.83, 3351279.59; 784550.62, 3351279.65; 784521.97, 3351281.88; 784493.51, 3351285.91; 784465.37, 3351291.71; 784437.64, 3351299.27; 784410.44, 3351308.56; 784383.88, 3351319.54; 784358.06, 3351332.16; 784333.09, 3351346.38; 784309.05, 3351362.14; 784286.06, 3351379.37; 784264.19, 3351398.02; 784243.53, 3351418.00; 784224.17, 3351439.25; 784206.19, 3351461.66; 784189.64, 3351485.16; 784174.61, 3351509.65; 784161.14, 3351535.04; 784149.29, 3351561.22; 784139.11, 3351588.10; 784130.64, 3351615.56; 784123.90, 3351643.50; 784118.94, 3351671.81; 784115.76, 3351700.37; 784114.38, 3351729.08; 784114.81, 3351757.81; 784117.04, 3351786.47; 784121.07, 3351814.92; 784126.87, 3351843.07; 784134.43, 3351870.80; 784143.72, 3351897.99; 784154.70, 3351924.55; 784167.32, 3351950.37; 784181.54, 3351975.35; 784197.30, 3351999.38; 784214.53, 3352022.38; 784233.18, 3352044.25; 784253.16, 3352064.90; 784274.40, 3352084.26; 784296.82, 3352102.25; 784320.32, 3352118.79; 784344.81, 3352133.83; 784370.20, 3352147.30; 784396.38, 3352159.15; 784423.26, 3352169.33; 784450.72, 3352177.80; 784478.66, 3352184.53; 784506.97, 3352189.50; 784535.53, 3352192.68; 784558.55, 3352193.78; 784564.24, 3352194.05; 784592.97, 3352193.63; 784621.63, 3352191.40; 784650.08, 3352187.37; 784678.23, 3352181.56; 784705.96, 3352174.00; 784733.15, 3352164.72; 784759.71,

3352153.74; 784785.53, 3352141.12; 784810.51, 3352126.90; 784834.54, 3352111.14; 784857.54, 3352093.90; 784879.41, 3352075.26; 784900.06, 3352055.27; 784919.42, 3352034.03; 784937.41, 3352011.62; 784953.96, 3351988.12; 784968.99, 3351963.63; 784982.46, 3351938.24; 784994.31, 3351912.06; 785004.49, 3351885.18; 785012.96, 3351857.72; 785019.70, 3351829.78; 785024.66, 3351801.47; 785027.84, 3351772.91; 785029.21, 3351744.20; 785028.79, 3351715.46; 785026.56, 3351686.81; 785022.53, 3351658.36; 785016.72, 3351630.21; 785009.16, 3351602.48; 784999.88, 3351575.28; 784988.90, 3351548.72; 784976.28, 3351522.90; 784962.06, 3351497.93; 784946.30, 3351473.89; 784929.06, 3351450.90; 784910.42, 3351429.03; 784890.43, 3351408.37; 784869.19, 3351389.01; 784846.78, 3351371.03; 784823.28, 3351354.48; 784798.79, 3351339.44; 784773.40, 3351325.98; 784747.21, 3351314.13; 784720.34, 3351303.95; 784692.88, 3351295.47; 784664.94, 3351288.74; 784636.63, 3351283.78; 784608.07, 3351280.60.

(B) *Note:* Map of Unit FFS–3 follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(xiv) Unit FFS–4, Subunit A—Baker County, Florida. From USGS 1:24,000 scale quadrangle maps Big Gum Swamp and Sanderson North, Florida.

(A) Land bounded by the following UTM Zone 17N NAD83 coordinates, (E, N): 367084.38, 3347273.00; 367857.36, 3347865.13; 367885.57, 3347850.05; 367910.67, 3347848.97; 367939.21, 3347845.97; 367967.54, 3347841.08; 367995.46, 3347834.54; 368022.88, 3347826.11; 368076.03, 3347804.41; 368126.01, 3347776.10; 368149.58, 3347759.63; 368172.08, 3347741.85; 368213.36, 3347702.00; 368249.49, 3347657.34; 368279.60, 3347608.54; 368303.41, 3347556.26; 368320.55, 3347501.41; 368326.47, 3347473.30; 368330.56, 3347444.98; 368333.52, 3347387.64; 368329.18, 3347330.38; 368324.31, 3347302.07; 368309.40, 3347246.60; 368287.59, 3347193.55; 368274.29, 3347168.10; 368242.92, 3347120.04; 368205.82, 3347076.15; 368163.49, 3347037.42; 368116.61, 3347004.29; 368066.05, 3346977.19; 368012.39, 3346956.67; 367956.61, 3346943.15; 366301.34, 3346652.76; 366243.94, 3346653.45; 366187.08, 3346661.34; 366131.66, 3346676.29; 366078.54, 3346698.07; 366028.58, 3346726.33; 365982.55, 3346760.63; 365941.18, 3346800.43; 365889.28, 3346869.05; 365862.23, 3346919.69; 365841.75, 3346973.32; 365828.15, 3347029.09; 365821.64, 3347086.12; 365822.34, 3347143.52; 365830.23, 3347200.39; 365845.18, 3347255.81; 365866.95, 3347308.92; 365895.22, 3347358.89; 365948.77, 3347426.23; 365991.09, 3347465.01; 366037.94, 3347498.19; 366088.58, 3347525.23; 366142.20, 3347545.72; 367577.52, 3347903.88; 367634.57, 3347910.39; 367692.00, 3347909.70; 367748.88, 3347901.80; 367804.22, 3347886.84; 367857.36, 3347865.13.

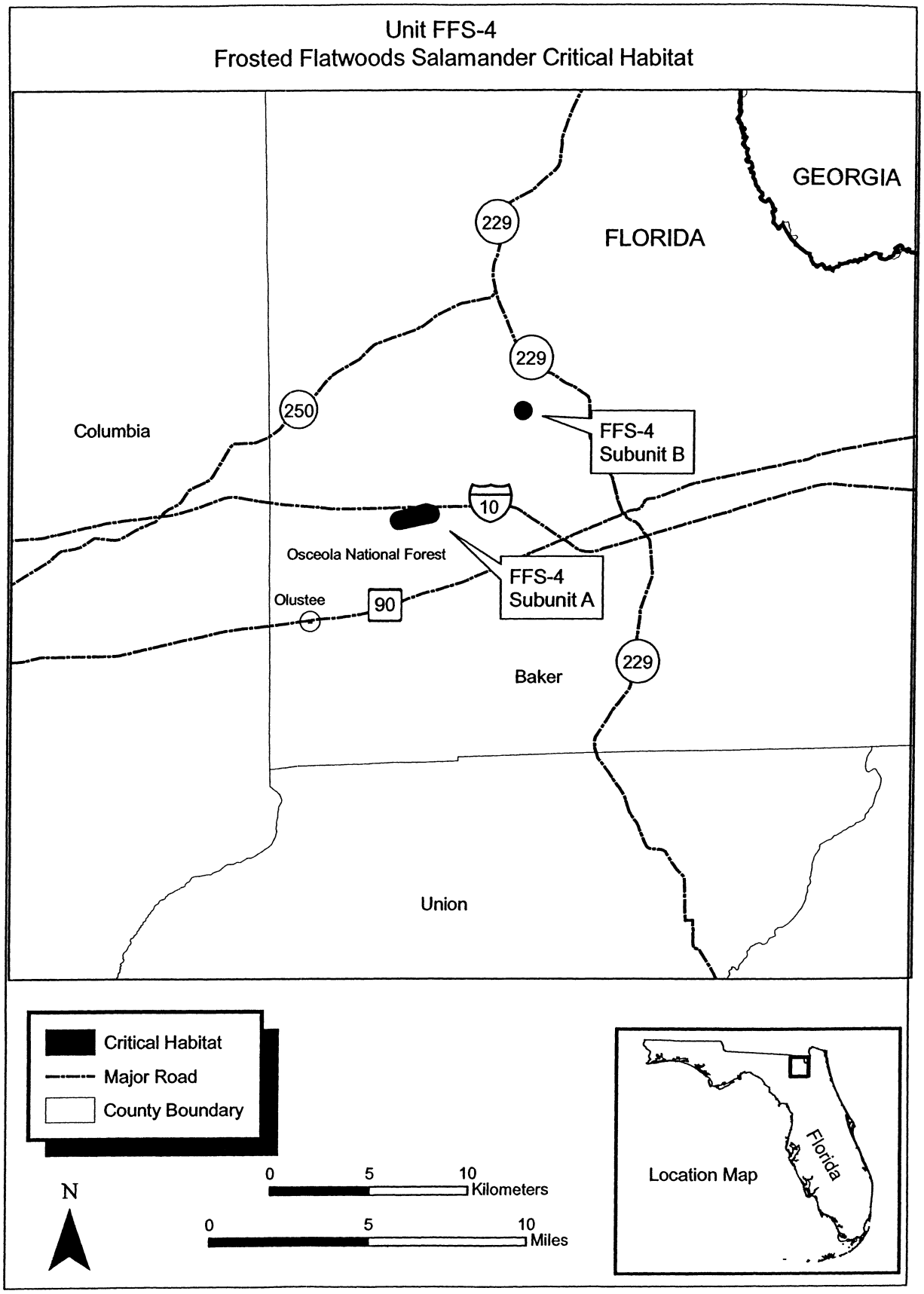
(B) *Note:* Map depicting Unit FFS–3, Subunit A is provided at paragraph (6)(xv)(B) of this entry.

(xv) Unit FFS–4, Subunit B: Baker County, Florida. From USGS 1:24,000 scale quadrangle map Sanderson North, Florida.

(A) Land bounded by the following UTM Zone 17N NAD83 coordinates, (E, N): 372674.15, 3352411.84; 372686.30, 3351954.90; 372657.58, 3351955.03; 372628.93, 3351956.98; 372600.46, 3351960.71; 372572.28, 3351966.23; 372544.50, 3351973.51; 372517.23, 3351982.51; 372490.58, 3351993.21; 372464.66, 3352005.56; 372439.56, 3352019.52; 372415.39, 3352035.02; 372392.24, 3352052.02; 372370.20, 3352070.43; 372349.36, 3352090.19; 372329.81, 3352111.21; 372311.61, 3352133.43; 372294.84, 3352156.74; 372279.57, 3352181.06; 372265.86, 3352206.29; 372253.76, 3352232.34; 372243.32, 3352259.09; 372234.58, 3352286.44; 372227.57, 3352314.29; 372222.33, 3352342.52; 372218.86, 3352371.03; 372217.20, 3352399.70; 372217.34, 3352428.41; 372219.28, 3352457.06; 372223.02, 3352485.54; 372228.54, 3352513.72; 372235.81, 3352541.50; 372244.82, 3352568.77; 372255.52, 3352595.41; 372267.87, 3352621.34; 372281.83, 3352646.43; 372297.33, 3352670.61; 372314.32, 3352693.76; 372332.73, 3352715.79; 372352.49, 3352736.63; 372373.52, 3352756.19; 372395.74, 3352774.38; 372419.05, 3352791.15; 372443.37, 3352806.42; 372468.60, 3352820.13; 372494.64, 3352832.23; 372521.39, 3352842.68; 372548.75, 3352851.42; 372576.60, 3352858.42; 372604.83, 3352863.67; 372633.34, 3352867.13; 372662.00, 3352868.79; 372690.72, 3352868.66; 372719.37, 3352866.71; 372747.84, 3352862.98; 372776.02, 3352857.46; 372803.80, 3352850.18; 372831.07, 3352841.18; 372857.72, 3352830.48; 372883.64, 3352818.12; 372908.74, 3352804.17; 372932.91, 3352788.66; 372956.06, 3352771.67; 372978.10, 3352753.26; 372998.94, 3352733.50; 373018.49, 3352712.47; 373036.69, 3352690.26; 373053.46, 3352666.95; 373068.73, 3352642.63; 373082.44, 3352617.40; 373094.54, 3352591.35; 373104.98, 3352564.60; 373113.72, 3352537.25; 373120.73, 3352509.40; 373125.97, 3352481.17; 373129.43, 3352452.66; 373131.10, 3352423.99; 373130.96, 3352395.28; 373129.02, 3352366.63; 373125.28, 3352338.15; 373119.76, 3352309.97; 373112.49, 3352282.19; 373103.48, 3352254.92; 373092.78, 3352228.28; 373080.43, 3352202.35; 373066.47, 3352177.26; 373050.97, 3352153.08; 373033.98, 3352129.93; 373015.57, 3352107.90; 372995.81, 3352087.06; 372974.78, 3352067.50; 372952.56, 3352049.31; 372929.25, 3352032.54; 372904.93, 3352017.27; 372879.70, 3352003.56; 372853.66, 3351991.46; 372826.91, 3351981.01; 372799.55, 3351972.27; 372771.70, 3351965.27; 372743.47, 3351960.02; 372714.96, 3351956.56; 372686.30, 3351954.90.

(B) *Note:* Map of Unit FFS–4 follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(7) Frosted flatwood salamander—Berkeley, Charleston, and Jasper Counties, South Carolina.

(i) Unit FFS–5, Subunit A—Jasper County, South Carolina. From USGS 1:24,000 scale quadrangle map Limehouse, South Carolina.

(A) Land bounded by the following UTM Zone 17N, NAD83 coordinates (E, N): 497847.74, 3566350.32; 498446.09, 3566295.60; 498439.16, 3566219.48; 498471.15, 3566178.02; 498514.08, 3566169.34; 498465.77, 3566061.18; 498347.55, 3566000.50; 498335.98, 3566046.55; 498253.70, 3566211.29; 498242.87, 3566287.84; 498145.31, 3566241.91; 498093.47, 3566197.40; 497998.76, 3566059.86; 497934.00, 3565901.25; 497898.67, 3565909.74; 497750.14, 3565959.14; 497684.01, 3565953.12; 497606.99, 3565916.86; 497442.74, 3566050.55; 497406.11, 3566214.18; 497415.01, 3566475.87; 497493.26, 3566667.21; 497540.65, 3566737.25; 497620.82, 3566798.86; 497732.91, 3566816.47; 497862.02, 3566803.14; 497974.49, 3566781.53; 497979.42, 3566780.58; 497992.64, 3566773.81; 497990.36, 3566773.41; 497991.28, 3566768.03; 497987.84, 3566757.91; 497989.91, 3566748.69; 497989.47, 3566747.94; 497988.60, 3566711.90; 497989.72, 3566675.82; 498042.65, 3566632.46; 498093.51, 3566608.11; 498098.16, 3566599.05; 498150.81, 3566572.33; 498174.50, 3566503.10; 498224.43, 3566468.83; 498297.24, 3566436.54; 498367.33, 3566396.68; 498406.68, 3566344.87; 498446.09, 3566295.60.

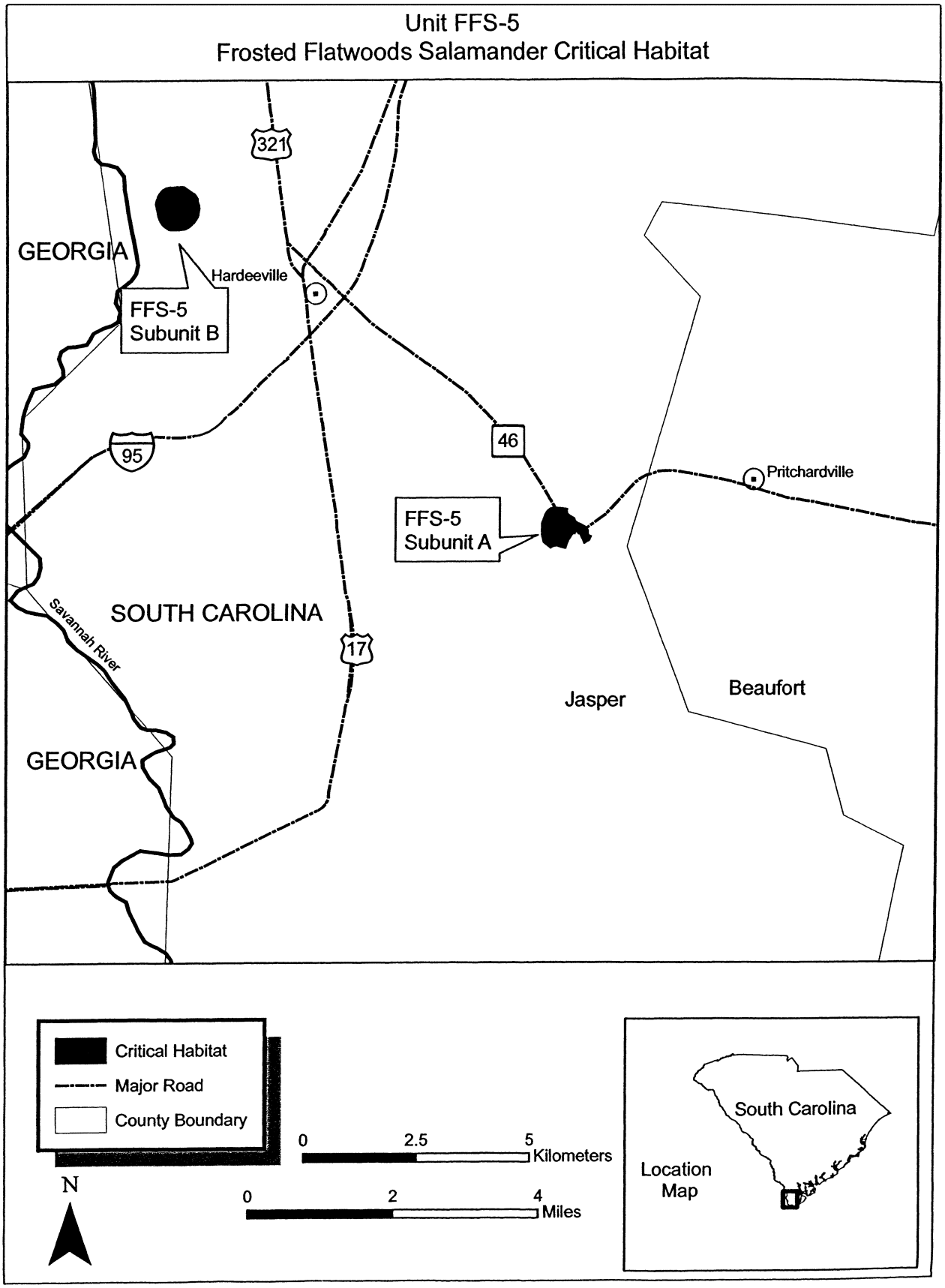
(B) *Note:* Map depicting Unit FFS–5, Subunit A is provided at paragraph (7)(ii)(B) of this entry.

(ii) Unit FFS–5, Subunit B—Jasper County, South Carolina. From USGS 1:24,000 scale quadrangle map Hardeeville, South Carolina.

(A) Land bounded by the following UTM Zone 17N, NAD83 coordinates (E, N): 489561.94, 3573503.59; 489722.85, 3573967.97; 489813.22, 3573903.16; 489904.81, 3573840.10; 489926.27, 3573824.52; 489946.02, 3573806.80; 489963.82, 3573787.14; 489979.50, 3573765.74; 489992.88, 3573742.83; 490003.82, 3573718.67; 490012.20, 3573693.50; 490017.94, 3573667.60; 490016.20, 3573652.66; 490013.19, 3573637.92; 490015.98, 3573632.12; 490025.87, 3573604.58; 490032.87, 3573576.16; 490036.91, 3573547.18; 490037.03, 3573543.60; 490041.81, 3573520.55; 490043.92, 3573497.11; 490043.41, 3573474.57; 490040.43, 3573452.23; 490035.01, 3573430.36; 490027.22, 3573409.21; 490026.77, 3573385.43; 490023.98, 3573361.81; 490018.89, 3573338.58; 490011.54, 3573315.96; 490002.00, 3573294.17; 489990.37, 3573273.42; 489980.99, 3573259.55; 489970.67, 3573246.37; 489959.67, 3573227.66; 489937.65, 3573195.84; 489913.35, 3573165.71; 489886.91, 3573137.45; 489858.47, 3573111.20; 489828.18, 3573087.11; 489796.21, 3573065.31; 489762.72, 3573045.91; 489727.90, 3573029.02; 489644.36, 3573024.70; 489560.73, 3573022.61; 489477.08, 3573022.74; 489393.46, 3573025.10; 489359.85, 3573040.41; 489327.69, 3573058.58; 489297.23, 3573079.47; 489268.70, 3573102.92; 489242.31, 3573128.77; 489218.27, 3573156.80; 489196.75, 3573186.82; 489177.92, 3573218.59; 489161.92, 3573251.88; 489148.87, 3573286.44; 489138.87, 3573321.99; 489085.29, 3573601.84; 489092.79, 3573641.38; 489103.20, 3573680.27; 489116.45, 3573718.27; 489132.48, 3573755.19; 489151.20, 3573790.83; 489172.50, 3573824.98; 489196.26, 3573857.47; 489214.53, 3573880.49; 489235.17, 3573901.42; 489257.94, 3573920.01; 489282.57, 3573936.04; 489308.78, 3573949.34; 489336.26, 3573959.75; 489364.71, 3573967.15; 489393.78, 3573971.44; 489423.15, 3573972.59; 489452.47, 3573970.58; 489453.58, 3573970.39; 489507.35, 3573975.17; 489561.29, 3573977.32; 489615.28, 3573976.84; 489669.17, 3573973.72; 489722.85, 3573967.97.

(B) *Note:* Map of Unit FFS–5 follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(iii) Unit FFS–6—Berkeley County, South Carolina. From USGS 1:24,000 scale quadrangle map Cainhoy, South Carolina.

(A) Land bounded by the following UTM Zone 17N NAD83 coordinates, (E, N): 611278.81, 3648848.98; 613513.07, 3649951.18; 613527.98, 3649895.75; 613535.82, 3649838.89; 613536.47, 3649781.49; 613529.62, 3649718.85; 613516.29, 3649668.71; 613495.76, 3649615.10; 613468.68, 3649564.49; 613435.47, 3649517.67; 613416.73, 3649495.91; 613396.66, 3649475.38; 613352.85, 3649438.29; 613304.74, 3649406.98; 613265.68, 3649387.26; 613198.69, 3649363.59; 613142.44, 3649352.20; 613087.44, 3649348.04; 613094.83, 3649293.89; 613095.48, 3649236.49; 613088.93, 3649179.46; 613075.29, 3649123.71; 613054.77, 3649070.10; 613042.02, 3649044.36; 613027.69, 3649019.49; 612994.47, 3648972.67; 612955.66, 3648930.38; 612911.85, 3648893.29; 612888.28, 3648876.88; 612863.74, 3648861.98; 612812.08, 3648836.95; 609500.97, 3647503.91; 609474.07, 3647493.88; 609446.58, 3647485.56; 609418.63, 3647478.99; 609390.32, 3647474.18; 609361.76, 3647471.16; 609333.08, 3647469.94; 609304.37, 3647470.53; 609275.75, 3647472.91; 609247.34, 3647477.09; 609219.25, 3647483.04; 609191.59, 3647490.74; 609164.46, 3647500.17; 609137.99, 3647511.28; 609112.26, 3647524.03; 609087.38, 3647538.37; 609063.45, 3647554.25; 609040.57, 3647571.59; 609018.82, 3647590.34; 608998.29, 3647610.42; 608979.07, 3647631.75; 608961.22, 3647654.24; 608944.81, 3647677.81; 608929.92, 3647702.36; 608916.60, 3647727.80; 608904.91, 3647754.02; 608894.88, 3647780.93; 608886.56, 3647808.42; 608879.99, 3647836.37; 608875.18, 3647864.68; 608872.16, 3647893.23; 608870.94, 3647921.92; 608871.52, 3647950.63; 608873.91, 3647979.25; 608878.08, 3648007.66; 608884.04, 3648035.75; 608891.74, 3648063.41; 608901.17, 3648090.53; 608912.28, 3648117.01; 608925.03, 3648142.74; 608939.37, 3648167.62; 608955.25, 3648191.54; 608972.59, 3648214.43; 608991.34, 3648236.18; 609011.42, 3648256.70; 609032.74, 3648275.93; 609055.24, 3648293.78; 609078.81, 3648310.18; 609103.36, 3648325.08; 612197.25, 3649979.02; 612248.91, 3650004.05; 612275.81, 3650014.08; 612331.23, 3650028.99; 612359.55, 3650033.80; 612416.80, 3650038.06; 612474.12, 3650035.11; 612502.53, 3650030.94; 612558.29, 3650017.30; 612611.90, 3649996.77; 612655.36, 3649973.81; 612691.29, 3650045.52; 612724.50, 3650092.34; 612743.24, 3650114.09; 612784.64, 3650153.86; 612830.69, 3650188.12; 612855.24, 3650203.02; 612906.90, 3650228.05; 612961.29, 3650246.41; 613025.74, 3650257.06; 613074.79, 3650262.06; 613103.50, 3650261.49; 613160.52, 3650254.94; 613216.28, 3650241.30; 613269.89, 3650220.78; 613295.63, 3650208.03; 613320.51, 3650193.70; 613367.33, 3650160.49; 613409.62, 3650121.67; 613428.85, 3650100.35; 613463.11, 3650054.30; 613491.34, 3650004.31; 613513.07, 3649951.18.

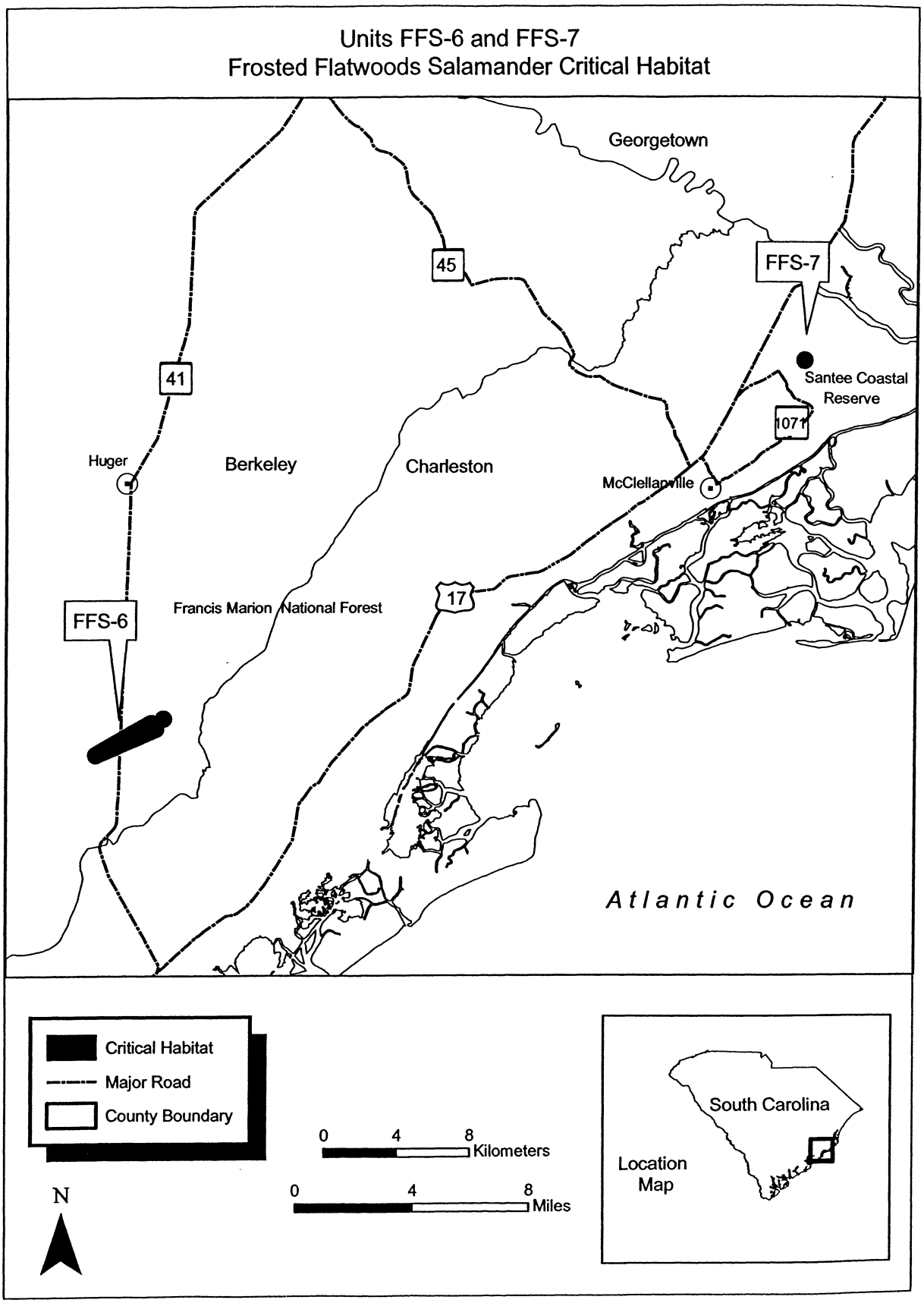
(B) *Note:* Map depicting Unit FFS–6 is provided at paragraph (7)(iv)(B) of this entry.

(iv) Unit FFS–7—Charleston County, South Carolina. From USGS 1:24,000 scale quadrangle map, Santee, South Carolina.

(A) Land bounded by the following UTM Zone 17N NAD83 coordinates, (E, N): 648576.17, 3668543.24; 648579.86, 3668086.10; 648551.15, 3668086.77; 648522.54, 3668089.24; 648494.14, 3668093.50; 648466.06, 3668099.54; 648438.42, 3668107.33; 648411.32, 3668116.84; 648384.87, 3668128.03; 648359.18, 3668140.86; 648334.34, 3668155.28; 648310.46, 3668171.23; 648287.62, 3668188.65; 648265.93, 3668207.47; 648245.46, 3668227.61; 648226.29, 3668249.00; 648208.50, 3668271.55; 648192.17, 3668295.17; 648177.35, 3668319.77; 648164.11, 3668345.25; 648152.49, 3668371.52; 648142.54, 3668398.46; 648134.31, 3668425.97; 648127.82, 3668453.95; 648123.09, 3668482.28; 648120.16, 3668510.84; 648119.03, 3668539.54; 648119.70, 3668568.25; 648122.17, 3668596.86; 648126.43, 3668625.26; 648132.47, 3668653.34; 648140.26, 3668680.98; 648149.77, 3668708.08; 648160.96, 3668734.53; 648173.79, 3668760.22; 648188.21, 3668785.06; 648204.16, 3668808.94; 648221.58, 3668831.78; 648240.40, 3668853.47; 648260.54, 3668873.94; 648281.93, 3668893.11; 648304.48, 3668910.89; 648328.10, 3668927.23; 648352.70, 3668942.05; 648378.18, 3668955.29; 648404.45, 3668966.91; 648431.39, 3668976.86; 648458.90, 3668985.09; 648486.88, 3668991.58; 648515.21, 3668996.30; 648543.77, 3668999.24; 648572.47, 3669000.37; 648601.18, 3668999.70; 648629.80, 3668997.23; 648658.20, 3668992.97; 648686.27, 3668986.93; 648713.92, 3668979.14; 648741.02, 3668969.63; 648767.46, 3668958.44; 648793.16, 3668945.61; 648818.00, 3668931.19; 648841.88, 3668915.24; 648864.71, 3668897.82; 648886.41, 3668879.00; 648906.88, 3668858.86; 648926.04, 3668837.47; 648943.83, 3668814.92; 648960.16, 3668791.30; 648974.98, 3668766.70; 648988.23, 3668741.22; 648999.85, 3668714.96; 649009.79, 3668688.01; 649018.03, 3668660.50; 649024.52, 3668632.53; 649029.24, 3668604.20; 649032.17, 3668575.63; 649033.31, 3668546.93; 649032.64, 3668518.22; 649030.17, 3668489.61; 649025.90, 3668461.21; 649019.86, 3668433.13; 649012.08, 3668405.49; 649002.57, 3668378.39; 648991.37, 3668351.94; 648978.54, 3668326.25; 648964.12, 3668301.41; 648948.17, 3668277.53; 648930.76, 3668254.69; 648911.94, 3668233.00; 648891.79, 3668212.53; 648870.41, 3668193.36; 648847.86, 3668175.58; 648824.23, 3668159.24; 648799.63, 3668144.42; 648774.15, 3668131.18; 648747.89, 3668119.56; 648720.94, 3668109.62; 648693.43, 3668101.38; 648665.46, 3668094.89; 648637.13, 3668090.17; 648608.56, 3668087.23; 648579.86, 3668086.10.

(B) *Note:* Map of Units FFS–6 and FFS–7 follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

Reticulated Flatwoods Salamander (*Ambystoma bishopi*)

(1) Critical habitat units are depicted for Calhoun, Holmes, Jackson, Santa Rosa, Walton, and Washington Counties in Florida; and Baker and Miller Counties in Georgia on the maps below.

(2) The primary constituent elements of critical habitat for the reticulated flatwoods salamander are the habitat components that provide:

(i) *Breeding habitat.* Small (generally less than 1 to 10 ac (less than 0.4 to 4.0 ha)), acidic, depressional standing bodies of freshwater (wetlands) that:

(A) Are seasonally flooded by rainfall in late fall or early winter and dry in late spring or early summer;

(B) Are geographically isolated from other water bodies;

(C) Occur within pine flatwoods-savanna communities;

(D) Are dominated by grasses and grass-like species in the ground layer and overstories of pond-cypress, blackgum, and slash pine;

(E) Have a relatively open canopy, necessary to maintain the herbaceous component that serves as cover for flatwoods salamander larvae and their aquatic invertebrate prey; and

(F) Typically have a burrowing crayfish fauna, but, due to periodic drying, the breeding ponds typically lack large, predatory fish (for example, *Lepomis* (sunfish), *Micropterus* (bass), *Amia calva* (bowfin)).

(ii) *Non-breeding habitat.* Upland pine flatwoods-savanna habitat that is open, mesic woodland maintained by frequent fires and that:

(A) Is within 1,500 ft (457 m) of adjacent and accessible breeding ponds;

(B) Contains crayfish burrows or other underground habitat that the flatwoods salamander depends upon for food, shelter, and protection from the elements and predation;

(C) Has an organic hardpan in the soil profile, which inhibits subsurface water penetration and typically results in moist soils with water often at or near the surface under normal conditions; and

(D) Often has wiregrasses as the dominant grasses in the abundant herbaceous ground cover, which supports the rich herbivorous invertebrates that serve as a food source for the reticulated flatwoods salamander.

(iii) *Dispersal habitat.* Upland habitat areas between nonbreeding and breeding habitat that allows for salamander movement between such sites and that is characterized by:

(A) A mix of vegetation types representing a transition between wetland and upland vegetation (ecotone);

(B) An open canopy and abundant native herbaceous species;

(C) Moist soils as described in paragraph (2)(ii); and

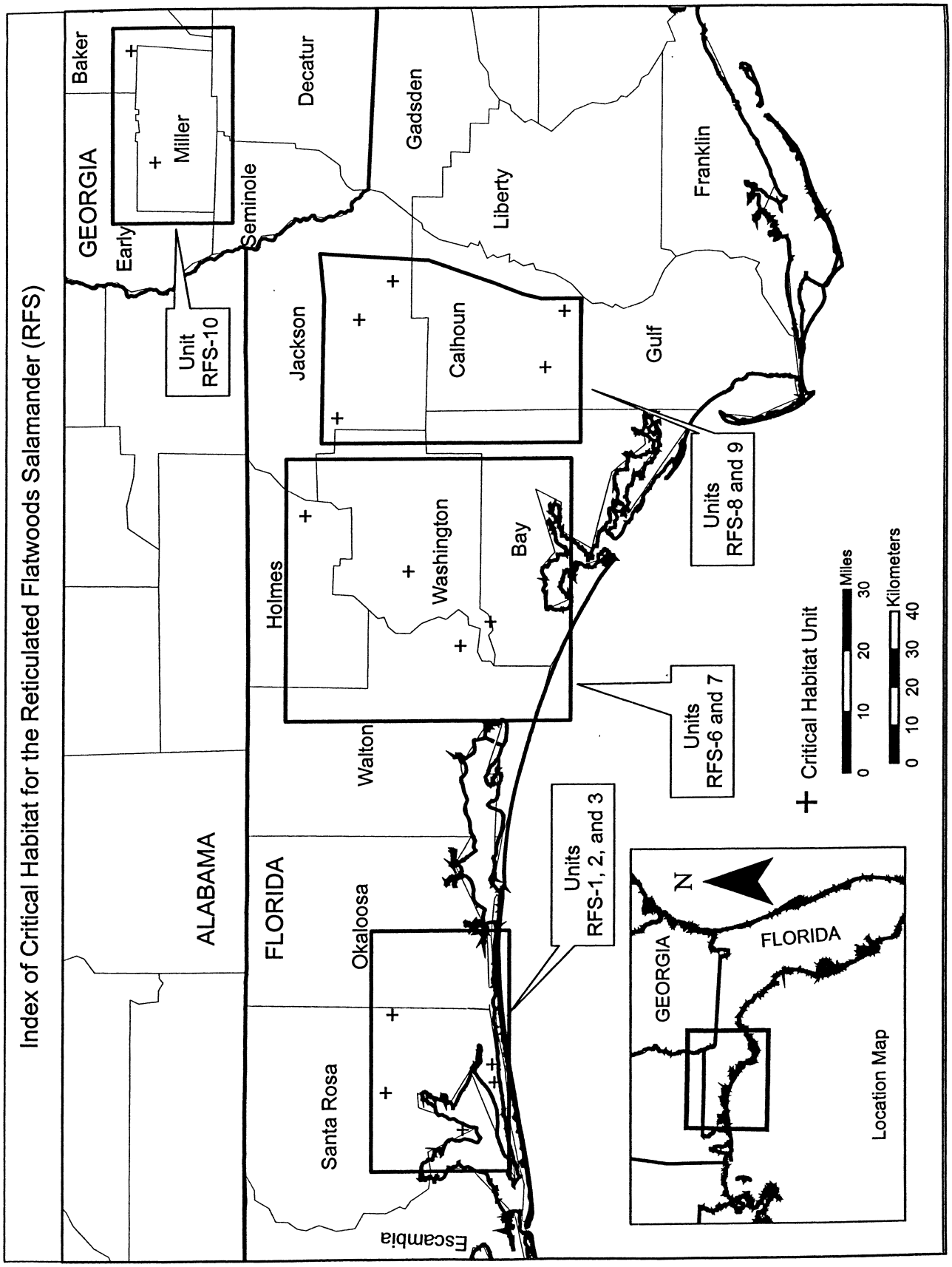
(D) Subsurface structure, such as deep litter cover or burrows that provide shelter for salamanders during seasonal movements.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) *Critical habitat map units.* Data layers defining map units were created on a base of USGS 7.5′ quadrangles, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(5) *Note:* Index map of critical habitat for the reticulated flatwoods salamander follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(6) Reticulated flatwood salamander—Calhoun, Holmes, Jackson, Santa Rosa, Walton and Washington Counties, Florida.

(i) Unit RFS–1—Santa Rosa County, Florida. From USGS 1:24,000 scale quadrangle map Garcon Point, Florida.

(A) Land bounded by the following UTM Zone 16N, North American Datum of 1983 (NAD83) coordinates, (E, N): 492983.94, 3372029.94; 493099.21, 3373387.45; 493154.87, 3373453.03; 493198.40, 3373490.44; 493271.61, 3373535.60; 493351.98, 3373566.25; 493436.67, 3373581.30; 493522.69, 3373580.20; 493551.12, 3373576.25; 493606.97, 3373563.02; 493686.54, 3373530.34; 493735.56, 3373500.50; 493801.14, 3373444.83; 493838.55, 3373401.30; 493870.20, 3373353.43; 493905.84, 3373275.14; 493921.15, 3373219.82; 493930.85, 3373134.35; 493928.32, 3373077.01; 493918.62, 3373020.45; 493901.91, 3372965.54; 492974.90, 3370886.40; 492965.68, 3370859.21; 492954.77, 3370832.65; 492942.22, 3370806.83; 492928.07, 3370781.84; 492912.38, 3370757.80; 492895.22, 3370734.79; 492876.64, 3370712.90; 492856.72, 3370692.22; 492835.54, 3370672.83; 492813.19, 3370654.81; 492789.75, 3370638.23; 492765.32, 3370623.16; 492739.98, 3370609.64; 492713.85, 3370597.75; 492687.03, 3370587.52; 492659.61, 3370578.99; 492631.71, 3370572.21; 492603.45, 3370567.18; 492574.92, 3370563.95; 492546.24, 3370562.51; 492517.54, 3370562.87; 492488.91, 3370565.04; 492460.47, 3370568.99; 492432.34, 3370574.73; 492404.62, 3370582.22; 492377.43, 3370591.44; 492350.87, 3370602.35; 492320.06, 3370618.11; 492291.54, 3370614.88; 492262.86, 3370613.44; 492234.15, 3370613.80; 492205.52, 3370615.97; 492177.09, 3370619.93; 492148.96, 3370625.66; 492121.24, 3370633.16; 492094.05, 3370642.37; 492067.49, 3370653.28; 492041.67, 3370665.83; 492016.69, 3370679.98; 491992.64, 3370695.67; 491969.63, 3370712.84; 491947.74, 3370731.42; 491927.07, 3370751.34; 491907.68, 3370772.52; 491889.66, 3370794.87; 491873.08, 3370818.31; 491858.01, 3370842.75; 491850.37, 3370857.07; 491865.61, 3370901.72; 491918.43, 3370965.16; 491965.55, 3371021.75; 492011.53, 3371083.74; 492053.38, 3371140.16; 492103.93, 3371212.08; 492141.72, 3371264.53; 492176.37, 3371309.64; 492207.14, 3371351.35; 492243.74, 3371397.83; 492283.27, 3371453.23; 492331.51, 3371520.83; 493069.37, 3373338.43; 493099.21, 3373387.45.

(B) *Note:* Map depicting Unit RFS–1 is provided at paragraph (6)(v)(B) of this entry.

(ii) Unit RFS–2, Subunit A—Santa Rosa County, Florida. From USGS 1:24,000 scale quadrangle map Harold, Florida.

(A) Land bounded by the following UTM Zone 16N, North American Datum of 1983 (NAD83) coordinates, (E, N): 501542.20, 3392876.13; 501578.50, 3392420.55; 501549.82, 3392419.17; 501521.11, 3392419.59; 501492.49, 3392421.82; 501464.06, 3392425.84; 501435.94, 392431.63; 501408.24, 3392439.18; 501381.07, 3392448.45; 501354.53, 3392459.42; 501328.74, 3392472.02; 501303.78, 3392486.22; 501279.77, 3392501.96; 501256.80, 392519.18; 501234.95, 3392537.80; 501214.31, 3392557.76; 501194.97, 3392578.98; 501176.99, 3392601.37; 501160.46, 3392624.84; 501145.44, 3392649.31; 501131.98, 392674.67; 501120.14, 3392700.83; 501109.96, 3392727.67; 501101.49, 3392755.11; 501094.76, 3392783.02; 501089.80, 3392811.30; 501086.62, 3392839.83; 501085.24, 392868.51; 501085.25, 3392868.93; 501085.66, 3392897.21; 501086.27, 3392904.98; 501087.89, 3392925.84; 501091.91, 3392954.27; 501097.70, 3392982.39; 501105.25, 393010.09; 501114.52, 3393037.26; 501125.49, 3393063.80; 501138.09, 3393089.59; 501152.29, 3393114.54; 501168.03, 3393138.56; 501185.25, 3393161.53; 501203.87, 393183.38; 501223.83, 3393204.02; 501245.05, 3393223.36; 501267.44, 3393241.33; 501290.91, 3393257.87; 501315.38, 3393272.89; 501340.74, 3393286.35; 501366.90, 393298.19; 501393.74, 3393308.36; 501421.18, 3393316.83; 501449.09, 3393323.56; 501477.37, 3393328.53; 501505.90, 3393331.70; 501534.58, 3393333.08; 501563.29, 393332.66; 501584.95, 3393330.98; 501591.91, 3393330.44; 501613.98, 3393327.32; 501620.34, 3393326.42; 501648.46, 3393320.62; 501676.16, 3393313.07; 501703.33, 393303.80; 501729.87, 3393292.84; 501755.66, 3393280.23; 501780.61, 3393266.03; 501804.63, 3393250.29; 501827.60, 3393233.08; 501849.45, 3393214.45; 501870.09, 393194.49; 501889.43, 3393173.27; 501907.41, 3393150.89; 501923.94, 3393127.41; 501938.96, 3393102.95; 501952.42, 3393077.59; 501964.26, 3393051.43; 501974.44, 393024.58; 501982.91, 3392997.15; 501989.64, 3392969.24; 501994.60, 3392940.96; 501997.78, 3392912.43; 501999.16, 3392883.75; 501998.73, 3392855.04; 501996.51, 392826.42; 501992.49, 3392797.99; 501986.70, 3392769.87; 501979.15, 3392742.17; 501969.87, 3392715.00; 501958.91, 3392688.46; 501946.31, 3392662.66; 501932.11, 392637.71; 501916.37, 3392613.70; 501899.15, 3392590.72; 501880.52, 3392568.87; 501860.56, 3392548.24; 501839.35, 3392528.89; 501816.96, 3392510.92; 501793.48, 392494.39; 501769.02, 3392479.36; 501743.66, 3392465.90; 501717.50, 3392454.06; 501690.66, 3392443.89; 501663.22, 3392435.42; 501635.31, 3392428.69; 501607.03, 3392423.73; 501578.50, 3392420.55.

(B) *Note:* Map depicting Unit RFS–2, Subunit A is provided at paragraph (6)(v)(B) of this entry.

(iii) Unit RFS–2, Subunit B—Santa Rosa County, Florida. From USGS 1:24,000 scale quadrangle map Floridale, Florida.

(A) Land bounded by the following UTM Zone 16N NAD83 coordinates, (E, N): 518978.93, 3390847.46; 519015.23, 3390391.88; 518986.55, 3390390.50; 518957.84, 3390390.92; 518929.22, 3390393.14; 518900.79, 3390397.16; 518872.67, 390402.96; 518844.97, 3390410.51; 518817.80, 3390419.78; 518791.26, 3390430.74; 518765.46, 3390443.35; 518740.51, 3390457.55; 518716.50, 3390473.29; 518693.52, 3390490.50; 518671.67, 3390509.13; 518651.04, 3390529.09; 518631.69, 3390550.31; 518613.72, 3390572.70; 518597.19, 3390596.17; 518582.16, 3390620.64; 518568.70, 3390646.00; 518556.86, 3390672.15; 518546.69, 3390699.00; 518538.22, 3390726.43; 518531.49, 3390754.34; 518526.53, 3390782.62; 518523.35, 3390811.16; 518521.97, 3390839.83; 518522.39, 3390868.54; 518524.62, 3390897.17; 518528.63, 3390925.59; 518534.43, 3390953.71; 518541.98, 3390981.41; 518551.25, 3391008.59; 518562.21, 3391035.12; 518574.82, 3391060.92; 518589.02, 3391085.87; 518604.76, 3391109.88; 518621.98, 3391132.86; 518640.60, 3391154.71; 518660.56, 3391175.35; 518681.78, 3391194.69; 518704.17, 3391212.66; 518727.64, 3391229.19; 518752.11, 3391244.22; 518777.47, 3391257.68; 518803.62, 3391269.52; 518830.47, 3391279.69; 518857.91, 3391288.16; 518885.82, 3391294.89; 518914.10, 3391299.86; 518942.63, 3391303.03; 518971.31, 3391304.41; 519000.02, 3391303.99; 519028.64, 3391301.77; 519057.07, 3391297.75; 519085.19, 3391291.95; 519112.89, 3391284.40; 519140.06, 3391275.13; 519166.60, 3391264.17; 519192.39, 3391251.56; 519217.35, 3391237.36; 519241.36, 3391221.62; 519264.33, 3391204.41; 519286.18, 3391185.78; 519306.82, 3391165.82; 519326.16, 3391144.60; 519344.14, 3391122.21; 519360.67, 3391098.74; 519375.69, 3391074.28; 519389.16, 3391048.92; 519401.00, 3391022.77; 519410.33, 3390998.13; 519411.17, 3390995.92; 519419.64, 3390968.48;

519426.37, 3390940.57; 519431.34, 3390912.29; 519434.51, 3390883.76; 519435.89, 3390855.08; 519435.47, 3390826.37; 519433.25, 3390797.7493; 519429.2274, 3390769.3210; 519423.4325, 3390741.2012; 519415.8831, 3390713.50; 519406.61, 3390686.33; 519395.65, 3390659.79; 519383.04, 3390634.00; 519368.84, 3390609.04; 519353.10, 3390585.03; 519335.89, 3390562.06; 519317.26, 3390540.21; 519297.30, 3390519.57; 519276.08, 3390500.23; 519253.69, 3390482.25; 519230.22, 3390465.72; 519205.75, 3390450.70; 519180.39, 3390437.24; 519154.24, 3390425.40; 519127.39, 3390415.22; 519099.96, 3390406.75; 519072.05, 3390400.02; 519043.77, 3390395.06; 519025.17, 3390392.99; 519015.23, 3390391.88.

(B) *Note:* Map depicting Unit RFS–2, Subunit B is provided at paragraph (6)(v)(B) of this entry.

(iv) Unit RFS–3, Subunit A—Santa Rosa County, Florida. From USGS 1:24,000 scale quadrangle map Holley, Florida.

(A) Land bounded by the following UTM Zone 16N NAD83 coordinates, (E, N): 503177.78, 3363967.21; 503665.03, 3364056.93; 503673.05, 3364029.36; 503679.32, 3364001.35; 503683.82, 3363972.99; 503686.53, 3363944.41; 503687.44, 3363915.71; 503694.98, 3363896.36; 503703.23, 3363884.01; 503713.36, 3363875.67; 503720.87, 3363866.60; 503726.39, 3363857.48; 503733.34, 3363843.78; 503741.25, 3363818.20; 503752.72, 3363782.15; 503757.95, 3363757.83; 503766.30, 3363741.51; 503653.07, 3363742.06; 503644.01, 3363721.11; 503630.98, 3363695.52; 503615.44, 3363669.75; 503614.55, 3363724.18; 503603.43, 3363777.35; 503601.27, 3363799.83; 503594.64, 3363834.69; 503563.00, 3363831.09; 503563.97, 3363824.67; 503558.81, 3363820.93; 503559.46, 3363811.37; 503555.68, 3363800.73; 503543.49, 3363787.96; 503527.75, 3363771.89; 503514.02, 3363772.76; 503464.40, 3363773.57; 503448.85, 3363749.85; 503448.44, 3363558.27; 503320.62, 3363559.79; 503273.43, 3363560.71; 503273.49, 3363572.75; 503279.14, 3363573.95; 503279.03, 3363592.72; 503284.42, 3363598.55; 503277.70, 3363622.86; 503272.12, 3363658.96; 503257.00, 3363659.53; 503220.26, 3363657.70; 503211.46, 3363656.94; 503211.34, 3363632.86; 503198.99, 3363600.69; 503189.65, 3363605.42; 503175.37, 3363661.31; 503174.55, 3363690.00; 503175.30, 3363735.30; 503170.12, 3363757.64; 503161.91, 3363768.67; 503127.37, 3363773.12; 503100.70, 3363791.93; 503033.44, 3363790.29; 502978.97, 3363827.84; 502954.55, 3363827.72; 502938.01, 3363827.31; 502928.95, 3363818.51; 502929.56, 3363685.06; 502929.74, 3363569.45; 502821.80, 3363570.13; 502821.27, 3363591.92; 502814.36, 3363603.64; 502789.75, 3363608.33; 502751.22, 3363613.34; 502704.61, 3363624.01; 502670.48, 3363639.13; 502640.35, 3363788.37; 502630.38, 3363844.28; 502624.76, 3363884.45; 502620.15, 3363937.85; 502612.79, 3363995.15; 502605.87, 3364010.90; 502632.10, 3364030.43; 502667.63, 3364049.11; 502682.24, 3364047.48; 502713.23, 3364052.86; 502771.52, 3364051.63; 502794.68, 3364052.20; 502805.45, 3364083.69; 502816.85, 3364110.04; 502829.87, 3364135.63; 502844.48, 3364160.34; 502860.61, 3364184.09; 502878.20, 3364206.79; 502897.18, 3364228.33; 502917.48, 3364248.63; 502939.01, 3364267.63; 502961.69, 3364285.23; 502985.43, 3364301.38; 503010.14, 3364316.00; 503035.71, 3364329.04; 503062.06, 3364340.45; 503089.07, 3364350.18; 503116.64, 3364358.20; 503144.65, 3364364.47; 503173.01, 3364368.97; 503201.59, 3364371.69; 503230.29, 3364372.60; 503258.99, 3364371.70; 503287.57, 3364369.01; 503315.93, 3364364.53; 503343.95, 3364358.27; 503371.52, 3364350.27; 503398.54, 3364340.55; 503424.89, 3364329.16; 503450.47, 3364316.13; 503475.19, 3364301.52; 503498.94, 3364285.39; 503521.63, 3364267.80; 503543.18, 3364248.82; 503563.48, 3364228.53; 503582.48, 3364207.00; 503600.08, 3364184.32; 503616.23, 3364160.57; 503630.85, 3364135.87; 503643.89, 3364110.29; 503655.30, 3364083.94; 503665.03, 3364056.93.

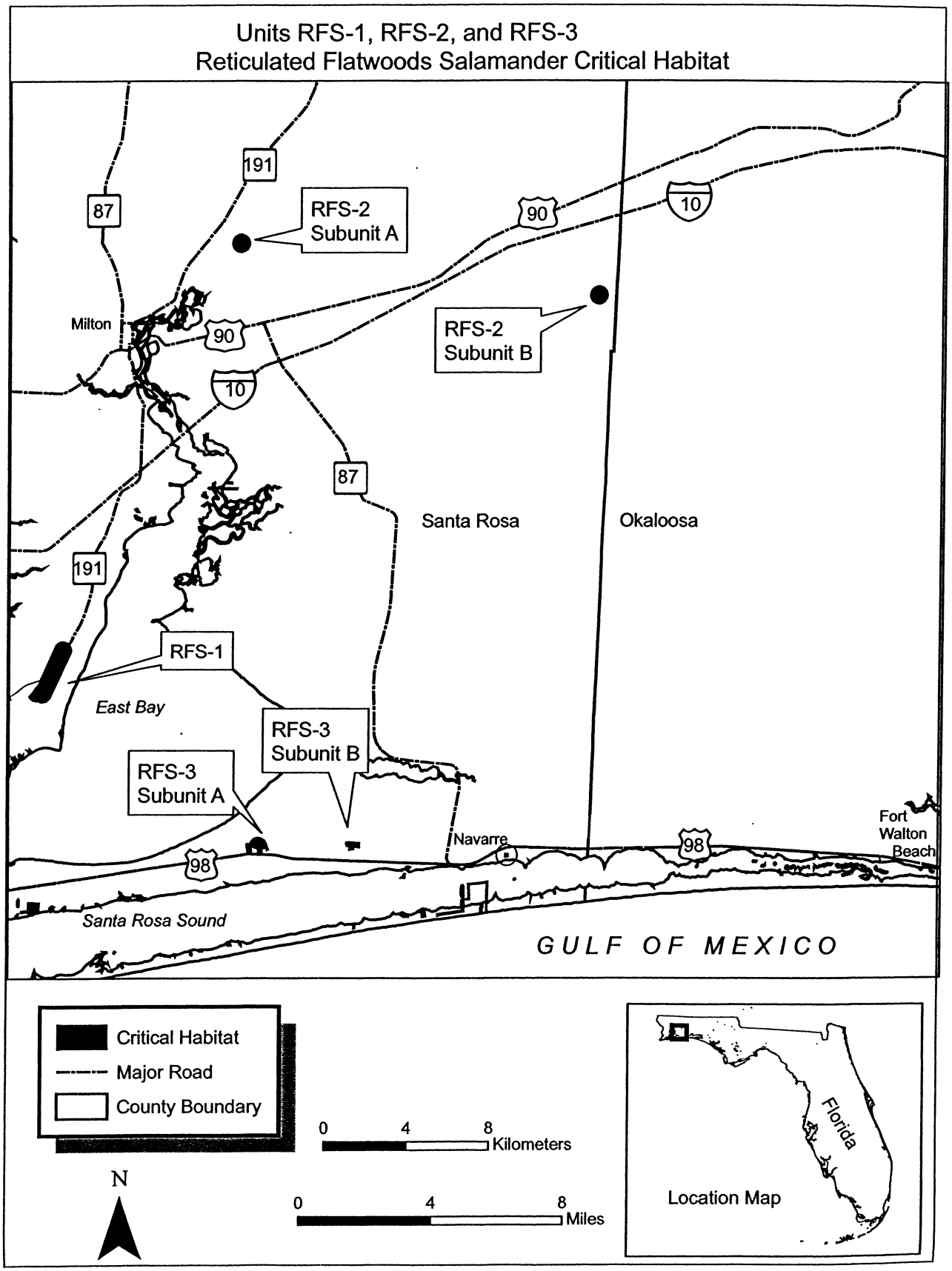
(B) *Note:* Map depicting Unit RFS–3, Subunit A is provided at paragraph (6)(v)(B) of this entry.

(v) Unit RFS–3, Subunit B—Santa Rosa County, Florida. From USGS 1:24,000 scale quadrangle map Holley, Florida.

(A) Land bounded by the following UTM Zone 16N NAD83 coordinates, (E, N): 507814.78, 3364090.74; 508038.93, 3364260.63; 508159.63, 3364258.28; 508158.08, 3364132.67; 508156.37, 3364018.27; 508155.42, 3363957.25; 508106.06, 3363958.06; 508068.35, 3363958.68; 508035.07, 3363959.24; 507887.21, 3363961.45; 507885.38, 3363855.42; 507685.15, 3363855.35; 507684.90, 3363837.37; 507612.21, 3363836.12; 507612.77, 3363907.73; 507612.90, 3363927.61; 507638.84, 3363928.05; 507638.99, 3363940.21; 507583.59, 3364018.73; 507491.86, 3364016.60; 507493.27, 3364096.55; 507471.91, 3364096.05; 507455.12, 3364095.65; 507457.47, 3364243.92; 507529.64, 3364243.19; 507566.34, 3364270.07; 507830.20, 3364271.25; 507890.35, 3364271.37; 507890.09, 3364262.80; 507967.94, 3364261.67; 508038.93, 3364260.63.

(B) *Note:* Map of Units RFS–1, RFS–2, and RFS–3 follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(vi) Unit RFS–6, Subunit A—Walton County, Florida. From USGS 1:24,000 scale quadrangle map Bruce, Florida.

(A) Land bounded by the following UTM Zone 16N, NAD83 coordinates (E, N): 601647.75, 3373576.77; 601493.33, 3374109.03; 601522.04, 3374108.60; 601550.67, 3374106.38; 601579.10, 3374102.36; 601607.23, 3374096.56; 601634.93, 3374089.01; 601662.11, 3374079.74; 601688.65, 3374068.77; 601714.44, 3374056.17; 601739.40, 3374041.96; 601763.41, 3374026.22; 601786.39, 3374009.00; 601808.25, 3373990.37; 601828.89, 3373970.41; 601848.23, 3373949.19; 601866.21, 3373926.80; 601882.74, 3373903.32; 601897.76, 3373878.85; 601911.23, 3373853.49; 601923.07, 3373827.33; 601933.24, 3373800.48; 601941.71, 3373773.04; 601948.44, 3373745.13; 601953.40, 3373716.84; 601956.58, 3373688.31; 601957.96, 3373659.62; 601957.54, 3373630.91; 601955.31, 3373602.29; 601951.29, 3373573.85; 601945.50, 3373545.73; 601937.95, 3373518.03; 601932.81, 3373498.30; 602077.97, 3373412.75; 602148.71, 3373370.38; 602189.04, 3373346.29; 602226.02, 3373324.08; 602242.81, 3373314.59; 602251.57, 3373308.87; 602249.73, 3373302.87; 602248.52, 3373298.22; 602244.07, 3373290.84; 602232.30, 3373285.25; 602226.49, 3373279.16; 602219.36, 3373273.03; 602212.40, 3373260.30; 602203.50, 3373245.54; 602189.89, 3373207.54; 602185.07, 3373188.25; 602182.00, 3373178.92; 602174.92, 3373170.82; 602167.16, 3373163.35; 602161.52, 3373150.66; 602159.44, 3373128.14; 602152.20, 3373073.77; 602147.72, 3373041.28; 602068.26, 3373014.83; 602046.87, 3372996.45; 602018.93, 3372975.27; 601977.95, 3372972.42; 601920.70, 3372984.20; 601893.12, 3373001.35; 601867.36, 3373025.15; 601844.26, 3373048.36; 601816.50, 3373072.78; 601799.99, 3373071.04; 601789.68, 3373059.55; 601764.95, 3373042.41; 601751.13, 3373012.99; 601725.10, 3372994.49; 601700.34, 3373005.10; 601680.55, 3373028.40; 601659.92, 3373058.94; 601630.17, 3373083.30; 601595.72, 3373083.76; 601568.63, 3373081.76; 601562.85, 3373153.48; 601546.32, 3373152.40; 601512.87, 3373139.67; 601482.57, 3373133.62; 601457.54, 3373128.37; 601443.06, 3373124.70; 601441.20, 3373198.67; 601422.79, 3373201.67; 601394.66, 3373207.46; 601366.96, 3373215.01; 601339.78, 3373224.29; 601313.25, 3373235.25; 601287.45, 3373247.86; 601262.49, 3373262.06; 601238.48, 3373277.81; 601215.50, 3373295.02; 601193.65, 3373313.65; 601173.01, 3373333.62; 601153.66, 3373354.84; 601135.69, 3373377.23; 601119.15, 3373400.70; 601104.13, 3373425.17; 601090.67, 3373450.54; 601078.83, 3373476.70; 601068.65, 3373503.55; 601060.18, 3373530.98; 601053.45, 3373558.90; 601048.49, 3373587.18; 601045.31, 3373615.72; 601043.93, 3373644.40; 601044.35, 3373673.11; 601046.58, 3373701.74; 601050.60, 3373730.17; 601056.39, 3373758.30; 601063.95, 3373786.00; 601073.22, 3373813.17; 601084.18, 3373839.71; 601096.79, 3373865.51; 601111.00, 3373890.47; 601126.74, 3373914.48; 601143.96, 3373937.46; 601162.58, 3373959.31; 601182.55, 3373979.95; 601203.77, 3373999.30; 601226.16, 3374017.27; 601249.64, 3374033.81; 601274.11, 3374048.83; 601299.47, 3374062.29; 601325.63, 3374074.13; 601352.48, 3374084.31; 601379.92, 3374092.78; 601407.83, 3374099.51; 601436.11, 3374104.47; 601464.65, 3374107.65; 601493.33, 3374109.03.

(B) *Note:* Map depicting Unit RFS–6, Subunit A is provided at paragraph (6)(ix)(B) of this entry.

(vii) Unit RFS–6, Subunit B—Washington County, Florida. From USGS 1:24,000 scale quadrangle map Bruce, Florida.

(A) Land bounded by the following UTM Zone 16N, NAD83 coordinates (E, N): 607444.16, 3365585.74; 607435.59, 3366042.75; 607464.30, 3366042.38; 607492.93, 3366040.22; 607521.37, 3366036.26; 607549.51, 3366030.52; 607577.23, 3366023.03; 607604.42, 3366013.81; 607630.98, 3366002.90; 607656.81, 3365990.35; 607681.79, 3365976.20; 607705.84, 3365960.50; 607728.86, 3365943.33; 607750.75, 3365924.75; 607771.43, 3365904.83; 607790.82, 3365883.65; 607808.84, 3365861.30; 607825.42, 3365837.85; 607840.50, 3365813.42; 607854.02, 3365788.08; 607865.91, 3365761.94; 607876.14, 3365735.11; 607884.67, 3365707.70; 607891.46, 3365679.79; 607896.48, 3365651.52; 607899.72, 3365622.99; 607901.16, 3365594.31; 607900.79, 3365565.60; 607898.63, 3365536.97; 607894.67, 3365508.53; 607888.93, 3365480.39; 607881.44, 3365452.67; 607872.22, 3365425.48; 607861.31, 3365398.91; 607848.76, 3365373.09; 607834.61, 3365348.10; 607818.91, 3365324.06; 607801.74, 3365301.04; 607783.16, 3365279.15; 607763.24, 3365258.47; 607742.06, 3365239.08; 607719.71, 3365221.06; 607696.26, 3365204.48; 607671.83, 3365189.40; 607646.49, 3365175.88; 607620.36, 3365163.99; 607593.53, 3365153.76; 607566.11, 3365145.23; 607538.21, 3365138.44; 607509.93, 3365133.42; 607481.40, 3365130.18; 607452.72, 3365128.74; 607424.01, 3365129.11; 607395.38, 3365131.27; 607366.94, 3365135.23; 607338.80, 3365140.97; 607311.08, 3365148.46; 607283.89, 3365157.68; 607257.33, 3365168.59; 607231.50, 3365181.14; 607206.52, 3365195.29; 607182.47, 3365210.99; 607159.45, 3365228.16; 607137.56, 3365246.74; 607116.88, 3365266.66; 607097.49, 3365287.84; 607079.47, 3365310.19; 607062.89, 3365333.64; 607047.81, 3365358.07; 607034.30, 3365383.41; 607022.40, 3365409.54; 607012.17, 3365436.37; 607003.64, 3365463.79; 606996.85, 3365491.69; 606991.83, 3365519.97; 606988.59, 3365548.50; 606987.15, 3365577.18; 606987.52, 3365605.89; 606989.68, 3365634.52; 606993.64, 3365662.96; 606999.38, 3365691.10; 607006.87, 3365718.82; 607016.09, 3365746.01; 607027.00, 3365772.57; 607039.55, 3365798.40; 607053.70, 3365823.38; 607069.40, 3365847.43; 607086.57, 3365870.45; 607105.15, 3365892.34; 607125.07, 3365913.02; 607146.25, 3365932.41; 607168.60, 3365950.43; 607192.05, 3365967.01; 607216.48, 3365982.09; 607241.82, 3365995.60; 607267.95, 3366007.50; 607294.78, 3366017.73; 607322.20, 3366026.26; 607350.10, 3366033.05; 607378.38, 3366038.07; 607406.91, 3366041.31; 607435.59, 3366042.75.

(B) *Note:* Map depicting Unit RFS–6, Subunit B is provided at paragraph (6)(ix)(B) of this entry.

(viii) Unit RFS–7, Subunit A—Holmes County, Florida. From USGS 1:24,000 scale quadrangle map Bonifay, Florida.

(A) Land bounded by the following UTM Zone 16N, NAD83 coordinates (E, N): 630429.91, 3415116.39; 630422.24, 3415573.43; 630450.95, 3415573.01; 630479.58, 3415570.79; 630508.01, 3415566.77; 630536.14, 3415560.98; 630563.84, 3415553.43; 630591.02, 3415544.16; 630617.56, 3415533.20; 630643.36, 3415520.59; 630668.32, 3415506.39; 630692.34, 3415490.65; 630715.32, 3415473.44; 630737.18, 3415454.81; 630757.82, 3415434.85; 630777.17, 3415413.63; 630795.15, 3415391.24; 630811.68, 3415367.76; 630826.71, 3415343.29; 630840.18, 3415317.93; 630852.02, 3415291.77; 630862.20, 3415264.92; 630870.67, 3415237.48; 630877.41, 3415209.57; 630882.38, 3415181.28; 630885.56, 3415152.74; 630886.94, 3415124.06; 630886.52, 3415095.35; 630884.30, 3415066.72; 630880.28, 3415038.28; 630874.49, 3415010.16; 630866.94, 3414982.45; 630857.67, 3414955.27; 630846.71, 3414928.73; 630834.11, 3414902.93; 630819.91, 3414877.97; 630804.17, 3414853.95; 630786.95, 3414830.97; 630768.32, 3414809.11; 630748.36, 3414788.47; 630727.15, 3414769.12; 630704.75, 3414751.14;

630681.28, 3414734.60; 630656.81, 3414719.57; 630631.45, 3414706.11; 630605.29, 3414694.26; 630578.44, 3414684.08; 630551.00, 3414675.61; 630523.09, 3414668.88; 630494.81, 3414663.91; 630466.27, 3414660.73; 630437.59, 3414659.34; 630408.87, 3414659.76; 630380.24, 3414661.99; 630351.81, 3414666.00; 630323.69, 3414671.79; 630295.98, 3414679.34; 630268.80, 3414688.61; 630242.26, 3414699.58; 630216.46, 3414712.18; 630191.50, 3414726.38; 630167.49, 3414742.12; 630144.51, 3414759.34; 630122.65, 3414777.97; 630102.01, 3414797.93; 630082.66, 3414819.15; 630064.68, 3414841.54; 630048.14, 3414865.01; 630033.11, 3414889.48; 630019.65, 3414914.85; 630007.80, 3414941.01; 629997.63, 3414967.86; 629989.15, 3414995.29; 629982.42, 3415023.21; 629977.45, 3415051.49; 629974.27, 3415080.03; 629972.89, 3415108.72; 629973.31, 3415137.43; 629975.53, 3415166.06; 629979.54, 3415194.49; 629985.34, 3415222.62; 629992.88, 3415250.32; 630002.16, 3415277.50; 630013.12, 3415304.04; 630025.72, 3415329.85; 630039.92, 3415354.81; 630055.66, 3415378.82; 630072.88, 3415401.81; 630091.50, 3415423.66; 630111.46, 3415444.31; 630132.68, 3415463.65; 630155.07, 3415481.63; 630178.55, 3415498.17; 630203.02, 3415513.20; 630228.38, 3415526.67; 630254.54, 3415538.51; 630281.39, 3415548.69; 630308.82, 3415557.16; 630336.74, 3415563.90; 630365.02, 3415568.87; 630393.56, 3415572.05; 630422.24, 3415573.43.

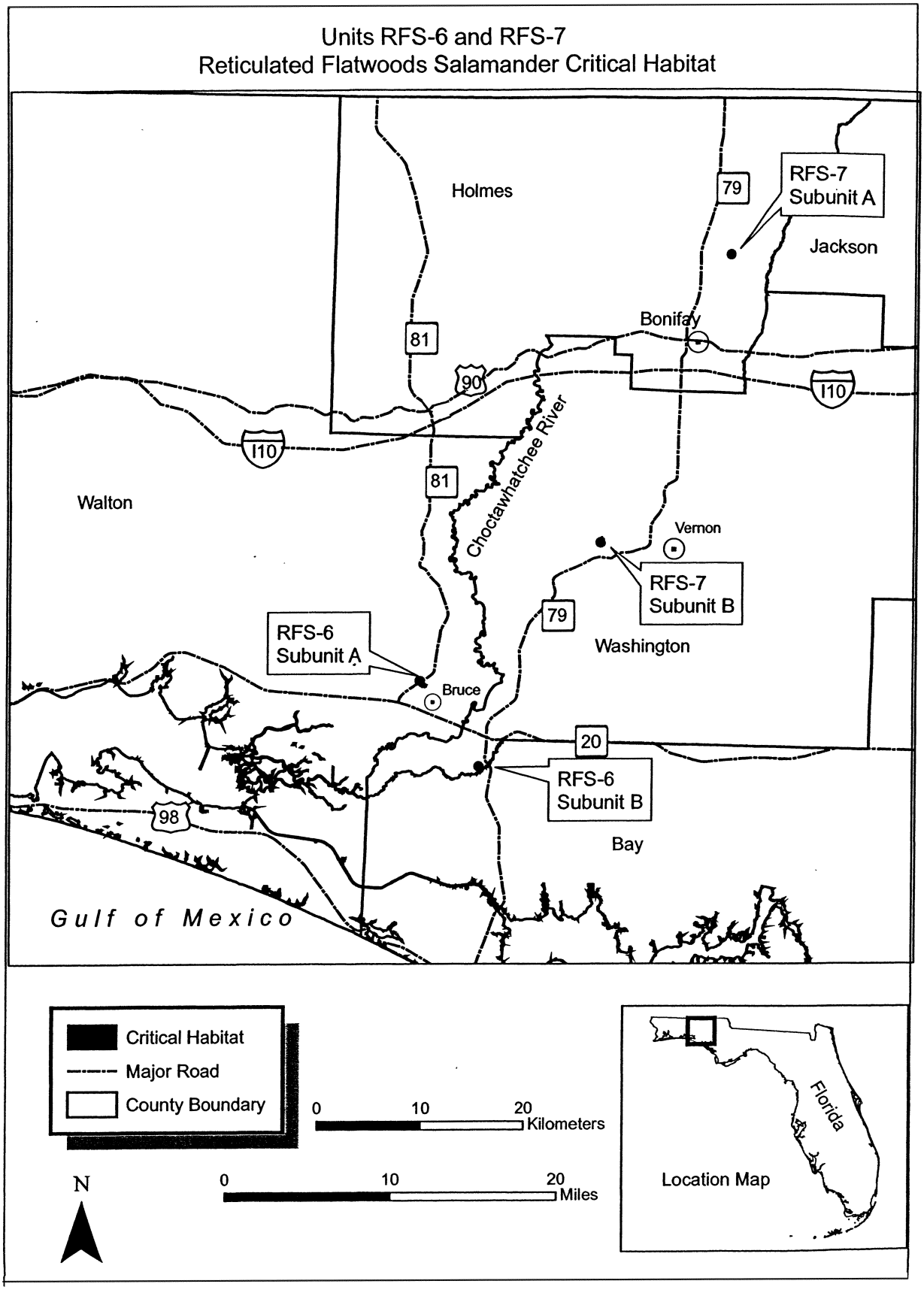
(B) *Note:* Map depicting Unit RFS–7, Subunit A is provided at paragraph (6)(ix)(B) of this entry.

(ix) Unit RFS–7, Subunit B—Washington County, Florida. From USGS 1:24,000 quadrangle map Millers Ferry, Florida.

(A) Land bounded by the following UTM Zone 16N, NAD83 coordinates (E, N): 618603.41, 3387429.45; 618699.68, 3387966.18; 618708.26, 3387969.49; 618723.71, 3387970.50; 618726.33, 3387965.00; 618725.78, 3387937.80; 618728.76, 3387918.09; 618732.40, 3387896.55; 618738.22, 3387886.81; 618755.97, 3387870.57; 618776.73, 3387857.50; 618803.06, 3387844.57; 618839.32, 3387830.66; 618872.53, 3387815.43; 618904.43, 3387802.63; 618918.85, 3387795.58; 618926.43, 3387789.59; 618930.96, 3387781.67; 618931.79, 3387748.94; 618930.13, 3387716.76; 618932.43, 3387674.79; 618932.53, 3387646.37; 618934.03, 3387611.79; 618948.87, 3387588.07; 618962.97, 3387569.26; 618980.28, 3387545.60; 618995.92, 3387515.09; 619007.01, 3387492.50; 619018.24, 3387464.98; 619025.65, 3387441.06; 619035.64, 3387413.50; 619042.95, 3387393.91; 619052.14, 3387373.13; 619059.11, 3387348.17; 619055.09, 3387319.74; 619049.30, 3387291.61; 619041.75, 3387263.91; 619032.48, 3387236.73; 619021.51, 3387210.19; 619008.91, 3387184.39; 618994.70, 3387159.43; 618978.96, 3387135.42; 618961.74, 3387112.44; 618943.12, 3387090.58; 618923.15, 3387069.94; 618901.93, 3387050.59; 618879.54, 3387032.62; 618856.06, 3387016.08; 618831.60, 3387001.05; 618806.23, 3386987.59; 618780.07, 3386975.75; 618753.22, 3386965.57; 618725.78, 3386957.10; 618697.87, 3386950.37; 618669.59, 3386945.41; 618641.05, 3386942.23; 618612.37, 3386940.85; 618583.65, 3386941.27; 618555.02, 3386943.49; 618526.59, 3386947.51; 618498.47, 3386953.31; 618470.76, 3386960.86; 618443.59, 3386970.13; 618417.05, 3386981.10; 618391.25, 3386993.70; 618366.29, 3387007.91; 618342.28, 3387023.65; 618319.30, 3387040.87; 618297.44, 3387059.49; 618276.80, 3387079.46; 618257.46, 3387100.68; 618239.48, 3387123.07; 618222.95, 3387146.55; 618207.92, 3387171.02; 618194.46, 3387196.38; 618182.61, 3387222.54; 618172.44, 3387249.39; 618163.97, 3387276.83; 618157.24, 3387304.75; 618152.27, 3387333.03; 618149.09, 3387361.57; 618147.71, 3387390.25; 618148.13, 3387418.97; 618150.36, 3387447.59; 618154.38, 3387476.03; 618160.17, 3387504.15; 618167.72, 3387531.86; 618177.00, 3387559.03; 618187.96, 3387585.58; 618200.57, 3387611.37; 618214.77, 3387636.33; 618230.51, 3387660.35; 618247.73, 3387683.33; 618266.36, 3387705.18; 618286.32, 3387725.82; 618307.54, 3387745.17; 618329.93, 3387763.15; 618353.41, 3387779.68; 618377.88, 3387794.71; 618403.24, 3387808.17; 618429.40, 3387820.02; 618456.25, 3387830.19; 618483.69, 3387838.66; 618511.60, 3387845.39; 618552.33, 3387867.90; 618598.24, 3387912.94; 618635.11, 3387948.48; 618647.90, 3387956.84; 618666.90, 3387964.74; 618689.14, 3387966.53; 618699.68, 3387966.18.

(B) *Note:* Map of Units RFS–6 and RFS–7 follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(x) Unit RFS–8, Subunit A—Jackson County, Florida. From USGS 1:24,000 quadrangle map Cottondale West, Florida.

(A) Land bounded by the following UTM Zone 16N, NAD83 coordinates (E, N): 652825.49, 3407068.83; 652825.48, 3407068.83; 653303.68, 3406605.29; 653038.02, 3406583.61; 653039.18, 3406691.92; 653028.57, 3406721.18; 653006.55, 3406734.40; 652986.39, 3406751.60; 652981.54, 3406786.91; 652980.43, 3406830.19; 652979.67, 3406859.70; 652965.63, 3406869.19; 652941.78, 3406876.45; 652916.11, 3406877.76; 652884.59, 3406876.95; 652859.18, 3406868.42; 652831.89, 3406855.91; 652800.52, 3406849.20; 652767.02, 3406848.34; 652747.17, 3406853.74; 652732.87, 3406873.06; 652724.33, 3406898.44; 652743.83, 3406906.81; 652763.39, 3406913.22; 652758.74, 3406940.66; 652753.99, 3406972.04; 652760.86, 3407011.59; 652764.09, 3407039.23; 652761.57, 3407060.82; 652749.49, 3407070.36; 652725.65, 3407077.62; 652709.68, 3407085.09; 652701.20, 3407108.49; 652698.57, 3407134.02; 652696.09, 3407153.64; 652674.12, 3407164.89; 652656.23, 3407170.34; 652642.04, 3407185.72; 652620.14, 3407175.05; 652594.55, 3407165.80; 652583.46, 3407159.57; 652578.33, 3407152.82; 652573.28, 3407143.44; 652569.58, 3407132.77; 652565.24, 3407121.42; 652555.67, 3407107.29; 652545.45, 3407092.48; 652535.85, 3407079.68; 652526.16, 3407070.17; 652517.58, 3407069.29; 652507.43, 3407077.62; 652495.88, 3407089.23; 652486.90, 3407103.54; 652483.22, 3407117.99; 652480.80, 3407135.12; 652478.24, 3407157.53; 652480.37, 3407177.42; 652480.51, 3407197.92; 652475.78, 3407201.76; 652465.72, 3407206.79; 652458.25, 3407213.87; 652449.33, 3407226.21; 652438.05, 3407227.24; 652428.85, 3407224.36; 652417.75, 3407218.12; 652411.37, 3407208.70; 652407.64, 3407199.35; 652404.20, 3407178.77; 652402.01, 3407160.86; 652397.94, 3407138.94; 652395.00, 3407124.32; 652386.76, 3407110.23; 652373.71, 3407102.62; 652360.44, 3407103.60; 652343.53, 3407117.72; 652333.43, 3407124.07; 652322.15, 3407125.10; 652314.14, 3407127.54; 652305.95, 3407137.25; 652296.58, 3407140.97; 652287.20, 3407145.36; 652274.56, 3407147.68; 652268.06, 3407142.89; 652261.53, 3407139.41; 652255.03, 3407134.62; 652248.60, 3407127.18; 652243.50, 3407119.78; 652238.44, 3407110.39; 652237.44, 3407097.81; 652241.12, 3407083.36; 652242.82, 3407068.86; 652245.24, 3407051.73; 652244.24, 3407039.14; 652236.01, 3407024.39; 652221.05, 3407014.09; 652203.25, 3407010.99; 652190.56, 3407015.29; 652182.47, 3407021.03; 652175.50, 3407034.74; 652172.53, 3407047.22; 652173.53, 3407059.81; 652170.75, 3407065.03; 652164.64, 3407070.82; 652155.26, 3407075.21; 652145.32, 3407075.61; 652133.44, 3407073.99; 652119.02, 3407068.33; 652106.60, 3407062.06; 652100.97, 3407049.36; 652097.32, 3407036.70; 652077.38, 3407039.50; 652052.56, 3407052.08; 652042.52, 3407056.45; 652034.12, 3407074.09; 652048.98, 3407088.35; 652061.11, 3407105.85; 652085.32, 3407117.05; 652106.16, 3407130.80; 652105.19, 3407142.68; 652106.02, 3407161.87; 652112.91, 3407177.25; 652135.31, 3407181.79; 652182.83, 3407187.64; 652215.86, 3407190.47; 652257.41, 3407196.82; 652295.04, 3407201.09; 652314.35, 3407205.65; 652308.49, 3407218.63; 652292.89, 3407233.43; 652266.52, 3407254.57; 652238.70, 3407280.96; 652220.19, 3407305.61; 652212.44, 3407323.92; 652210.01, 3407341.05; 652209.77, 3407350.30; 652210.11, 3407362.87; 652213.26, 3407375.54; 652299.80, 3407383.66; 652374.80, 3407395.52; 652472.45, 3407408.60; 652594.12, 3407426.43; 652663.66, 3407439.95; 652719.80, 3407445.35; 652756.73, 3407450.93; 652822.76, 3407457.91; 652861.06, 3407462.20; 652917.52, 3407467.64; 652905.20, 3407362.30; 652901.54, 3407298.74; 652968.31, 3407276.65; 653003.40, 3407251.11; 653001.57, 3407219.33; 652994.98, 3407166.27; 653006.18, 3407142.76; 653022.74, 3407116.74; 653023.96, 3407069.17; 653009.23, 3407023.84; 653002.04, 3406994.56; 653028.78, 3406984.67; 653046.56, 3407014.22; 653069.77, 3407038.61; 653101.19, 3407052.64; 653145.98, 3407061.72; 653188.39, 3407060.16; 653209.09, 3407079.20; 653227.21, 3407095.54; 653233.05, 3407074.53; 653231.22, 3407042.75; 653237.12, 3407019.10; 653258.77, 3407001.15; 653290.87, 3406988.75; 653294.33, 3406957.10; 653292.43, 3406927.97; 653290.39, 3406904.11; 653290.87, 3406885.61; 653306.88, 3406880.74; 653330.43, 3406891.92; 653353.91, 3406905.74; 653377.80, 3406903.71; 653389.13, 3406874.91; 653395.38, 3406838.05; 653396.39, 3406798.41; 653397.07, 3406771.98; 653400.40, 3406745.62; 653413.97, 3406732.75; 653440.50, 3406730.79; 653454.01, 3406720.56; 653454.42, 3406704.70; 653438.67, 3406699.01; 653411.87, 3406711.54; 653393.20, 3406716.35; 653374.68, 3406715.88; 653358.93, 3406710.18; 653341.08, 3406683.28; 653331.11, 3406659.23; 653321.06, 3406637.81; 653308.37, 3406616.33; 653303.68, 3406605.29.

(B) *Note:* Map depicting Unit RFS–8, Subunit A is provided at paragraph (6)(xiv)(B) of this entry.

(xi) Unit RFS–8, Subunit B—Jackson County, Florida. From USGS 1:24,000 scale quadrangle map Oakdale, Florida.

(A) Land bounded by the following UTM Zone 16N, NAD83 coordinates (E, N): 674995.60, 3401690.28; 673875.85, 3402158.93; 674341.17, 3402164.28; 674675.84, 3402154.41; 674910.48, 3402162.13; 675034.90, 3402087.99; 675083.93, 3402061.49; 675233.86, 3401974.12; 675401.89, 3401877.97; 675485.18, 3401832.51; 675531.62, 3401803.30; 675583.62, 3401764.31; 675781.28, 3401546.61; 675851.43, 3401471.73; 675878.14, 3401437.38; 675932.68, 3401376.64; 675959.66, 3401349.36; 675970.87, 3401333.99; 675981.97, 3401314.44; 676115.36, 3401200.87; 676086.59, 3401161.12; 676052.69, 3401114.62; 676041.90, 3401096.49; 676016.12, 3401069.38; 675998.03, 3401051.73; 675964.86, 3401028.39; 675934.93, 3401007.79; 675918.10, 3400992.81; 675908.38, 3400984.62; 675897.49, 3400970.46; 675889.97, 3400953.73; 675879.31, 3400879.41; 675844.53, 3400893.06; 675327.40, 3401121.69; 674861.39, 3401328.81; 674684.03, 3401401.59; 674391.31, 3401530.89; 673876.29, 3401753.54; 673877.85, 3402081.41; 673875.85, 3402158.93.

(B) *Note:* Map depicting Unit RFS–8, Subunit B is provided at paragraph (6)(xiv)(B) of this entry.

(xii) Unit RFS–8, Subunit C—Jackson County, Florida. From USGS 1:24,000 scale quadrangle map Cypress, Florida.

(A) Land bounded by the following UTM Zone 16N, NAD83 coordinates (E, N): 683829.73, 3393074.70; 684023.32, 3393574.80; 684052.04, 3393574.38; 684080.68, 3393572.16; 684109.12, 3393568.14; 684137.25, 3393562.34; 684164.96, 3393554.79; 684192.15, 3393545.52; 684218.69, 3393534.55; 684244.50, 3393521.94; 684269.46, 3393507.74; 684293.49, 3393491.99; 684316.47, 3393474.77; 684338.33, 3393456.14; 684358.98, 3393436.17; 684378.33, 3393414.95; 684396.32, 3393392.55; 684412.86, 3393369.07; 684427.89, 3393344.60; 684441.36, 3393319.23; 684453.20, 3393293.06; 684463.38, 3393266.20; 684471.86, 3393238.76; 684478.59, 3393210.84; 684483.56, 3393182.55; 684486.74, 3393154.00; 684488.12, 3393125.31; 684487.70, 3393096.59; 684485.48, 3393067.96; 684481.46, 3393039.52; 684475.66, 3393011.38; 684468.11, 3392983.67; 684458.84, 3392956.49; 684447.87, 3392929.94; 684435.27, 3392904.13; 684421.06, 3392879.17;

684405.32, 3392855.15; 684388.09, 3392832.16; 684369.46, 3392810.30; 684349.50, 3392789.65; 684328.27, 3392770.30; 684305.87, 3392752.32; 684282.39, 3392735.78; 684257.92, 3392720.75; 684232.55, 3392707.28; 684206.38, 3392695.43; 684179.52, 3392685.25; 684152.08, 3392676.78; 684124.16, 3392670.04; 684095.87, 3392665.08; 684067.32, 3392661.89; 684038.63, 3392660.51; 684009.91, 3392660.93; 683981.28, 3392663.16; 683966.02, 3392656.75; 683947.05, 3392647.66; 683923.43, 3392639.12; 683903.85, 3392628.04; 683886.86, 3392619.00; 683867.12, 3392613.87; 683843.82, 3392618.55; 683819.20, 3392623.21; 683789.11, 3392634.33; 683770.46, 3392638.47; 683744.30, 3392651.02; 683720.12, 3392664.28; 683706.10, 3392668.55; 683685.47, 3392672.64; 683658.43, 3392667.97; 683632.03, 3392664.65; 683606.95, 3392661.36; 683585.89, 3392656.18; 683542.11, 3392633.24; 683512.11, 3392615.27; 683479.46, 3392597.24; 683450.00, 3392583.92; 683423.91, 3392568.70; 683385.42, 3392545.89; 683371.14, 3392534.94; 683348.35, 3392519.81; 683332.69, 3392510.81; 683315.62, 3392505.08; 683294.59, 3392498.59; 683272.28, 3392490.74; 683253.15, 3392487.60; 683203.24, 3392496.89; 683207.64, 3392582.95; 683209.99, 3392696.72; 683212.45, 3392729.84; 683218.34, 3392783.54; 683218.66, 3392796.77; 683214.15, 3392817.81; 683194.50, 3392886.06; 683182.83, 3392927.40; 683174.68, 3392960.91; 683171.34, 3392987.93; 683171.38, 3393011.73; 683174.93, 3393028.35; 683181.19, 3393042.39; 683179.64, 3393050.95; 683179.13, 3393070.77; 683177.70, 3393100.48; 683176.50, 3393146.73; 683179.16, 3393171.92; 683183.14, 3393197.15; 683188.54, 3393219.10; 683190.03, 3393238.31; 683189.67, 3393252.19; 683214.05, 3393256.78; 683227.92, 3393258.46; 683266.03, 3393270.03; 683309.50, 3393279.08; 683347.79, 3393284.04; 683367.66, 3393283.89; 683389.34, 3393286.52; 683469.22, 3393300.40; 683524.08, 3393304.46; 683580.93, 3393308.57; 683593.71, 3393300.97; 683608.59, 3393292.07; 683614.08, 3393305.37; 683626.69, 3393331.18; 683640.90, 3393356.14; 683656.64, 3393380.17; 683673.86, 3393403.15; 683692.49, 3393425.01; 683712.46, 3393445.66; 683733.68, 3393465.01; 683756.08, 3393482.99; 683779.56, 3393499.53; 683804.04, 3393514.57; 683829.41, 3393528.03; 683855.57, 3393539.88; 683882.43, 3393550.06; 683909.88, 3393558.54; 683937.80, 3393565.27; 683966.09, 3393570.24; 683994.63, 3393573.42; 684023.32, 3393574.80.

(B) *Note:* Map depicting Unit RFS–8, Subunit C is provided at paragraph (6)(xiv)(B) of this entry.

(xiii) Unit RFS–9, Subunit A—Calhoun County, Florida. From USGS 1:24,000 scale quadrangle map Broad Branch, Florida.

(A) Land bounded by the following UTM Zone 16N, NAD83 coordinates (E, N): 664818.75, 3351879.40; 664810.75, 3352336.50; 664839.47, 3352336.10; 664868.11, 3352333.90; 664896.55, 3352329.90; 664924.68, 3352324.13; 664952.40, 3352316.60; 664979.59, 3352307.34; 665006.14, 3352296.40; 665031.95, 3352283.81; 665056.93, 3352269.63; 665080.96, 3352253.90; 665103.96, 3352236.70; 665125.83, 3352218.08; 665146.49, 3352198.13; 665165.86, 3352176.93; 665183.85, 3352154.54; 665200.41, 3352131.08; 665215.46, 3352106.61; 665228.94, 3352081.26; 665240.81, 3352055.10; 665251.01, 3352028.25; 665259.50, 3352000.82; 665266.26, 3351972.90; 665271.25, 3351944.62; 665274.45, 3351916.08; 665275.85, 3351887.39; 665275.45, 3351858.67; 665273.25, 3351830.04; 665269.26, 3351801.60; 665263.48, 3351773.46; 665255.95, 3351745.75; 665246.70, 3351718.56; 665235.75, 3351692.00; 665223.16, 3351666.19; 665208.98, 3351641.22; 665193.25, 3351617.18; 665176.05, 3351594.19; 665157.44, 3351572.31; 665137.49, 3351551.65; 665116.28, 3351532.29; 665093.90, 3351514.29; 665070.43, 3351497.73; 665045.97, 3351482.68; 665020.61, 3351469.20; 664994.45, 3351457.33; 664967.61, 3351447.13; 664940.17, 3351438.64; 664912.26, 3351431.89; 664883.97, 3351426.90; 664855.43, 3351423.70; 664826.74, 3351422.29; 664798.03, 3351422.69; 664769.39, 3351424.89; 664740.95, 3351428.89; 664712.82, 3351434.66; 664685.10, 3351442.19; 664657.91, 3351451.45; 664631.36, 3351462.39; 664605.54, 3351474.98; 664580.57, 3351489.17; 664556.54, 3351504.89; 664533.54, 3351522.09; 664511.67, 3351540.71; 664491.01, 3351560.66; 664471.64, 3351581.87; 664453.64, 3351604.25; 664437.09, 3351627.72; 664422.04, 3351652.18; 664408.55, 3351677.53; 664396.69, 3351703.69; 664386.49, 3351730.54; 664377.99, 3351757.97; 664371.24, 3351785.89; 664366.25, 3351814.17; 664363.05, 3351842.71; 664361.65, 3351871.40; 664362.05, 3351900.12; 664364.25, 3351928.75; 664368.24, 3351957.19; 664374.02, 3351985.33; 664381.55, 3352013.04; 664390.80, 3352040.23; 664401.74, 3352066.79; 664414.33, 3352092.60; 664428.52, 3352117.57; 664444.24, 3352141.60; 664461.45, 3352164.60; 664480.06, 3352186.47; 664500.01, 3352207.14; 664521.22, 3352226.50; 664543.60, 3352244.50; 664567.07, 3352261.06; 664591.53, 3352276.11; 664616.89, 3352289.59; 664643.04, 3352301.46; 664669.89, 3352311.66; 664697.33, 3352320.15; 664725.24, 3352326.90; 664753.53, 3352331.89; 664782.07, 3352335.09; 664810.75, 3352336.50.

(B) *Note:* Map depicting Unit RFS–9, Subunit A is provided at paragraph (6)(xiv)(B) of this entry.

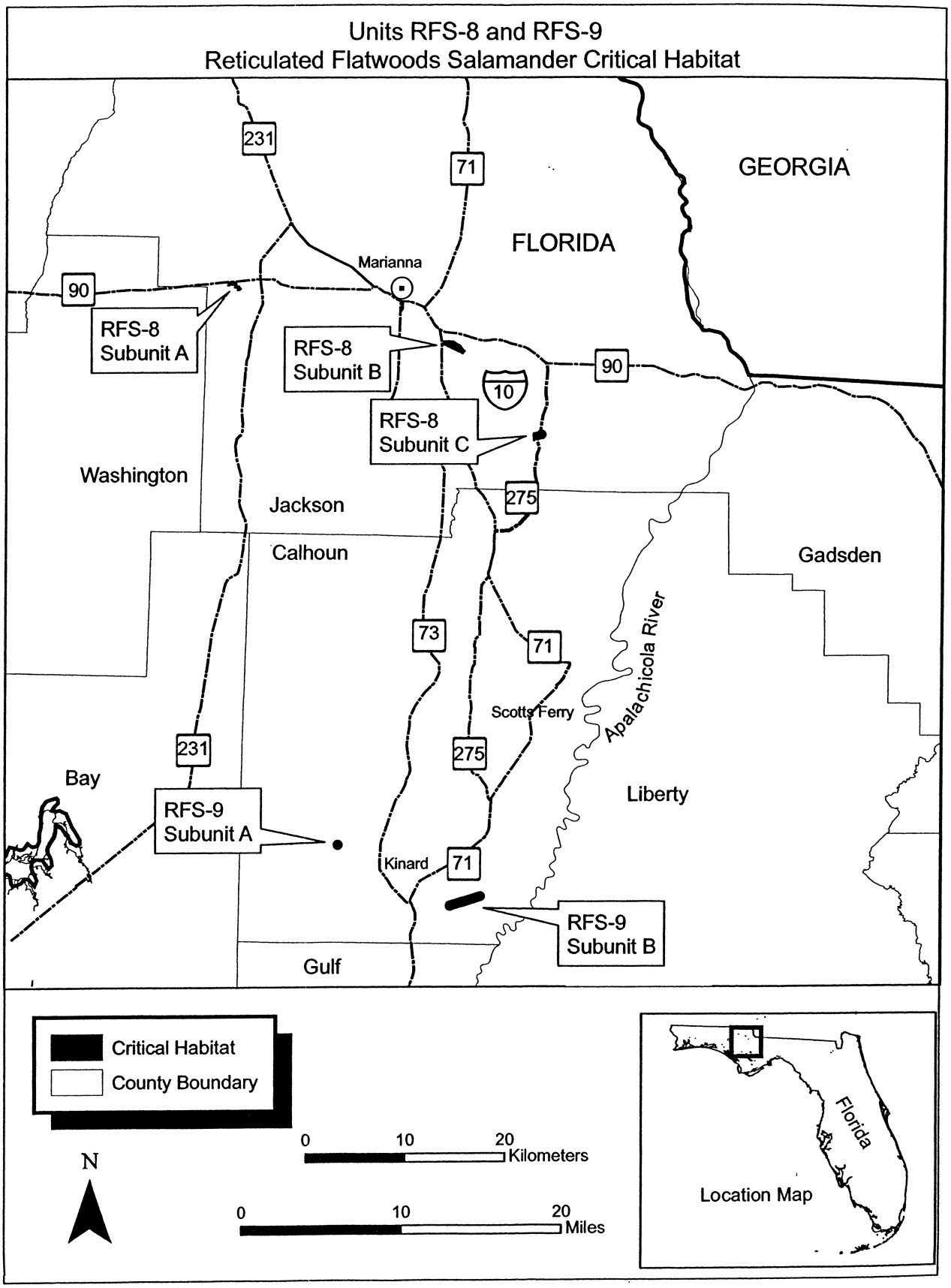
(xiv) Unit RFS–9, Subunit B—Calhoun County, Florida. From USGS 1:24,000 scale quadrangle map Dead Lake, Florida.

(A) Land bounded by the following UTM Zone 16N, NAD83 coordinates (E, N): 677786.48, 3346665.69; 676322.21, 3345710.86; 676293.52, 3345709.49; 676264.80, 3345709.91; 676236.17, 3345712.14; 676207.73, 3345716.17; 676179.60, 3345721.97; 676151.89, 3345729.52; 676124.71, 3345738.80; 676098.16, 3345749.77; 676072.36, 3345762.39; 676047.40, 3345776.60; 676023.38, 3345792.34; 676000.40, 3345809.57; 675978.54, 3345828.20; 675957.90, 3345848.17; 675938.55, 3345869.40; 675920.57, 3345891.80; 675904.04, 3345915.28; 675889.01, 3345939.76; 675875.55, 3345965.13; 675863.71, 3345991.30; 675853.53, 3346018.16; 675845.07, 3346045.60; 675838.34, 3346073.52; 675833.38, 3346101.81; 675830.20, 3346130.36; 675828.82, 3346159.05; 675829.25, 3346187.76; 675831.48, 3346216.40; 675835.50, 3346244.84; 675841.31, 3346272.97; 675848.86, 3346300.67; 675858.14, 3346327.85; 675869.11, 3346354.40; 675881.73, 3346380.20; 675895.94, 3346405.16; 675911.69, 3346429.18; 675928.91, 3346452.16; 675947.55, 3346474.02; 675967.52, 3346494.66; 675988.75, 3346514.01; 676011.15, 3346531.98; 676034.63, 3346548.52; 676059.11, 3346563.55; 676084.48, 3346577.01; 676110.65, 3346588.85; 676137.51, 3346599.02; 679138.53, 3347597.18; 679165.98, 3347605.65; 679193.90, 3347612.37; 679222.19, 3347617.34; 679250.74, 3347620.51; 679279.43, 3347621.89; 679308.15, 3347621.46; 679336.78, 3347619.23; 679365.22, 3347615.21; 679393.35, 3347609.41; 679421.06, 3347601.85; 679448.25, 3347592.57; 679474.79, 3347581.60; 679500.60, 3347568.99; 679525.56, 3347554.78; 679549.58, 3347539.03; 679572.56, 3347521.81; 679594.42, 3347503.17; 679615.06, 3347483.20; 679634.41, 3347461.97; 679652.39, 3347439.57; 679668.92, 3347416.09; 679683.95, 3347391.61; 679697.41, 3347366.24; 679709.25, 3347340.07; 679719.43, 3347313.22; 679727.89, 3347285.77;

679734.62, 3347257.85; 679739.58, 3347229.56; 679742.76, 3347201.01; 679744.14, 3347172.32; 679743.71, 3347143.61; 679741.48, 3347114.97; 679737.46, 3347086.53; 679731.66, 3347058.40; 679724.10, 3347030.69; 679714.82, 3347003.51; 679703.85, 3346976.97; 679691.23, 3346951.16; 679677.02, 3346926.20; 679661.27, 3346902.19; 679644.05, 3346879.20; 679625.41, 3346857.35; 679605.44, 3346836.70; 679584.21, 3346817.36; 679561.81, 3346799.38; 679538.33, 3346782.84; 679513.85, 3346767.82; 679488.47, 3346754.36; 679462.31, 3346742.52; 679435.45, 3346732.34; 676434.42, 3345734.20; 676406.97, 3345725.73; 676379.05, 3345719.00; 676350.76, 3345714.04; 676322.21, 3345710.86.

(B) *Note:* Map of Units RFS–8 and RFS–9 follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(7) Reticulated flatwood salamander—Baker and Miller Counties, Georgia.

(i) Unit RFS–10, Subunit A—Miller County, Georgia. From USGS 1:24,000 scale quadrangle map Donalsonville NE, Georgia.

(A) Land bounded by the following UTM Zone 16N, NAD83 coordinates (E, N): 709773.06, 3456290.97; 709801.78, 3456290.64; 709830.43, 3456288.51; 709858.89, 3456284.58; 709887.04, 3456278.87; 709914.78, 3456271.41; 709942.00, 3456262.22; 709968.58, 3456251.34; 709994.43, 3456238.81; 710019.45, 3456224.68; 710043.52, 3456209.01; 710066.57, 3456191.86; 710088.49, 3456173.30; 710109.20, 3456153.39; 710128.62, 3456132.23; 710146.68, 3456109.89; 710163.30, 3456086.45; 710178.41, 3456062.02; 710191.96, 3456036.69; 710203.89, 3456010.56; 710214.16, 3455983.73; 710222.72, 3455956.31; 710229.54, 3455928.41; 710234.60, 3455900.13; 710237.88, 3455871.59; 710239.35, 3455842.91; 710239.02, 3455814.18; 710236.89, 3455785.53; 710232.96, 3455757.08; 710227.25, 3455728.92; 710219.79, 3455701.18; 710210.60, 3455673.97; 710199.72, 3455647.38; 710187.19, 3455621.53; 710173.06, 3455596.52; 710157.39, 3455572.44; 710140.24, 3455549.40; 710121.68, 3455527.48; 710101.77, 3455506.76; 710080.61, 3455487.34; 710058.27, 3455469.29; 710034.83, 3455452.67; 710010.40, 3455437.56; 709985.07, 3455424.01; 709958.94, 3455412.08; 709932.11, 3455401.81; 709904.69, 3455393.25; 709876.79, 3455386.42; 709848.51, 3455381.36; 709819.97, 3455378.09; 709791.29, 3455376.62; 709762.56, 3455376.95; 709733.91, 3455379.08; 709705.46, 3455383.01; 709677.30, 3455388.71; 709649.56, 3455396.18; 709622.35, 3455405.37; 709595.76, 3455416.25; 709569.91, 3455428.78; 709544.90, 3455442.90; 709520.82, 3455458.57; 709497.78, 3455475.73; 709475.86, 3455494.29; 709455.15, 3455514.19; 709435.72, 3455535.36; 709417.67, 3455557.70; 709401.05, 3455581.13; 709385.94, 3455605.56; 709372.39, 3455630.89; 709360.46, 3455657.02; 709350.19, 3455683.85; 709341.63, 3455711.27; 709334.80, 3455739.18; 709329.75, 3455767.45; 709326.47, 3455795.99; 709325.00, 3455824.68; 709325.33, 3455853.40; 709327.46, 3455882.05; 709331.39, 3455910.51; 709337.10, 3455938.66; 709344.56, 3455966.40; 709353.75, 3455993.62; 709364.63, 3456020.20; 709377.16, 3456046.05; 709391.29, 3456071.07; 709406.96, 3456095.14; 709424.11, 3456118.19; 709442.67, 3456140.11; 709462.57, 3456160.82; 709483.74, 3456180.24; 709506.08, 3456198.30; 709529.51, 3456214.92; 709553.94, 3456230.03; 709579.27, 3456243.58; 709605.40, 3456255.51; 709632.23, 3456265.78; 709659.65, 3456274.34; 709687.56, 3456281.16; 709715.83, 3456286.22; 709744.37, 3456289.49; 709773.06, 3456290.97.

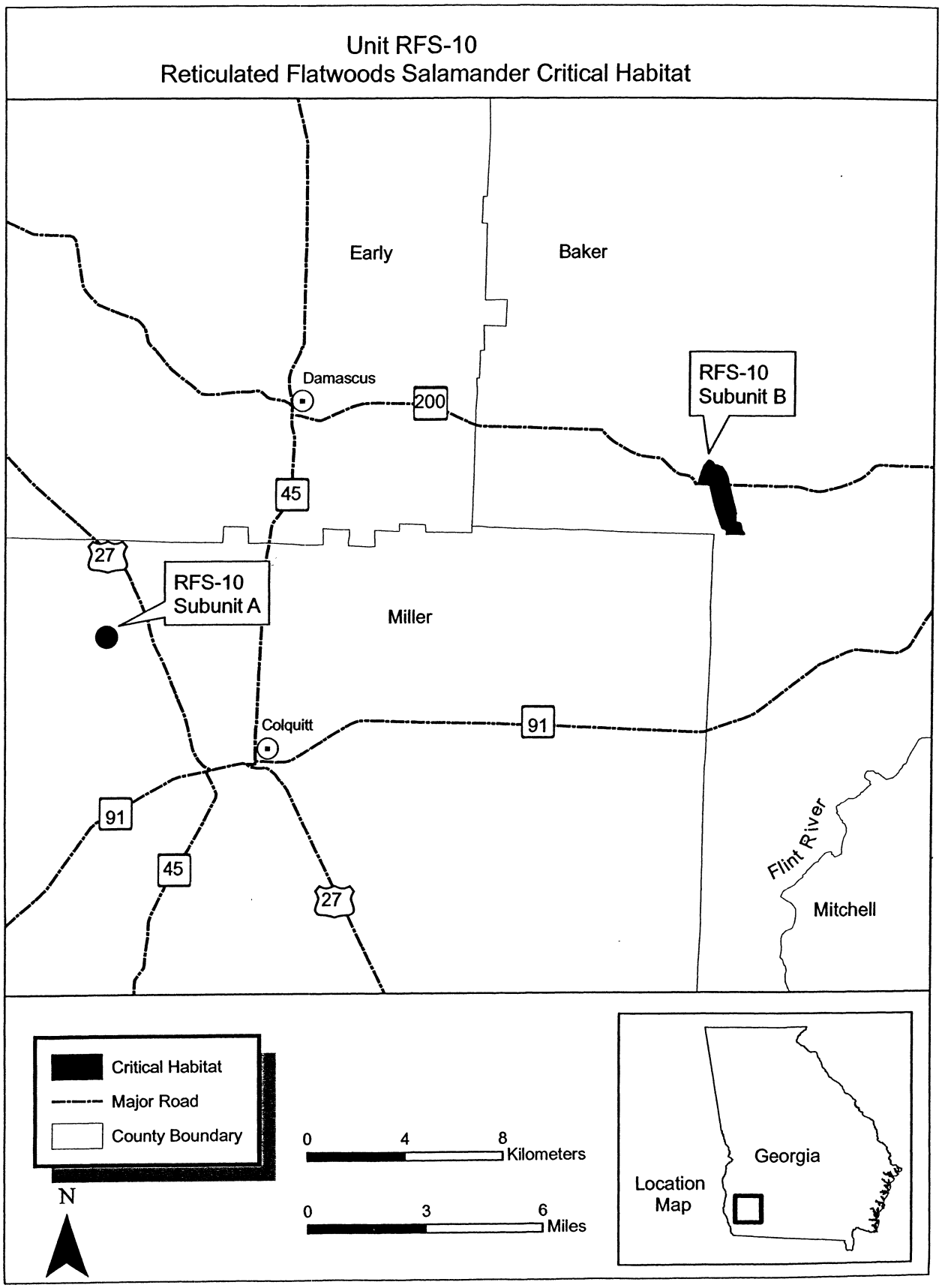
(B) *Note:* Map depicting Unit RFS–10, Subunit A is provided at paragraph (7)(ii)(B) of this entry.

(ii) Unit RFS–10, Subunit B—Baker County, Georgia. From USGS 1:24,000 scale quadrangle map Bethany, Georgia.

(A) Land bounded by the following UTM Zone 16N, NAD83 coordinates (E, N): 734799.11, 3462120.86; 735025.60, 3462958.51; 735075.16, 3462764.67; 735444.38, 3461469.20; 735412.19, 3461400.33; 735420.28, 3461310.28; 735420.28, 3461223.05; 735430.58, 3461136.30; 735479.60, 3461141.39; 735578.13, 3461132.68; 735613.43, 3461091.58; 735650.82, 3461010.58; 735669.51, 3460923.35; 735703.92, 3460811.06; 735756.74, 3460736.42; 735800.35, 3460649.19; 735744.28, 3460624.27; 735432.74, 3460624.27; 735021.51, 3460618.04; 735040.20, 3460767.58; 734952.97, 3460823.66; 734840.82, 3460861.04; 734812.02, 3460938.41; 734541.74, 3461658.58; 734504.36, 3461783.19; 734301.81, 3462565.34; 734165.92, 3462612.37; 734048.55, 3462652.99; 733925.73, 3462646.35; 733818.44, 3462640.54; 733818.98, 3462680.42; 733831.44, 3462724.03; 733831.91, 3462789.15; 733887.18, 3462970.92; 733929.82, 3463111.13; 733981.10, 3463244.98; 734029.39, 3463371.05; 734111.12, 3463466.09; 734161.67, 3463534.03; 734214.05, 3463602.19; 734302.98, 3463595.69; 734405.69, 3463535.78; 734460.75, 3463434.34; 734585.36, 3463428.11; 734697.51, 3463384.49; 734766.02, 3463372.96; 734844.43, 3463268.82; 734936.26, 3463146.86; 735025.60, 3462958.51.

(B) *Note:* Map of Unit RFS–10 follows:

BILLING CODE 4310–55–P


Unit RFS-10
Reticulated Flatwoods Salamander Critical Habitat
Early
Baker
Damascus
200
RFS-10
Subunit B
45
27
RFS-10
Subunit A
Miller
Colquitt
91
91
45
27
Flint River
Mitchell
Critical Habitat
Major Road
County Boundary
N
0
4
8
Kilometers
0
3
6
Miles
Georgia
Location
Map

* * * * *

Dated: *January 29, 2009.*

Jane Lyder,

Assistant Deputy Secretary, Department of the Interior.

[FR Doc. E9–2403 Filed 2–9–09; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Tuesday,
February 10, 2009

Part III

Securities and Exchange Commission

17 CFR Parts 229, 230, et al.
Interactive Data To Improve Financial Reporting; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 230, 232, 239, 240, and 249

[Release Nos. 33–9002; 34–59324; 39–2461; IC–28609; File No. S7–11–08]

RIN 3235–AJ71

Interactive Data To Improve Financial Reporting

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting rules requiring companies to provide financial statement information in a form that is intended to improve its usefulness to investors. In this format, financial statement information could be downloaded directly into spreadsheets, analyzed in a variety of ways using commercial off-the-shelf software, and used within investment models in other software formats. The rules will apply to public companies and foreign private issuers that prepare their financial statements in accordance with U.S. generally accepted accounting principles (U.S. GAAP), and foreign private issuers that prepare their financial statements using International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board (IASB). Companies will provide their financial statements to the Commission and on their corporate Web sites in interactive data format using the eXtensible Business Reporting Language (XBRL). The interactive data will be provided as an exhibit to periodic and current reports and registration statements, as well as to transition reports for a change in fiscal year. The new rules are intended not only to make financial information easier for investors to analyze, but also to assist in automating regulatory filings and business information processing. Interactive data has the potential to increase the speed, accuracy and usability of financial disclosure, and eventually reduce costs.

DATES: *Effective Date:* April 13, 2009 except § 232.406T, which is effective from April 13, 2009 until October 31, 2014.

FOR FURTHER INFORMATION CONTACT: Mark W. Green, Senior Special Counsel (Regulatory Policy), Division of Corporation Finance at (202) 551–3430; Craig E. Slivka, Special Counsel, Division of Corporation Finance at (202) 551–3430; Jeffrey W. Naumann, Assistant Director, Office of Interactive Disclosure at (202) 551–5352; or Jeffrey Ellis, Professional Accounting Fellow, Office of the Chief Accountant at (202) 551–5300, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: We are adding Rules 405 and 406T to Regulation S–T,[1] and revising Item 601 [2] of Regulation S–K,[3] Rules 11,[4] 201,[5] 202,[6] 305,[7] 401,[8] and 402 [9] of Regulation S–T, Rule 144 [10] under the Securities Act of 1933 (Securities Act),[11] and Rules 12b–25,[12] 13a–14 [13] and 15d–14 [14] under the Securities Exchange Act of 1934 (Exchange Act).[15] We also are revising Forms S–3,[16] S–8,[17] F–3,[18] F–9 [19] and F–10 [20] under the Securities Act and Forms 10–Q,[21] 10–K,[22] 12b–25,[23] 20–F,[24] 40–F [25] and 6–K [26] under the Exchange Act.

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I. Introduction and Background

A. Introduction

On May 30, 2008, we issued a release in which we proposed for public comment amendments requiring companies to provide their financial statements to the Commission and on their corporate Web sites in interactive data format using XBRL.[27] In this release, we are adopting the amendments substantially as proposed, but with the modifications discussed below.

Over the last several decades, developments in technology and electronic data communication have facilitated greater transparency in the form of easier access to, and analysis of, financial reporting and disclosures. Technological developments also have significantly decreased the time and cost of filing disclosure documents with us. Most notably, in 1993 we began to require electronic filing on our Electronic Data Gathering, Analysis and Retrieval System (EDGAR).[28] Since then, widespread use of the Internet has vastly decreased the time and expense of accessing disclosure filed with us.

We continue to update our filing standards and systems as technologies improve. These developments assist us in our goal to promote efficient and transparent capital markets. For

[1] 17 CFR 232.10 *et seq.*
[2] 17 CFR 229.601.
[3] 17 CFR 229.10 *et seq.*
[4] 17 CFR 232.11.
[5] 17 CFR 232.201.
[6] 17 CFR 232.202.
[7] 17 CFR 232.305.
[8] 17 CFR 232.401.
[9] 17 CFR 232.402.
[10] 17 CFR 230.144.
[11] 15 U.S.C. 77a *et seq.*
[12] 17 CFR 240.12b–25.
[13] 17 CFR 240.13a–14.
[14] 17 CFR 240. 15d–14.
[15] 15 U.S.C. 78a *et seq.*
[16] 17 CFR 239.13.
[17] 17 CFR 239.16b.
[18] 17 CFR 239.33.
[19] 17 CFR 239.39.
[20] 17 CFR 239.40.
[21] 17 CFR 249.308a.
[22] 17 CFR 249.310.
[23] 17 CFR 249.322.
[24] 17 CFR 249.220f.
[25] 17 CFR 249.240f.
[26] 17 CFR 249.306.

[27] We proposed the amendments in Release No. 33–8924 (May 30, 2008) [73 FR 32794]. The comment letters we received in response to the proposing release were filed in File Number S7–11–08 and are available at *http://www.sec.gov/comments/s7-11-08/s71108.shtml* or from our Public Reference Room at 100 F Street, NE., Washington, DC 20549.

[28] In 1993, we began to require domestic issuers to file most documents electronically. Release No. 33–6977 (Feb. 23, 1993) [58 FR 14628]. Electronic filing began with a pilot program in 1984. Release No. 33–6539 (June 27, 1984) [49 FR 28044].

example, since 2003 we have required electronic filing of certain ownership reports [29] filed on Forms 3,[30] 4,[31] and 5 [32] in a format that provides interactive data, and recently we adopted similar rules governing the filing of Form D.[33] In addition, recently we have encouraged, and in some cases required, public reporting companies and mutual funds to provide disclosures and communicate with investors using the Internet.[34] Now, as part of our continuing efforts to assist investors who use Commission disclosures, as well as filers of that disclosure, we are adopting rules to require that financial statements be provided in a format that makes the information they contain interactive.

Our adoption of the new rules is consistent with the recently announced plan to replace the EDGAR system with the Interactive Data Electronic Applications (IDEA) system. Based on a completely new architecture being built from the ground up, it will at first supplement and then eventually replace the EDGAR system. IDEA will facilitate the use and analysis of information submitted to the Commission in interactive data format.[35]

The new rules build on our voluntary filer program, started in 2005,[36] that allowed us to evaluate certain uses of interactive data. The Commission has evaluated interactive data from an investor's perspective in several ways, including holding a roundtable focused on investor/analyst needs from interactive data, meeting with various investor focused data service providers to understand the ways in which interactive data could improve their ability to serve investors, and, at the staff level, experimenting with analysis capabilities using the Commission's viewer and other existing XBRL software. The voluntary program allows companies to submit financial statements on a supplemental basis in interactive format as exhibits to specified filings under the Exchange Act and the Investment Company Act of 1940 (Investment Company Act).[37] Companies that participate in the program still are required to file their financial statements in American Standard Code for Information Interchange (ASCII) or HyperText Markup Language (HTML).[38] In 2007, we extended the program to enable mutual funds voluntarily to submit in interactive data format supplemental information contained in the risk/return summary section of their prospectuses.[39] Over 100 companies have participated in the voluntary program. These companies span a wide range of industries and company characteristics, and have a total public float of over $2 trillion.

Interactive data can create new ways for investors, analysts, and others to retrieve and use financial information in documents filed with us. For example, users of financial information will be able to download it directly into spreadsheets, analyze it using commercial off-the-shelf software, or use it within investment models in other software formats. Through interactive data, what is currently static, text-based information can be dynamically searched and analyzed, facilitating the comparison of financial and business performance across companies, reporting periods, and industries.

Interactive data also provide a significant opportunity to automate regulatory filings and business information processing, with the potential to increase the speed, accuracy, and usability of financial disclosure. Such automation could eventually reduce costs. A company that uses a standardized interactive data format at earlier stages of its reporting cycle could reduce the need for repetitive data entry and, therefore, the likelihood of human error. In this way, interactive data may improve the quality of information while reducing its cost.

Also, to the extent investors currently are required to pay for access to annual or quarterly report disclosure that has been extracted and reformatted into an interactive data format by third-party sources, the availability of interactive data in Commission filings will allow investors to avoid additional costs associated with third party sources.

We believe that requiring issuers to file their financial statements using interactive data format will enable investors, analysts, and the Commission staff to capture and analyze that information more quickly and at less cost than is possible using the same financial information provided in a static format. Any investor with a computer and an Internet connection will have the ability to acquire and download interactive financial data that have generally been available only to large institutional users. The new interactive data requirements will not change disclosure requirements under the federal securities laws and regulations, but will add a requirement to include financial statements in a new interactive data format as an exhibit. Thus, the requirement that filers provide financial statements using interactive data will not otherwise alter at all the disclosure or formatting standards of periodic or other reports,[40] registration statements,[41] or transition reports.[42] These filings will continue to be available as they are today for those who prefer to view the traditional text-based document.

We received 79 comment letters relating to the proposing release from domestic and foreign commenters including investor groups, pension funds, corporations, accounting and law firms, vendors and service providers, individuals, and corporate, professional and trade associations. Many commenters generally supported the proposed requirement to submit financial information in interactive data format, but many also expressed concern about specific aspects of the proposed rules including, in particular, the proposed phase-in requirement, detailed tagging of footnotes and liability related to the interactive data file. The final amendments adopt the rules substantially as proposed, with some changes to address issues expressed in the comment letters. We discuss specific comments where applicable throughout this release.

[29] Release No. 33–8230 (May 7, 2003) [68 FR 25788 and 37044 (correction)] (required electronic filing of ownership reports) and Release No. 33–8891 (Feb. 6, 2008) [73 FR 10592] (required electronic filing of Form D [17 CFR 239.500]).

[30] 17 CFR 249.103 and 274.202.

[31] 17 CFR 249.104 and 274.203.

[32] 17 CFR 249.105.

[33] 17 CFR 239.500.

[34] *See, e.g.,* Release No. 34–56135 (July 26, 2007) [72 FR 42222]; Release No. 34–55146 (Jan. 22, 2007) [72 FR 4148]; Release No. 34–52056 (July 19, 2005) [70 FR 44722]; Release No. 33–8861 (November 21, 2007) [72 FR 67790]; and Release No. 34–57172 (Jan. 18, 2008) [73 FR 4450].

[35] Press Release No. 2008–179 (Aug. 19, 2008).

[36] Release No. 33–8529 (Feb. 3, 2005) [70 FR 6556].

[37] 15 U.S.C. 80a–1 *et seq.*

[38] HTML is a standardized language commonly used to present text and other information on Web sites.

[39] Release No. 33–8823 (July 11, 2007) [72 FR 39290].

[40] These reports include reports on Forms 8–K and 6–K that either are required to be filed as a result of information regarding specified events or are filed voluntarily to disclose other information.

[41] Unless otherwise stated, when we refer to registration statements, we mean registration statements filed under the Securities Act.

[42] Transition reports generally must be filed when an issuer changes its fiscal closing date. The transition report covers the resulting transition period between the closing date of its most recent fiscal year and the opening date of its new fiscal year. *See* Rules 13a–10 [17 CFR 240.13a–10] and 15d–10 [17 CFR 240.15d–10]. Unless otherwise stated, when we refer to Exchange Act reports, periodic reports, or ''reports,'' we mean quarterly and annual periodic reports as well as transition reports.

B. Current Filing Technology and Interactive Data

Companies filing electronically are required to file their registration statements, quarterly, annual and current reports, and transition reports in ASCII or HTML format.[43] Also, to a limited degree, our electronic filing system uses other formats for internal processing and document-type identification. For example, our system uses eXtensible Markup Language (XML) to process reports of beneficial ownership of equity securities on Forms 3, 4, and 5 under Section 16(a) of the Exchange Act.[44]

Electronic formats such as HTML, XML, and XBRL are open standards[45] that define or ''tag'' data using standard definitions. The tags establish a consistent structure of identity and context. This consistent structure can be recognized and processed by a variety of different software applications. In the case of HTML, the standardized tags enable Web browsers to present Web sites' embedded text and information in predictable format. In the case of XBRL, software applications, such as databases, financial reporting systems, and spreadsheets, recognize and process tagged financial information. XBRL was derived from the XML standard. It was developed and continues to be supported by XBRL International, a consortium of approximately 550 organizations representing many elements of the financial reporting community worldwide. XBRL U.S., the international organization's U.S. jurisdiction representative, is a non-profit organization[46] that includes companies, public accounting firms, software developers, filing agents, data aggregators, stock exchanges, regulators, financial services companies, and industry associations.[47] In 2006, the Commission contracted with XBRL U.S. to develop the taxonomy or standard list of tags necessary for financial reporting in interactive format consistent with U.S. GAAP and Commission regulations.[48] In developing the taxonomy, XBRL U.S., which is responsible for the content of the taxonomy, included items required by U.S. GAAP and the Commission's regulations, however they also included other items that are commonly used by companies in their financial statements. In addition to undergoing a public review and comment period, the taxonomy was reviewed by the staff of the Financial Accounting Standards Board (FASB) and the Commission. The FASB staff is involved in the process for creating and reviewing tags for new accounting pronouncements as they are published and in the future the draft tags may even be published with the accounting standard. Currently, the Commission has a contract with XBRL U.S. to develop the standard list of tags for the risk/return summary section of mutual fund prospectuses and the schedule of investments for investment companies.

Financial reporting in interactive format requires a standard list of tags. These tags are similar to definitions in an ordinary dictionary, and they cover a variety of financial concepts that can be read and understood by software applications. For financial statements prepared in accordance with U.S. GAAP, a filer will use the list of tags for U.S. financial statement reporting.[49] This list of tags contains descriptive labels, definitions, authoritative references to U.S. GAAP and Commission regulations where applicable, and other elements, all of which provide the contextual information necessary for interactive data[50] to be recognized and processed by software.[51]

Data tags are applied to financial statements by using commercially available software that guides a preparer to tag information in the financial statements with the appropriate tags in the standard list. Each element in the standard list of tags has a standard label. A company can therefore match the standard labels to each caption in its financial statements. Occasionally, because filers have considerable flexibility in how financial information is reported under U.S. reporting standards, it is possible that a company may wish to use a non-standard financial statement line item that is not included in the standard list of tags. In this situation, a company will create a company-specific element, called an extension.[52] For example, what a company identifies in its traditional format financial statements as ''operating revenues'' may be associated with an element that has ''net revenues'' as the standard label. In this situation, a company will need to change, or extend, the standard label to become ''operating revenues'' when it tags that disclosure with the element.[53] A company may choose to tag its own financial statements using commercially available software, or it may choose instead to outsource the tagging process.

By the same process, a filer that prepares its financial statements in accordance with IFRS as issued by the IASB[54] will use the IFRS list of tags to

[43] Rule 301 under Regulation S–T [17 CFR 232.301] requires electronic filings to comply with the EDGAR Filer Manual, and Section 5.1 of the Filer Manual requires that electronic filings be in ASCII or HTML format. Rule 104 under Regulation S–T [17 CFR 232.104] permits filers to submit voluntarily as an adjunct to their official filings in ASCII or HTML unofficial PDF copies of filed documents. Unless otherwise stated, we refer to filings in ASCII or HTML as traditional format filings.

[44] 15 U.S.C. 78p(a).

[45] The term ''open standard'' is generally applied to technological specifications that are widely available to the public, royalty-free, at minimal or no cost.

[46] XBRL U.S. is a 501(c)(6) organization. Internal Revenue Code section 501(c)(6) applies to ''Business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.'' *See* 26 U.S.C. 501(c)(6).

[47] XBRL U.S. supports efforts to promote interactive financial and business data specific to the U.S., including U.S. GAAP.

[48] That contract has been completed.

[49] Unless stated otherwise, when we refer to the ''list of tags for U.S. financial statement reporting'' we mean the interactive data taxonomy as approved by XBRL U.S. that is based on U.S. GAAP, Commission regulations, and common financial reporting practices used in the preparation of financial statements in the U.S.

[50] The new rules define the interactive data in machine-readable format required to be submitted as the ''interactive data file,'' which will be required with every interactive data submission. *See* § 232.11 of Regulation S–T.

[51] For example, contextual information will identify the entity to which it relates, usually by using the filer's CIK number. A hypothetical filer converting its traditional electronic disclosure of $1,000,000 of net sales would have to create interactive data that identify what the 1,000,000 represents, net sales, and the currency in which it is disclosed, dollars. The contextual information will include other information as necessary; for example, whether it relates to an annual report or quarterly report, the financial reporting period, continuing or discontinued operations, or actual, restated, forecast, pro forma or other type of disclosure.

[52] In other cases, without a relevant and appropriate tag in the list of tags, a company will be required to create an extension in order to provide interactive data that are equivalent to the corresponding portion of the traditional format filing.

[53] Unless otherwise stated, extensions, whether relating to an element or a label, are not part of the standard list of tags.

[54] As used in this release, the phrase ''IFRS as issued by the IASB'' refers to the authoritative text of IFRS, which, according to the Constitution of the International Accounting Standards Committee Foundation (IASCF), is published in English. *See* ''International Financial Reporting Standards, including International Accounting Standards and Interpretations as at 1 January 2007,'' Preface to International Financial Reporting Standards, at paragraph 23. *See http://www.iasb.org/xbrl/index.html.* The IASCF released the 2008 taxonomy (list of tags) on March 31, 2008. *See* IASB Press Release, The IASC Foundation publishes IFRS Taxonomy 2008, (March 31, 2008). Following a 60-day public consultation period, the IASCF published the final list of tags in June 2008. *See* IASB Press Release IASC Foundation publishes IFRS Taxonomy 2008 (June 24, 2008). Recently, the IASC published the IFRS Taxonomy Guide. *See* IASB Press Release, The IASC Foundation

create its interactive data-formatted financial statements.[55] The IFRS list of tags contains descriptive labels, authoritative references to IFRS where applicable, and other elements and concepts that provide the contextual information necessary for interactive data to be recognized and processed by software. The IASCF has developed the IFRS list of tags. To create interactive data using the IFRS list of tags, an issuer generally will need to follow the same mapping, extension and tagging process as will a company that uses the list of tags for U.S. financial statement reporting. As further discussed below, the IASCF is collaborating with XBRL U.S. and other parties to align the U.S. GAAP and IFRS lists of tags to make them more interoperable and comparable. This collaboration involves the development of the appropriate scope for the IFRS list of tags' content and technology architecture and currently totals 2,700 IFRS tags.

Because financial statements in interactive data format are intended to be processed by software applications, the unprocessed data are not readable by humans. Thus, viewers are necessary to convert or ''render'' the interactive data file to human readable format. Some viewers are similar to Web browsers used to read HTML files.

The Commission's Web site currently provides links to viewers that allow the public to easily read company disclosures submitted using interactive data. These viewers are intended to demonstrate the capability of software to present interactive data in human-readable form and to provide open source software to give developers a free resource they can use as is or build upon. As noted above, software also is able to process interactive data so as to automate and, as a result, facilitate access to and analysis of tagged data. In addition, we are aware of other applications under development that may provide additional and advanced functionality.

C. The Commission's Multiyear Evaluation of Interactive Data and Overview of New Rules

In 2004, we began to assess the benefits of interactive data and its potential to improve the timeliness and accuracy of financial disclosure and analysis of Commission filings.[56] As part of this evaluation, we adopted rules in 2005 that permitted filers, on a voluntary basis, to provide financial disclosure in interactive data format as an exhibit to certain filings on our electronic filing system. The voluntary program has been based on an earlier version of the list of tags for U.S. financial statement reporting, which does not include a full array of standard elements for financial statement footnotes and schedules. After more than two years of increasing participation, 100 companies have chosen to provide interactive data financial reporting.[57]

During this time, we have kept informed of technology advances and other interactive data developments. We note that several U.S. and foreign regulators have begun to incorporate interactive data into their financial reporting systems.[58] In the U.S., the Federal Deposit Insurance Corporation (FDIC), the Federal Reserve, and the Office of the Comptroller of the Currency (OCC) require the use of XBRL.[59] Since 2006, approximately 8,200 U.S. financial institutions have been using XBRL to submit quarterly reports to banking regulators.[60] Internationally, countries that require or have instituted voluntary or pilot programs for XBRL financial reporting include Australia, Belgium, Canada, China, Denmark, France, Germany, Ireland, Israel, Japan, Korea, Luxembourg, the Netherlands, New Zealand, Norway, Singapore, Spain, Sweden, Thailand and the United Kingdom.[61]

We also have kept informed of relevant advances and developments by hosting roundtables on the topic of interactive data financial reporting,[62] creating the Commission's Office of Interactive Disclosure,[63] and meeting with international securities regulators to discuss, among other items, timetables for implementation of interactive data initiatives for financial reporting.[64] Also, staff of the Commission attended meetings of the Advisory Committee on Improvements to Financial Reporting (CIFiR) in which the committee discussed proposals for financial reporting using interactive data.[65] We also have reviewed written statements and public comments received by CIFiR on its XBRL developed proposal[66] that preceded its XBRL final recommendation.

Building on our experience from the voluntary program, and our participation in the other initiatives described above, we proposed rules to require financial reporting using interactive data, and are now adopting

publishes the IFRS Taxonomy Guide (August 28, 2008).

[55] Unless stated otherwise, when we refer to the ''IFRS list of tags'' we mean the list of tags for financial statements prepared in accordance with IFRS as issued by the IASB.

[56] Press Release No. 2004–97 (July 22, 2004).

[57] A viewer for the voluntary program is available at *http://www.sec.gov/spotlight/xbrl/xbrlwebapp.shtml*. This viewer maintains a running total of companies and filers submitting data as part of the voluntary program. As of January 2, 2009, 125 companies had submitted over 540 interactive data reports.

[58] However, well-developed and widespread application of XBRL to financial reports used by investors is not yet the international norm. According to the commenter EuropeanIssuers, ''XBRL is permitted or required by regulators * * * only * * * for certain reports filed with banking regulators or unconsolidated financial statements filed with the commercial registries [and] XBRL is not currently being used in Europe for financial reporting to investors.'' EuropeanIssuers is a non-profit pan-European organization formed when the European Association of Listed Companies and the Union of Issuers Quoted in Europe combined their organizations in 2008. The organization states that it represents the vast majority of publicly quoted companies in Europe.

[59] Since 2005, the FDIC, Federal Reserve, and the OCC have required the insured institutions that they oversee to file their quarterly Consolidated Reports of Condition and Income (called Call Reports) in interactive data format using XBRL. Call Reports, which include data about an institution's balance sheet and income statement, are used by these federal agencies to assess the financial health and risk profile of the financial institution.

[60] *See* Improved Business Process Through XBRL: A Use Case for Business Reporting, available at *http://www.xbrl.org/us/us/FFIEC%20White%20Paper%2002Feb2006.pdf.*

[61] *See* XBRL International Progress Report (November 2007), available at *http://www.xbrl.org/ProgressReports/2007_11_XBRL_Progress_Report.pdf.*

[62] *See* materials available at *http://www.sec.gov/spotlight/xbrl/xbrl-meetings.shtml.*

[63] Press Release No. 2007–213 (October 9, 2007).

[64] Press Release No. 2007–227 (November 9, 2007).

[65] For example, CIFiR conducted an open meeting on March 14, 2008 in which it heard reactions from an invited panel of participants to CIFiR's developed proposal regarding required filing of financial information using interactive data. An archived Web cast of the meeting is available at *http://sec.gov/about/offices/oca/cifir.shtml*. The March 14, 2008 panelists presented their views and engaged with CIFiR members regarding issues relating to requiring interactive data tagged financial statements, including tag list and technological developments, implications for large and small public companies, needs of investors, necessity of assurance and verification of such tagged financial statements, and legal implications arising from such tagging. Also, CIFiR has provided to the Commission a Final Report that recommends that the Commission, over the long term, require the filing of financial information using interactive data once specified conditions are satisfied. See Final Report of the Advisory Committee on Improvements to Financial Reporting to the United States Securities and Exchange Commission (Aug. 1, 2008) (Final Report), available at *http://www.sec.gov/about/offices/oca/acifr/acifr-finalreport.pdf*. CIFiR's recommendation is discussed more fully in Part II.B.2 below.

[66] *See* Progress Report of the Advisory Committee on Improvements to Financial Reporting to the United States Securities and Exchange Commission (Feb. 14, 2008) (Progress Report), available at *http://www.sec.gov/rules/other/2008/33-8896.pdf*. The XBRL developed proposal appears in chapter 4 of the Progress Report. Written statements of panelists at the March 14, 2008 meeting and public comments received on the Progress Report are available at *http://sec.gov/comments/265-24/265-24.shtml*.

those rules with the modifications discussed below. The rules will apply to domestic and foreign public companies that prepare their financial statements in accordance with U.S. GAAP, and foreign private issuers that prepare their financial statements in accordance with IFRS as issued by the IASB. Filers will be required to include an exhibit containing interactive data with their Securities Act registration statements, quarterly, if applicable, and annual reports, and transition reports, as well as reports on Forms 8–K [67] or 6–K that contain specified financial statements.[68] Filers also will be required to provide it on their company Web sites.[69] We believe requiring the submission and posting of interactive data has the potential to provide advantages for the investing public by making financial data more accessible, timely, inexpensive and easier to analyze.

By enabling filers to further automate their financial processes, interactive data may eventually help filers improve the timeliness of, and speed at which they generate, financial information, while reducing the cost of filing and potentially increasing the accuracy of the information. For example, with standardized interactive data tags, registration statements and periodic and current reports may require less time for information gathering and review. Also, standardized interactive data tagging may enhance the ability of an issuer's in-house financial professionals to identify and correct errors in the issuer's registration statements and periodic and current reports filed in traditional electronic format. Filers also may gain benefits not directly related to public financial disclosures. For example, filers that use interactive data may be able to consolidate enterprise financial information more quickly and potentially more reliably across operating units with different accounting systems. However, we recognize that at the outset, filers will most likely prepare their interactive data as an additional step after their financial statements have been prepared.

D. Summary of Adopted Amendments

The principal elements of the new rules are as follows:

- Domestic and foreign large accelerated filers [70] that use U.S. GAAP and have a worldwide public common equity float above $5 billion [71] as of the end of the second fiscal quarter of their most recently completed fiscal year [72] will provide to the Commission a new exhibit.[73] The exhibit will be required with such filers' Securities Act registration statements, quarterly, if applicable, and annual reports, and transition reports, as well as reports on Form 8–K or Form 6–K that contain revised or updated financial statements.[74] The exhibit will contain the financial statements [75] and any applicable financial statement schedules in interactive data format. The requirement will apply beginning with a periodic report on Form 10–Q, Form 20–F or Form 40–F containing financial statements for a fiscal period ending on or after June 15, 2009.
- All other domestic and foreign large accelerated filers using U.S. GAAP will be subject to the same interactive data reporting requirements the following year, beginning with a periodic report on Form 10–Q, Form 20–F or Form 40–F containing financial statements for a fiscal period ending on or after June 15, 2010.
- All remaining filers using U.S. GAAP, including smaller reporting companies,[76] and all foreign private issuers that prepare their financial statements in accordance with IFRS as issued by the IASB,[77] will be subject to the same interactive data reporting requirements beginning with a periodic report on Form 10–Q, Form 20–F or Form 40–F containing financial statements for a fiscal period ending on or after June 15, 2011.
- Filers that first become subject to the requirement to submit interactive data after year three (*i.e.*, companies that become subject to our reporting requirements after the phase-in is complete), will first be required to

[67] 17 CFR 249.308.

[68] The specified financial statements are discussed in detail in n. 74.

[69] The new rules will not include any investment company that is registered under the Investment Company Act or any ''business development company,'' as defined in Section 2(a)(48) of that Act [15 U.S.C. 80a–2(a)(48)]. Business development companies are a category of closed-end investment companies that are not required to register under that Act. The new rules also will not include any entity that reports under the Exchange Act and prepares its financial statements in accordance with Article 6 of Regulation S–X [17 CFR 210.6–01 *et seq.*]. The new rules will not apply to these entities because the standard list of tags for investment management is under development.

[70] Exchange Act Rule 12b–2 [17 CFR 240.12b–2] generally defines ''large accelerated filer'' as an issuer that has common equity held by unaffiliated persons with a value of at least $700 million, has been subject to the Exchange Act's periodic reporting requirements for at least 12 months, has filed at least one annual report, and is not eligible to use the disclosure requirements available to smaller reporting companies for its periodic reports.

[71] The $5 billion cutoff will establish a category of approximately 500 filers that will be subject to the interactive data requirements in the first year.

[72] The proposing release at n. 89 stated our intention that the float measurement date be consistent with the measurement date for determining large accelerated filer status. Throughout the proposing release, however, we inadvertently characterized the measurement date as the end of the most recently completed second fiscal quarter rather than the end of the second fiscal quarter of the most recently completed fiscal year. We now characterize the measurement date in the latter manner to conform it to our stated intention.

[73] Interactive data will be required as an exhibit to a Securities Act registration statement that contains financial statements, such as a Form S–1 [17 CFR 239.11], but not required in connection with an initial public offering. Interactive data will not be required as an exhibit to a Securities Act registration statement that does not contain financial statements, such as a Form S–3 or other form filed by an issuer that is eligible to and does incorporate by reference all required financial statements from its periodic reports. Also, interactive data will not be required as an exhibit to an Exchange Act registration statement.

[74] In connection with registration statements where historical financial statements are incorporated by reference, issuers often file under cover of Form 8–K or 6–K their revised audited annual financial statements when their previously filed annual financial statements are required to be revised, pursuant to applicable accounting standards, to reflect the effects of certain subsequent events, including a discontinued operation, a change in reportable segments, or a change in accounting principle. Also, foreign private issuers occasionally may file current interim financial statements pursuant to the nine-month updating requirement of Item 8.A.5 of Form 20–F under cover of Form 6–K which are incorporated by reference into a registration statement. In these circumstances, the interactive data exhibit will be required to be included in the Form 8–K or 6–K to accompany the traditional format financial statements to which they relate. Interactive data exhibits related to financial statements that have been restated to correct an accounting error will be required to be included in any amended registration statement or periodic report or transition report that contains the restated traditional format financial statements. The requirement to submit restated financial statements in interactive data format in such an instance would depend on whether the original filing contained financial statements for fiscal periods regarding which the filer was subject to the interactive data requirements. For instance, for those filers in the first phase-in period, the financial statements being restated would only have to be submitted in interactive data format if they were originally for fiscal periods ending on or after June 15, 2009.

[75] When we refer to financial statements, we mean the face of the financial statements and accompanying footnotes. The face of the financial statements refers to the statement of financial position (balance sheet), income statement, statement of comprehensive income, statement of cash flows, and statement of owners' equity, as required by Commission regulations. References to the financial statements as required for interactive data reporting include any required schedules to the financial statements, unless we expressly state otherwise.

[76] Item 10(f)(1) of Regulation S–K [17 CFR 229.10(f)(1)], Rule 405 under the Securities Act [17 CFR 230.405] and Rule 12b–2 under the Exchange Act [17 CFR 240.12b–2] define the term ''smaller reporting company,'' in general, as a company that has common equity securities held by non-affiliates with a market value of less than $75 million or, if that value cannot be calculated, had less than $50 million in revenue in the prior fiscal year.

[77] The amendments will not require or permit foreign private issuers that prepare their financial statements in accordance with a variation of IFRS as issued by the IASB to provide interactive data.

submit an interactive data file for their first periodic report on Form 10–Q or first annual report on Form 20–F or Form 40–F, as applicable.

• The amendments will not alter the requirements to provide financial statements and any required financial statement schedules with the traditional format filings.

• Financial statements in interactive data format will be provided as exhibits identified in Item 601(b) of Regulation S–K and Forms F–9, F–10, 20–F, 6–K and 40–F.[78]

• Financial statement footnotes and financial statement schedules initially will be tagged individually as a block of text. After a year of such tagging, a filer also will be required to tag the detailed quantitative disclosures within the footnotes and schedules and will be permitted, but not required, to the extent they choose, to tag each narrative disclosure.

• The amendments will require the financial information and document and entity identifier elements, such as the form type, company name, and public float, to be tagged according to Regulation S–T and the EDGAR Filer Manual.[79]

• Interactive data exhibits will be required at the same time as the rest of the related report or Securities Act registration statement, except for the following two circumstances. The initial interactive data exhibit of a filer will be required within 30 days after the earlier of the due date or filing date of the related report or registration statement, as applicable. In year two, a filer will have a similar 30 day grace period for its first interactive data exhibit that includes detailed tagging of its footnotes and schedules.

• A filer required to provide financial statements in interactive data format to the Commission also will be required to post those financial statements in interactive data format on its corporate Web site not later than the end of the calendar day it filed or was required to file the related registration statement or report with the Commission, whichever is earlier.[80]

• Filers that do not provide or post required interactive data on the date required will be deemed not current with their Exchange Act reports and, as a result, will not be eligible to use the short Form S–3, F–3, or S–8, or elect under Form S–4 or F–4 to provide information at a level prescribed by Form S–3 or F–3. Similarly, such filers will not be deemed to have available adequate current public information for purposes of the resale exemption safe harbor provided by Rule 144.[81] A filer that is deemed not current solely as a result of not providing or posting an interactive data exhibit when required will be deemed current upon providing or posting the interactive data. Therefore it will regain current status for purposes of short form registration statement eligibility, and determining adequate current public information under Rule 144. As such, it will not lose its status as having ''timely'' filed its Exchange Act reports solely as a result of the delay in providing interactive data.[82]

• Companies that are not required to provide interactive data until a later time will have the option to do so earlier and may provide interactive data at their discretion until required by the amendments. Such a company may also tag footnotes individually as a block of text until required to tag the detailed quantitative disclosures within the footnotes and schedules, but otherwise must follow the same requirements as those mandated and can only use a grace period for its initial submission and the initial detail-tagged-footnote submission, whether submitted voluntarily or as required by the amendments.

• Companies may cease voluntary submissions at any time and need not tag their financial data at a pace other than at which the rules otherwise would require.

• The voluntary program rules will be modified to permit investment companies to participate, but to exclude non-investment company participation. As a result, the voluntary program will continue for the financial statements of investment companies that are registered under the Investment Company Act, and business development companies and other entities that report under the Exchange Act and prepare their financial statements in accordance with Article 6 of Regulation S–X.[83]

• An interactive data file generally will be subject to the federal securities laws in a modified manner similar to that of the voluntary program if the filer submits the interactive data file within 24 months of the time the filer first is required to submit interactive data files but no later than October 31, 2014. During the time a filer's interactive data files are treated in this modified manner, they will be

○ Deemed not filed for purposes of specified liability provisions; and

○ Protected from liability for failure to comply with the tagging requirements if the interactive data file failed to meet those requirements but the failure occurred despite the filer's good faith effort and the filer corrected the failure promptly after becoming aware of it.[84]

• Also similar to the voluntary program, interactive data files will be excluded from the officer certification requirements under Rules 13a–14 and 15d–14 of the Exchange Act.

The principal changes from the proposing release include:

• Modified treatment of liability for the interactive data files under the federal securities laws only will be available for interactive data files that a filer submits within 24 months of the time the filer first is required to submit interactive data files and no later than October 31, 2014.

• The phase-in schedule has been changed from the proposal. The filers that will be phased in during year one will first be required to submit an interactive data file for a periodic report on Form 10–Q, Form 20–F or Form 40–F containing financial statements for a fiscal period ended on or after June 15, 2009. Filers that are phased in during years two and three will be treated in a similar manner. Filers that first become subject to the requirement to submit interactive data after year three will first be required to submit an interactive data

[78] The adopted interactive data requirements would not apply to asset-backed filings because issuer financial statements are generally not required or provided in filings made pursuant to *Regulation AB (17 CFR 229.1100 et seq.)*.

[79] New Rule 405 of Regulation S–T will directly set forth the basic tagging requirements and indirectly set forth the rest of the tagging requirements through the requirement to comply with the EDGAR Filer Manual. Consistent with new Rule 405, the Filer Manual will contain the technical tagging requirements.

[80] The day the registration statement or report is submitted electronically to the Commission may not be the business day on which it was deemed officially filed. For example, a filing submitted after 5:30 p.m. generally is not deemed officially filed until the following business day. Under the new rules, the Web posting will be required at any time on the same calendar day that the related registration statement or report is deemed officially filed or required to be filed, whichever is earlier.

[81] 17 CFR 230.144.

[82] Filers that do not provide or post required interactive data on the date required with respect to a Securities Act filing will be deemed not current with their Exchange Act reports.

[83] On December 17, 2008, the Commission voted to adopt rules requiring interactive data for the risk/return summary section of mutual fund prospectuses. See Press Release No. 2008–300 (December 18, 2008). *See* also Release No. 33–8929 (June 10, 2008) [73 FR 35442] (mutual fund proposing release).

[84] Although the interactive data formatted version of the financial statements will be provided in a separate exhibit and subject to modified liability during the specified period, the financial statements themselves will, of course, continue to be part of the registration statement or report and therefore subject to the full panoply of the federal securities laws, including, without limitation, Sections 11, 12(a)(2) and 17 of the Securities Act and Sections 10(b), 13 and 18 of the Exchange Act.

file for a quarterly report on Form 10–Q or annual report on Form 20–F or Form 40–F, as applicable.

• The amendments will require that interactive data be submitted with a Securities Act registration statement filing only after a price or price range has been determined and any later time when the financial statements are changed, rather than requiring interactive data submissions with each filing.

• The amendments will require companies to submit interactive data for financial statements contained in additional forms—Securities Act registration statements on Forms F–9 and F–10 and periodic reports on Forms 40–F [85] as well as reports on Forms 8–K and Form 6–K that contain revised or updated financial statements.[86]

• The timing of the required Web site posting has been eased. A filer must post the interactive data exhibit on its corporate Web site not later than the end of the calendar day it submitted or was required to submit the interactive data exhibit, whichever is earlier. As proposed, Web site posting would have been required by the end of the business rather than calendar day.

• Interactive data will be required to be posted for at least 12 months on an issuer's Web site. The proposing release did not specify this, but commenters requested clarification.

• While the amendments will require filers to tag separately each amount within a footnote or schedule (*i.e.*, monetary value, percentage, and number), the rules will permit, but not require, filers to tag, to the extent they choose, each narrative disclosure.

We intend to monitor implementation and, if necessary, make appropriate adjustments to the adopted amendments.

II. Discussion of Amendments

A. Submission of Financial Information Using Interactive Data

For several years XBRL U.S. and its related entities, in consultation with the Commission staff and FASB staff, have developed and refined the list of tags to classify and define financial information in accordance with U.S. financial reporting practices and Commission regulations.[87] Many investors, accountants, and others, including companies that have been providing interactive data disclosure in the voluntary program, have helped in this process.

Interactive data financial statements using the list of tags for U.S. financial statement reporting have been submitted voluntarily to us by over 100 companies, some of which have done so since the start of the voluntary program. The list of tags for U.S. financial statement reporting has expanded significantly since the original version available for the voluntary program.[88] During this period, there has been a continuous increase in both the number and capabilities of software products and applications for users of interactive data, as well as of the services to assist companies to tag their financial statements using interactive data.[89] The growing number of software applications available to preparers and consumers is helping make interactive data increasingly useful to both institutional and retail investors, as well as to other participants in the U.S. and global capital markets. On this basis, we believe interactive data, and in particular the XBRL standard, is growing and that the updated list of tags for U.S. financial statement reporting is now sufficiently comprehensive to require that U.S. GAAP-reporting companies provide their financial statements in interactive data format using XBRL.[90] We anticipate that there will be a further update of this list of tags in February 2009 but that the newer tags will not differ significantly from the old list and that any update would not pose an additional burden to the tagging process.

With respect to the list of tags for IFRS financial reporting, the IASCF has, over several years, developed a list of tags designed to classify and define financial information in accordance with international accounting standards as issued by the IASB. Over the course of the past year, the IASCF has worked to strengthen the development of its list of tags by forming an XBRL Advisory Committee and an XBRL Quality Reporting Team, both consisting of international representatives from investors, auditors, accountants, regulators and others. On March 31, 2008, the IASCF published a near final version of the list of tags for IFRS financial reporting,[91] which was subject to public comment through May 30, 2008.[92] On June 24, 2008, the IASCF published the final version.[93] In addition, the IASCF is collaborating with XBRL U.S., other foreign regulators, accounting industry members, analyst/investor groups, XBRL technology/software service providers, and others to align practices designed to improve and broaden the IFRS list of tags. This collaboration involves the development of the appropriate scope for the IFRS list of tags' content and technology architecture. On this basis, we believe that the updated IFRS list of tags will be sufficiently advanced to require that foreign private issuers that prepare their financial statements in accordance with IFRS as issued by the IASB provide their financial statements in interactive data format under the phase-in schedule we are adopting.

As discussed in more detail below, the new rules set forth a phase-in period that begins with domestic and foreign large accelerated U.S. GAAP filers with a worldwide public common equity float above $5 billion as of the end of the second fiscal quarter of their most recently completed fiscal year. These large accelerated filers will be subject to the new rules beginning with their first quarterly report on Form 10–Q, or annual report on Form 20–F or Form 40–F, that contains financial statements for fiscal periods ending on or after June 15, 2009. Although it will not be required, we encourage other U.S. GAAP filers to provide financial information in interactive data format during the phase-in period. In such an instance, these filers' voluntary interactive data submissions will be under the rules as adopted instead of the existing rules of the voluntary program. We also encourage foreign private issuers that prepare their financial statements in accordance with IFRS as issued by the IASB to provide financial information in interactive data format once EDGAR will accept such

[85] Similar to Form 20–F, Form 40–F may be used either as a periodic report or a registration statement under the Exchange Act. As adopted, the amendments will require interactive data for Form 40–F only when used as a periodic report.

[86] *See* note 74 above.

[87] Press Release No. 2006–158 (Sept. 25, 2006).

[88] When we adopted the voluntary program, the list of tags for U.S. GAAP financial statement reporting contained approximately 4,000 data elements. The list of tags released on April 28, 2008 contains approximately 13,000 data elements, with the most significant additions relating to the development of elements for standard U.S. GAAP footnote disclosure.

[89] Press Release No. 2007–253 (Dec. 5, 2007).

[90] As previously noted, however, the new rules will not apply to investment companies registered under the Investment Company Act and other entities.

[91] Unless stated otherwise, when we refer to the ''list of tags for IFRS financial reporting'' we mean the interactive data taxonomy that is based on IFRS as issued by the IASB.

[92] *See* Press Release, The IASC Foundation publishes IFRS Taxonomy 2008 (March 31, 2008), available at *http://www.iasb.org/News/Press+Releases/The+IASC+Foundation+publishes+IFRS+Taxonomy+2008.htm.*

[93] *See* Press Release, The IASC Foundation publishes IFRS Taxonomy 2008 (June 24, 2008), available at *http://www.iasb.org/News/Press+Releases/IASC+Foundation+publishes+IFRS+Taxonomy+2008.htm.*

filings.[94] Prior to this time, such foreign private issuers will be unable to submit financial information in interactive data format.

The new rules will require filers to provide the same type of information in interactive data format that companies have been providing in the voluntary program,[95] together with the following items: The footnotes to the financial statements; any applicable schedules to the financial statements; and document and entity identifier tags, such as company name and public float. As is the case in the voluntary program, the new requirement for interactive data reporting is intended to be disclosure neutral in that we do not intend the rules to result in companies providing more, less, or different disclosure for a given disclosure item depending upon the format whether ASCII, HTML, or XBRL.

Because we believe that the various electronic formats have uses for which each is best suited, we will continue to require the existing ASCII and HTML electronic formats now used in filings.[96] We also believe it is necessary to monitor the usefulness of interactive data reporting to investors and the cost and ease of providing interactive data before we consider discontinuing the use of ASCII and HTML formats and the integration of formats. However, the new rules will treat interactive data as part of the official filing, instead of as only a supplement as is the case in the voluntary program.[97] Further evaluation also will be useful with respect to the availability of inexpensive and sophisticated interactive data viewers. In fact, there are many software providers and financial printers that are developing interactive data viewers. We anticipate that these will become widely available and increasingly useful to investors.

We expect that the open standard feature of the XBRL format will facilitate the development of applications and software, and that some of these applications may be made available to the public for free or at a relatively low cost. The expected continued improvement in this software should give the public increasingly useful ways to view and analyze company financial information. As we continue to evaluate the use of the new interactive data technologies, software, and lists of tags, we may consider proposing rules to require a filing format that integrates HTML with XBRL or eliminate financial statement reporting in ASCII or HTML format.

We believe XBRL is the appropriate interactive data format with which to supplement ASCII and HTML. Our experience with the voluntary program and feedback from company, accounting, and software communities point to XBRL as the appropriate open standard for the purposes of this rule. XBRL data will be compatible with a wide range of open source and proprietary XBRL software applications. As discussed above, many XBRL-related products exist for analysts, investors, public and private companies, and others to create and compare financial data more easily; still others are in development, and that process will likely be hastened by increased public company reporting using interactive data.

Most commenters generally supported the required submission of interactive data,[98] but a significant number did not.[99] Some commenters that supported the required submission of interactive data believed it would improve the usefulness of financial information to companies and investors, and that mandated interactive data use would provide the incentives to drive sufficient investment in software to enable widespread adoption of interactive data.[100] Commenters that provide interactive data services stated that issuers would need to expend only modest cost and effort to comply with the proposed requirements.[101] One commenter stated that it expected that costs would fall quickly, especially for small companies, as interactive data became part of standard corporate accounting software packages.[102] Another commenter stated that, based on its experience in the voluntary program, costs would fall significantly for subsequent submissions.[103] One commenter stated that it expected that preparing financial information in interactive data format would result in less manual effort and provide the foundation to improve business processes.[104] Similarly, comments on our 2004 concept release and proposed rules in 2004 and 2007 generally supported interactive data and XBRL in particular.[105]

Many commenters objected to some or all of the requirements as proposed and suggested alternatives.[106] For instance, one commenter argued that implementing interactive data would add significant costs to purchase software, and pay for assistance and annual maintenance fees for that software.[107] This commenter believed that the costs of using interactive data outweighed the benefits. Several commenters also claimed that complying with the proposed requirements would not reduce the likelihood of human error or would not reduce costs for issuers.[108] In this regard, one commenter stated that the additional costs would make the U.S. market less attractive to foreign issuers.[109]

Some commenters that objected to the required submission of interactive data believed that interactive data would not

[94] Pursuant to the EDGAR Filer Manual, we will notify filers of the ability to file in IFRS on our Web site.

[95] Unlike the voluntary program, unless otherwise stated, an interactive data file will be required to be provided with the traditional format filing to which it relates. Companies will not be permitted to provide an interactive data file with a Form 8–K or 6–K unless it presents in interactive data format the revised or updated financial statements included in that Form 8–K or 6–K as described in footnote 74. *See* Part II.B.4 for a further discussion.

[96] For example, HTML currently is best suited for providing human-readable text.

[97] As further discussed below in Part II.C.3, however, interactive data generally will be deemed not filed for purposes of specified liability provisions.

[98] *See, e.g.*, letters from American Bar Association (ABA), American Institute of Certified Public Accountants (AICPA), Astoria Financial Corp. (Astoria), California Public Employees' Retirement System (CalPERS), EDGAR Online, Inc. (EDGAR Online), and Financial Executives International (FEI).

[99] *See, e.g.*, letters from Council of Institutional Investors (CII), Financial Services Information Division of the Software and Information Industry Association (FISD), EuropeanIssuers, Committee of Annuity Insurers (COAI), Valero Energy Corp. (VEC), and Wellpoint, Inc. (WellPoint).

[100] *See, e.g.*, letters from American Business Conference (ABC), AICPA, National City Corporation (National City), New York State Society of Certified Public Accountants (NYSSCPA), and United Technologies Corporation (UTC).

[101] *See, e.g.*, letters from Enterprise Compliance International (ECI), EdgarFilings, and UBMatrix, Inc.

[102] *See* letter from James Angel, PhD (Angel).

[103] *See* letter from PepsiCo., Inc.

[104] *See* letter from UTC.

[105] Release No. 33–8497 (Sept. 27, 2004) [69 FR 59111] (concept release); Release No. 33–8496 (Oct. 1, 2004) [69 FR 59098]; Release No. 33–8781 (Feb. 12, 2007) [72 FR 6676]. *See, e.g.*, letter from Deloitte regarding the voluntary program proposing release and letter from PR Newswire Association LLC regarding the concept release. We also note that participants in the voluntary program provided positive feedback with respect to possible required use of XBRL. For example, the vast majority of voluntary program participants that submitted responses and views to a questionnaire answered in the affirmative to the question ''Based on your experience to date, do you think it would be advisable for the Commission to continue to explore the feasibility and desirability of the use of interactive data on a more widespread and, possibly, mandated basis?'' See question V.f in the Interactive Data Voluntary Program Questionnaire available at *http://www.sec.gov/cgi-bin/XBRL_Questionnaire*.

[106] *See, e.g.*, letters from ABA, ACLI/AIA, AllState, Astoria, CSG, FEI, FirstEnergy, IBM, Intel, National City, Pfizer and SCS.

[107] *See, e.g.*, letter from Florida Power and Light Company (FPL).

[108] *See, e.g.*, letters from CSG, EEC, National City, Southern and VEC.

[109] *See* letter from EuropeanIssuers.

at this point improve the usefulness of financial information to analysts or investors.[110] Some of these commenters suggested that there was not a widespread demand for interactive data in the market, and that the Commission should allow market forces to provide incentives for more widespread voluntary implementation of interactive data.[111] Other commenters believed that before adopting this requirement a way needs to be developed to independently verify that financial data have been tagged accurately and ensure that information that is consistent with that in the traditional format filing is provided to investors.[112]

Although commenters generally favored XBRL as the most appropriate interactive data format, some commenters expressed concerns about XBRL itself or the manner in which it is proposed to be implemented in connection with the proposals. These concerns ranged from the availability of adequate software products [113] to the potential that customized taxonomy extensions could grow so common that they would directly interfere with the comparability of inter-company data.[114] A significant number of commenters suggested ways to facilitate interactive data tagging, including exposing for comment the Commission's maintenance and support agreement for XBRL,[115] as well as monitoring,[116] cataloging,[117] providing guidance on [118] and discouraging [119] extension use. We acknowledge these concerns and suggestions and believe that the rules as adopted will address many of them. Widespread, mandatory adoption is expected to foster a network effect and encourage development of cost reducing and improved analytical products. Additionally, we believe that the taxonomy will become even more comprehensive over time as common extensions are incorporated into the base in annual releases thus minimizing any interference that common extensions might have with data comparability.

B. Phase-in Under the New Rules

1. Overview

The new rules initially will require interactive data reporting only by domestic and foreign large accelerated filers that prepare their financial statements in accordance with U.S. GAAP and have a worldwide public common equity float above $5 billion as of the end of the second fiscal quarter of their most recently completed fiscal year.[120] The first required submissions for issuers that file on domestic forms will be for quarterly reports containing financial statements for a fiscal period ending on or after June 15, 2009. For calendar year companies, this requirement will first apply to their June 30, 2009 quarterly reports filed on Form 10–Q.[121]

Filers under the new rules will be required to submit their financial statements in an interactive data file using the list of tags for U.S. GAAP or IFRS as issued by the IASB, in either case as approved for use by the Commission. The submission also will be required to include any supporting files as prescribed by the EDGAR Filer Manual. Interactive data will be required for the entirety of their financial statements, although tagging of the footnotes and schedules at a deeper level of detail will be phased in the following year.

We did not propose, and are not adopting, a requirement that filers provide interactive data for their Management's Discussion and Analysis (MD&A), executive compensation, or other financial, statistical or narrative disclosure.[122] Many commenters supported this position.[123] Some commenters supported the idea of eventually tagging non-financial statement information because of its usefulness to investors,[124] while others expressed concern that variations among companies in executive compensation practices may not lend themselves to the development of standard tags [125] and should at the most be voluntary rather than required.[126] Another commenter supported the application of interactive data format to MD&A because of a belief that interactive data format for MD&A disclosures would be more useful to investors than detailed tagging of the footnotes to the financial statements.[127] This commenter recommended block tagging each section of the MD&A, with some level of detailed tagging for the numbers and tables. In deciding not to require the tagging of this information at this time, we agree with the commenters who believed that more experience with interactive data and a greater understanding of the costs and time associated with compliance with the requirements as proposed is needed before expanding the requirement to other information. We will continue to consider, however, the advisability of permissible optional or required interactive data for disclosures made outside a set of financial statements prepared in accordance with U.S. GAAP or IFRS as issued by the IASB or related financial statement schedules required under Commission rules.

The following tables identify the reports for which a filer would first be required to include interactive data for the company's financial statements according to the company's filing status.[128]

[110] *See, e.g.*, letters from BDO Seidman, LLP (BDO), CII, EuropeanIssuers, and VEC.

[111] *See, e.g.*, letters from EuropeanIssuers and Jay Starkman (Starkman).

[112] *See, e.g.*, CII and VEC.

[113] *See, e.g.*, letter from Robert Gilmore (Gilmore).

[114] *See, e.g.*, letter from EuropeanIssuers.

[115] *See, e.g.*, letters from Center for Audit Quality (CAQ), Deloitte Touche LLP (Deloitte), E&Y, and PricewaterhouseCoopers LLP (PWC).

[116] *See, e.g.*, letter from CFA.

[117] *See, e.g.*, letter from ABA.

[118] *See, e.g.*, letters from CFA Institute Centre for Financial Market Integrity (CFA), ConstellationEnergy (Constellation), Deloitte, FEI, Grant Thornton, Morgan Stanley, and Rivet Software Inc (Rivet).

[119] *See, e.g.*, letters from Grant Thornton, CFA, Morgan Stanley, and Rivet.

[120] Approximately 500 companies initially will be required to submit interactive data. Other companies, however, initially will be permitted to submit interactive data if they use U.S. GAAP or IFRS as issued by the IASB.

[121] For most U.S. companies and foreign private issuers filing on domestic forms, the periodic report to which this will first apply will be the June 30, 2009 quarterly report. For a company that files on domestic forms with a June 30 fiscal year, the first report will be the September 30, 2009 quarterly report. Foreign private issuers not using domestic forms that are in the first phase-in group will first provide interactive data in connection with their first Form 20–F or Form 40–F annual reports for the year ended on or after June 15, 2009.

[122] Tagging this information is neither required nor permitted under the amendments.

[123] *See, e.g.*, letters from ABA, General Mills (Gen. Mills), KPMG, Pfizer, Inc. (Pfizer) and The Society of Corporate Secretaries, and Governance Professionals (SCS).

[124] *See, e.g.*, letter from CalPERS.

[125] *See, e.g.*, letters from ABA, Johnson & Johnson (J&J), Pfizer, Gen. Mills, and SCS.

[126] *See, e.g.*, letter from UTC.

[127] *See, e.g.*, letter from National City.

[128] Transition reports that contain financial statements of the type and for the periods specified also will be required to be submitted in interactive data format under the new rules. These dates apply to the initial required interactive data disclosure; detailed tagging of the financial statement footnotes and schedules will not be required for an additional year.

Domestic and Foreign Large Accelerated Filers Using U.S. GAAP with Worldwide Public Common Equity Float above $5 Billion as of the End of the Second Fiscal Quarter of Their Most Recently Completed Fiscal Year.	Quarterly report on Form 10–Q or annual report on Form 20–F or Form 40–F containing financial statements for a fiscal period ending on or after June 15, 2009.
All Other Large Accelerated Filers Using U.S. GAAP	Quarterly report on Form 10–Q or annual report on Form 20–F or Form 40–F containing financial statements for a fiscal period ending on or after June 15, 2010.
All Remaining Filers Using U.S. GAAP	Quarterly report on Form 10–Q or annual report on Form 20–F or Form 40–F containing financial statements for a fiscal period ending on or after June 15, 2011.
Foreign Private Issuers with Financial Statements Prepared in Accordance with IFRS as Issued By the IASB.	Annual reports on Form 20–F or Form 40–F for fiscal periods ending on or after June 15, 2011.

2. Companies Covered by New Rules and Phase-in

The new rules will cover all companies that report either in U.S. GAAP, including smaller reporting companies and foreign private issuers that report in U.S. GAAP or, in the case of foreign private issuers, in accordance with IFRS as issued by the IASB.[129] On November 14, 2008, we issued a release proposing to allow certain domestic issuers to prepare financial statements in accordance with IFRS as issued by IASB.[130] The phase-in will require domestic and foreign large accelerated filers that report in U.S. GAAP and meet the minimum worldwide common equity float of greater than $5 billion to provide their initial interactive data submissions in year one of the phase-in period discussed above. All other U.S. GAAP filers that meet the definition of large accelerated filer will be required to provide their initial interactive data submissions in year two of the phase-in period. All remaining U.S. GAAP filers, including smaller reporting companies and companies not previously subject to periodic reporting requirements, will be required to provide their initial interactive data submissions in year three of the phase-in period.

Foreign private issuers that prepare their financial statements in accordance with IFRS as issued by the IASB will be required to provide their initial interactive data submissions in year three of the phase-in period.

The additional phase-in time for all but the largest accelerated filers is intended to permit companies to plan and implement their data tagging with the benefit of the experience of year one filers. It also is intended to enable us to monitor implementation and, if necessary, make appropriate adjustments during the phase-in period. With respect to foreign private issuers that report using IFRS as issued by the IASB, the additional phase-in time for these issuers is to allow greater development of the IFRS list of tags and our ability to accept filings using them.

Our multiyear experience with the voluntary program has helped us to better understand the extent to which a filer will incur additional costs to create and submit its existing financial disclosures in interactive data format. Based on that experience, we believe that the process of preparing an interactive data file will not impose a significant burden or cost. The voluntary program clearly demonstrated, although that program was limited to face financial statements only and not footnotes, that companies can, if they choose, tag their financial statements using currently available software without need of outside services or consultants; alternatively, they can rely on financial printers, consultants, and software companies for assistance, although they will retain ultimate responsibility for both their financial statements and their tagged data. As discussed in more detail in the cost-benefit analysis below,[131] we believe that first-year costs for a company will decrease in subsequent periods, particularly after detailed footnote tagging has been implemented. We also believe that these costs will be justified by interactive data's benefits. As with domestic registrants, we believe foreign private issuers that report in U.S. GAAP or prepare their financial statements in accordance with IFRS as issued by the IASB will be able to comply with the rules without incurring significant costs.

We expect that smaller companies, which generally are disproportionately affected by regulatory costs, also will be able to provide their reports in interactive data format without undue effort or expense. While interactive data reporting involves changes in reporting procedures, mostly in the initial reporting periods, we expect that these changes may provide efficiencies in future periods. As a result, there may be potential net savings to the filer, particularly if interactive data become integrated into the filer's financial reporting process. While we recognize that requiring interactive data financial reporting will likely result in start-up expenses for smaller companies, these expenses may be lower than those of larger filers, given that smaller filers tend to have simpler financial statements than larger companies, with fewer elements and disclosures to tag. In addition, we expect that both software and third-party services will be available to help meet the needs of smaller filers. We expect that the phase-in will foster the improvement and availability of inexpensive software and that a firmly established phase-in deadline could stimulate the development of such software. We also intend that the third-year phase-in for smaller reporting companies will permit them to learn from the experience of the earlier filers. It will also give them a longer period of time over which to spread first-year data tagging costs.

As noted above,[132] CIFiR issued its final report recommending that the Commission, over the long term, phase in the requirement that companies file financial statements using interactive data after the satisfaction of specified preconditions:

- Successful testing of the list of tags for U.S. financial statement reporting;
- The ability of reporting companies to file interactive data on the Commission's electronic filing system using the new list of tags for U.S. financial statement reporting; and
- The ability of the Commission's electronic filing system to provide an accurate human-readable version of the interactive data.

CIFiR recommended that we phase in financial statements using interactive

[129] As noted above, however, the new rules would not apply to investment companies registered under the Investment Company Act, business development companies, or other entities that report under the Exchange Act and prepare their financial statements in accordance with Article 6 of Regulation S–X.

[130] *See* Release No. 33–8982 (Nov.14, 2008) [73 FR 70816].

[131] *See* Part V.

[132] *See* Part I.C above.

data by requiring the largest 500 domestic registrants,[133] as determined by the value of shares held by unaffiliated persons, to furnish (rather than file) interactive data for the face of their financial statements and, in block-tagged form,[134] the footnotes to the financial statements. The Final Report also recommends that, one year after we impose this requirement on the first group of registrants, we impose the same requirement on the remaining domestic registrants that fall within the definition of ''large accelerated filer.'' Finally, the Final Report recommends that, once the specified conditions have been satisfied and the second phase-in period has been implemented, we evaluate whether and when to require that the domestic large accelerated filers file rather than furnish financial statements in interactive data format, as well as the inclusion of all other reporting companies.

Several commenters suggested a later phase-in for all companies with start dates of the second half of 2009 and when these pre-conditions are met. These commenters generally reasoned that the additional time would help companies and service providers to prepare.[135]

We believe that sufficient progress has been made regarding each of CIFiR's preconditions, particularly with respect to the list of tags for U.S. financial statement reporting.[136] While admittedly there has been only limited experience with footnote tagging, the current list of tags for U.S. financial statement reporting has been in wide use by participants in the voluntary program in submissions to us.[137] We understand that the list also is being used by companies that are tagging their financial statements outside of the voluntary program, including experimenting with footnote tagging. The tags also will be updated in an expected January 2009 version. The updated list is expected to contain improvements such as the reflection of new accounting pronouncements. The Commission's IDEA system into which companies actually will submit interactive data has been effectively implemented and the ability of companies to do so is now established. Finally, the Commission has developed a viewer to provide an accurate human-readable version of interactive data. Both the filing and viewing capabilities are fundamentally enhanced versions of applications and processes that were already in place for the voluntary program.

We have also carefully considered the Committee's thoughtful recommendation, including the recommended phase-in of 500 initial companies and delayed consideration of non-accelerated and other filers until after two years. We are adopting a phase-in schedule similar to that suggested by the Committee.[138] However, instead of waiting until after the second year to determine whether to propose extending the applicability of the rules to all filers, the new rules will establish a phase-in for the remaining companies' required interactive data submissions that will begin in the third year. Based on comments received on the proposing release, participants' experience with the voluntary program and our consultations with filers, software providers and filing intermediaries, we believe the new rules will accelerate the improvement and availability of inexpensive software. This, in turn, should generate more options and assistance for non-accelerated filers in general and, in particular, smaller reporting companies and foreign private issuers that prepare their financial statements in accordance with IFRS as issued by the IASB in particular so that they could become proficient in the use of interactive data without undue burden.

One commenter expressed concern about whether the initial phase-in of 500 issuers would involve enough companies to create a ''network effect'' so users of financial reporting obtain the benefits of interactive data in peer comparisons that are most useful and likely to occur if many or all filers provide financial reporting using interactive data.[139] Although including a larger number of filers in the initial phase-in might increase the overall commercial and analytical value of the interactive data, which in turn would likely increase the supply of software for analyzing and presenting interactive data to analysts and investors, we believe a firm schedule for all U.S. GAAP and IFRS reporting companies to file their financial statements using interactive data can provide an incentive to stimulate the further development of interactive data-related software and services, while also affording most companies additional time to learn from the experience of others.

We also believe that concurrently adopting a phase-in for non-accelerated filers in general and, in particular, smaller reporting companies, and foreign private issuers using IFRS as issued by the IASB will establish an appropriate and measured timeline, which we will be able to monitor and, if necessary, reconsider during the first two years of the phase-in.

Commenters generally supported the proposed phase-in schedule. A substantial majority of the commenters, however, suggested that the initial submission required be a Form 10–Q for domestic companies.[140] Other commenters recommended that the phase-in commence with filings made for fiscal periods[141] or years[142] beginning on or after December 15, 2008 or fiscal years beginning after December 31, 2008,[143] as opposed to fiscal periods ending on or after December 15, 2008, as proposed. The reasons cited by commenters included assuring that issuers would submit an interactive data file for three Forms 10–Q before submitting it for a Form 10–K,[144] providing more time for issuers and service providers to prepare[145] and allowing bugs to be detected in quarterly filings before the more widely distributed annual filings.[146]

The commenters suggesting that the initial submission required be a Form

[133] The recommendation does not address foreign companies. We do not believe that whether a U.S. GAAP reporting company is domestic or foreign should determine the applicability of the rules, and therefore foreign companies using U.S. GAAP will be included in the phase-in schedule along with their domestic counterparts. As noted, foreign private issuers that prepare their financial statements in accordance with IFRS as issued by the IASB also will be subject to the interactive data submission requirements, although they would not be phased in until year three. We also note that the CIFiR Final Report does not expressly address filings other than Exchange Act periodic reports.

[134] ''Block'' text means that the entire footnote or other discrete item, such as a schedule or table, would be tagged as an individual element.

[135] *See, e.g.*, letters from National City, Safeway, Inc. (Safeway), and Emerson Electric Company (EEC).

[136] We are still working on the ability to use the IFRS list of tags with our system, but expect it to be operational by the time filers that report in accordance with IFRS are required to submit interactive data files. As will be provided in the EDGAR Filer Manual, we will publish on our Web site when EDGAR can support filings that use the IFRS list of tags.

[137] Since June, when it became available on EDGAR, approximately 60 companies have completed approximately 100 submissions using the new taxonomy.

[138] As previously noted, the worldwide public float cutoff of $5 billion will result in approximately 500 companies subject to the new rules in year one.

[139] *See* letter from CalPERS.

[140] *See, e.g.*, letters from ABA, American Council of Life Insurers/American Insurance Association (ACLI/AIA), AICPA, AllState Corp. (AllState), Credit Suisse Group (CSG), and Comcast Corp. (Comcast).

[141] *See, e.g.*, letter from Constellation.

[142] *See, e.g.*, letters from Comcast, Grant Thornton, and Pfizer.

[143] *See, e.g.*, letter from Astoria.

[144] *See, e.g.*, letters from Astoria and Comcast.

[145] *See, e.g.*, letter from Constellation.

[146] *See, e.g.*, letter from Grant Thornton.

10–Q for domestic issuers generally reasoned that it would be helpful to companies and service providers alike if they could begin with a relatively simple form. Many of these commenters suggested that the content requirements of quarterly reports would be less burdensome than those of annual reports and allow companies to allocate more staff to initial tagging and provide a tagged template on which to build for subsequent filings.[147] At least one commenter acknowledged, however, that despite the greater initial effort posed by tagging an annual report, the comprehensiveness of this report would cause companies to address most of the issues in quarterly reports.[148] Some service providers commented that although a complete annual report is more effort for preparers, creating a related XBRL document is about the same level of effort for both a Form 10–K and Form 10–Q (assuming the footnotes are block tagged) and that the biggest difference between the forms is the larger number of footnotes in a Form 10–K, resulting in a nominal number of additional hours of effort.[149] These commenters further stated that allowing the tagging of a Form 10–Q instead of a Form 10–K would delay the use and development of XBRL by issuers while providing no significant savings of time or money. Overall, the commenters that generally supported the proposed phase-in schedule took the view that companies and service providers would be ready and the date certain together with the significant number of issuers involved would encourage potential vendors of interactive data products and services to invest in the development and marketing of new and improved products and services.[150]

Many of the commenters that suggested that the phase-in be slower had concerns related to the potential costs and burden of detailed footnote tagging.[151] Some commenters suggesting a different initial phase-in period than what was proposed cited the ability to assess costs and technology advancements.[152] Commenters also were concerned that such detailed tagging could result in more company specific extensions than anticipated, which might not be comparable between companies and present information out of context.[153]

One commenter suggested that the phase-in should be faster for some filers, and specifically recommended that all large accelerated filers reporting in accordance with U.S. GAAP be made subject to the filing requirements in the first year, perhaps starting with a quarterly report.[154] Other commenters stated that not only is tagging relatively simple and inexpensive, but that we should endeavor to get more companies tagging sooner in order to enhance the value of information available and to provide further impetus for software development.[155]

Some commenters also suggested that the rules should exclude or defer foreign private issuers because of the possibility that there might be a disproportionate burden on these issuers.[156] As to foreign private issuers reporting in accordance with U.S. GAAP and who meet the criteria for the first phase-in period in particular, several commenters stated that these issuers could face extra burdens potentially due to less access to service provider help, language barriers, a need to address both the U.S. GAAP list of tags and, possibly, relatively soon after, the IFRS IASB list of tags (such as those issuers that have signaled an intention to report in accordance with IFRS as issued by the IASB and discontinue reporting in U.S. GAAP), and have a potential competitive disadvantage in comparison to foreign private issuers already reporting in accordance with IFRS as issued by the IASB who would not have to tag until the third year.[157] One commenter suggested treating all foreign private issuers the same and placing them on the later phase-in schedule (or at least the ones that have announced an intention to switch to IFRS as their sole reporting standard).[158]

One commenter expressed the desire that the phase-in not be delayed due to a possible conversion away from U.S. GAAP to IFRS. The commenter noted in this regard that it believed interactive data could facilitate such a conversion if similar items were to receive similar tags.[159] In light of the differing opinions among commenters, the experience of those in the voluntary program, the size and resources of those issuers in the first group, and our ability to monitor the experiences of those larger first phase companies, we believe that the phase-in period as modified from the proposal generally addresses the burden and expense concerns expressed by some commenters. In this regard, as noted above, a filer first will be required to submit an interactive data file for a Form 10–Q, Form 20–F or Form 40–F, as applicable and the phase-in period will begin later than proposed. We believe that this approach will provide issuers more time to prepare their financial statements and service providers more time to deliver adequate software to support them. The staff also will consider requests to defer the phase-in on a case-by-case basis for issuers with special circumstances, particularly where the filer is committed to switching its basis of reporting to IFRS as issued by the IASB. Issuers could make such requests by applying for a continuing hardship exemption under amended Rule 202 of Regulation S–T.[160]

With respect to Canadian issuers, one commenter stated that such issuers filing forms under the Multijurisdictional Disclosure System (MJDS)[161] should be able to submit interactive data regardless of whether reporting in U.S. GAAP in order to avoid placing such issuers at a competitive disadvantage to other issuers permitted or required to submit interactive data.[162] The commenter stated that if it would not be feasible to enable such issuers to submit interactive data using a Canadian GAAP taxonomy, then the Commission should permit such issuers to tag a U.S. GAAP reconciliation. Consistent with the commenter's concern and our solicitation of comment in the proposing release, we are adding MJDS Forms F–9, F–10 and 40–F to the forms we expressly proposed to be subject to the interactive data requirements in adopting the requirements. The rules will not, however, require or permit interactive data related to these MJDS forms to be submitted when the financial statements they contain are

[147] *See, e.g.*, letters from EEI, IBM, Pfizer, Southern Company (Southern), United States Steel Corporation (USS) and UTC.

[148] *See* letter from Association of the Bar of the City of New York (NYCBA).

[149] *See, e.g.*, letters from EDGAROnline and Rivet.

[150] *See, e.g.*, letters from PepsiCo., EDGAROnline and Rivet.

[151] *See, e.g.*, letters from ABA, Constellation, SCS and Intel. *See* Part .II.B.3.a below for a more detailed discussion of footnote tagging.

[152] *See, e.g.*, letters from EEI, Cisco Systems (Cisco), Comcast, and PPG Industries Inc. (PPG).

[153] *See, e.g.*, the letters from ABA, ACLI/AIA, CSG. FEI, IBM and Intel.

[154] *See* letter from Grant Thornton.

[155] *See, e.g.*, letters from UBMatrix, EDGAROnline.

[156] *See, e.g.*, letters from CSG, Nippon Keidanren (NK), Philips International B.V. (Philips) and Sullivan & Cromwell (S&C).

[157] *See, e.g.*, letters from Credit Suisse Group (CSG), NK, Philips, S&C, and J.P. Morgan (JPM).

[158] *See* letter from Philips.

[159] *See* letter from CFA.

[160] As further discussed in Part II.E, Rule 202 will permit an issuer to apply in writing for a continuing hardship exemption from the requirement to provide interactive data if the issuer cannot do so without undue burden or expense.

[161] Certain Canadian foreign private issuers file registration statements and annual reports under the MJDS, which permits eligible Canadian companies to use their disclosure documents prepared in accordance with Canadian requirements in filings with the Commission.

[162] *See* letter from Canadian Pacific Railway (CP).

prepared in accordance with Canadian GAAP or as a U.S. GAAP reconciliation. There is no taxonomy for Canadian GAAP or a U.S. GAAP reconciliation and, as a result, there is not sufficient tagging guidance to produce tags that would be comparable across companies using Canadian GAAP.

As proposed and as adopted, investment companies registered under the Investment Company Act, business development companies or other entities that report under the Exchange Act and prepare their financial statements in accordance with Article 6 of Regulation S–X will not be subject to the new rules. The one commenter to address the exclusion of these companies agreed with this approach and stated that the investment management financial reporting taxonomy is not sufficiently developed and that the degree of investor benefit from tagging that occurs in the case of other types of issuers is not present for investment company and similar issuers.[163]

3. Information and Documents Covered by the New Rules

a. Financial Statements, Footnotes, and Financial Statement Schedules

The rules will require interactive data tagging of a filer's complete financial statements and any required financial statement schedules.[164] As with the voluntary program, the new rules will require companies to provide the interactive data in an exhibit. Interactive data will be required for all periods included in the filer's financial statements.[165] As proposed and as adopted, the new rules will not, however, require interactive data submissions for other financial statements that may be required of filers, including those provided pursuant to Rules 3–05, 3–09, 3–14, and 3–16 of Regulation S–X.[166] This approach was generally supported by commenters.[167]

As with the voluntary program, the new rules will require that the line item descriptions and amounts presented on the face of the financial statements in the traditional format filing be the same as in the interactive data format. Also, the rules will prohibit partial presentation of face financial statements in interactive data format. For example, filers will not be permitted to exclude comparative financial information for prior periods.

Unlike the voluntary program, our new rules require companies using U.S. GAAP or foreign private issuers using IFRS as issued by the IASB to provide tagged data for the footnotes and schedules to the financial statements. The 2005 adopting release for the voluntary program stated that we recognized that technical issues made it difficult to tag the notes to the financial statements. We did, however, provide volunteers with the option of tagging the notes to the financial statements.[168] Since the time of the adopting release, the necessary list of tags has been completed and the available software has advanced sufficiently to require that the financial statement footnotes and schedules be included in the new rules.

The voluntary program adopting release recommended that if participants voluntarily provided footnotes in interactive data format, then they should provide enough detail so that the tagging would be of practical value to users. The release stated that a single tag for the entire group of footnotes in a filing would cover too much information to be useful to the user. We still believe that one tag for the entire group of footnotes would be confusing and provide little benefit. If filers tag each footnote separately, however, users will be able to compare footnote disclosure between periods and across filers while minimizing the burden on preparers. We are therefore adopting the requirement that footnotes be tagged using four different levels of detail:

(i) Each complete footnote tagged as a single block of text;

(ii) Each significant accounting policy within the significant accounting policies footnote tagged as a single block of text;

(iii) Each table within each footnote tagged as a separate block of text; and

(iv) Within each footnote, each amount (*i.e.*, monetary value, percentage, and number) separately tagged.

To allow filers time to become familiar with tagging footnotes, in each filer's first year of interactive data reporting, only level (i) will be required. All four levels will be required starting one year from the filer's initial required submission in interactive data. In year two, for the first filing required to have detailed tagging of footnotes and schedules, the filer will have an additional 30 days to submit the interactive data exhibit. This is similar to the grace period provided for a filer's first required filing with interactive data. Subsequent interactive data exhibits using all of the levels will be required at the same time as the rest of the related report or registration statement. We believe the 30 day grace period will help a filer comply with the more detailed tagging requirements.

The requirement that in the second year a filer tag separately each amount within a footnote (*i.e.*, monetary value, percentage, and number) should not affect a filer's decisions regarding what to disclose. We are aware of questions as to whether the contextual information or data elements chosen from the standard list of tags could potentially reveal information that the rest of the related registration statement or periodic report would not otherwise make known. However, we do not believe that the contextual information or data elements chosen should provide any additional substantive disclosure.

To clarify the intent of the interactive data requirements, new Rule 405 of Regulation S–T, that sets forth tagging requirements, includes an instruction that states that the rule requires a disclosure format, but does not change substantive disclosure requirements. As proposed and as adopted, the rules also state clearly that the information in interactive data format should not be more or less than the information in the ASCII or HTML part of the related registration statement or report.[169]

As briefly noted above, commenters provided a mix of views on the footnote tagging requirements we proposed. Many commenters objected to some or all of the requirements as proposed and suggested alternatives.[170] In terms of burden, a significant number of commenters objected, in particular, to level (iv) tagging in whole or part.[171]

[163] *See* letter from the Investment Company Institute.

[164] As previously noted, new Rule 405 of Regulation S–T will directly set forth the basic tagging requirements and indirectly set forth the rest of the tagging requirements through the requirement to comply with the EDGAR Filer Manual. Consistent with new Rule 405, the EDGAR Filer Manual will contain the detailed tagging requirements.

[165] References in the rules to the financial statements of the filer or issuer also include financial statements of its predecessor to the extent they are included in the related registration statement or report pursuant to Rule 3–02 of Regulation S–X, Instruction 1 to Item 8 of Form 20–F or the requirements applicable to Forms F–9, F–10 or 40–F.

[166] 17 CFR 210.3–05, 17 CFR 210.3–09, 17 CFR 210.3–14, and 17 CFR 210.3–16. Additionally, pro forma financial statements prepared under Article 11 of Regulation S–X are not subject to the interactive data requirements.

[167] *See, e.g.*, letter from Deloitte.

[168] *See* Part II.E. of Release No. 33–8529 (Feb. 3, 2005) [70 FR 6556].

[169] *See* Preliminary Note 2 of Rule 405 of Regulation S–T.

[170] *See, e.g.*, letters from ABA, ACLI/AIA, AllState, Astoria, FEI, FirstEnergy, IBM, Intel, National City, and SCS.

[171] *See, e.g.*, letters from ABA, ACLI/AIA, AllState, Astoria, CSG, FEI, FirstEnergy, IBM, Intel, National City, Pfizer, and SCS.

Several of these commenters argued that detailed footnote tagging would require significant effort from the issuer and could be confusing because of the high number of company-specific extensions and the risk of inconsistency among filers due to varying footnote formats.[172] Other criticisms included assertions that the effort required would be greater than the Commission estimated,[173] overly burdensome [174] and duplicative,[175] would result in so many extensions that the information would not be comparable among issuers,[176] and would produce information that users inappropriately would take out of context.[177]

Other commenters reacted more favorably, with some suggesting alternatives to the proposed rules. For instance, a number of commenters recommended that the detailed tagging of footnotes be gradually phased in to provide more time for issuers to get acclimated to the process and for the development of standard taxonomies.[178] Other commenters suggested that the required detail tagging of footnotes should focus on the most useful and used footnote data rather on a broad array of data that would require issuers to apply thousands of additional tags for detailed financial and narrative information.[179] Similarly, another commenter suggested that detail tagging only be required as to the more standardized types of footnotes.[180]

While we are adopting the proposed requirement to tag separately each amount within a footnote (*i.e.*, monetary value, percentage, and number), we will permit, but not require, filers to tag, to the extent they choose, each narrative disclosure. We believe that adopting the footnote tagging requirements substantially as proposed strikes an appropriate balance between satisfying investors' needs and not imposing undue burden on issuers. We believe the block-text tagging required under levels (i) through (iii) will satisfy the needs of those who desire information within the context of an entire footnote or an entire table. We also believe that requiring the detail tagging of individual amounts but permitting the detail tagging of narrative disclosures within the footnotes as provided under level (iv) will satisfy the needs of those who desire to analyze specific pieces of information or data. Further, we believe that by permitting filers to choose whether and which elements to tag in the narrative disclosures of the footnotes and schedules, they are granted a degree of flexibility and relieved of the uncertainty as to which narrative elements to tag, some of which are placed into footnotes and schedules voluntarily. We also believe that not requiring detailed tagging of narratives would not result in the loss of information due to block text tagging. Finally, we believe that taxonomy and software advances, combined with the rules' grace period, will avoid placing an undue burden on issuers. We will, however, monitor the implementation of these amendments and, if necessary, consider making appropriate adjustments to the requirements.

Apart from footnote disclosures, filers may be required under existing financial reporting requirements to include certain supplementary financial statement schedules with their financial statements. The form and content of these schedules are governed by Article 12 of Regulation S–X.[181] The list of tags for U.S. financial statement reporting enables companies to tag individual facts in these financial statement schedules, or to block tag each entire schedule.

Filers also will be required to include with their interactive data any financial statement schedules prescribed by Article 12 of Regulation S–X. These financial statement schedules will be tagged using two different levels of detail; only the first level will be required in the first year. Both levels will be required starting one year from the filer's initial required submission in interactive data format. Similar in concept to the tagging approach adopted for the financial statement footnotes, the required levels of detail will be: (i) Each complete financial statement schedule tagged as a block of text; and (ii) each amount (*i.e.*, monetary value, percentage, and number) separately tagged. However, we will permit but not require each narrative disclosure in such schedule to be separately tagged to the extent desired by the filer.

A filer may restate its previously filed financial statements for the correction of an error and file an amendment to its registration statement, periodic report or transition report. Alternatively, a filer may revise its previously filed financial statements to reflect the effects of certain subsequent events, including a discontinued operation, a change in reportable segments, or a change in accounting principle and file a Form 8–K or 6–K or an amendment to a pre-effective registration statement. The new rules require a filer to provide revised interactive data at the same time it files the restated or revised traditional format financial statements as an exhibit to the registration statement or report containing those financial statements.[182] If a filer decides to change a tag it used previously that was not inappropriate at the time used, it would not be required to disclose the change.

b. Reports Covered by the New Rules

We are adopting the proposed requirement to submit interactive data for the filer's financial statements contained in periodic reports on Forms 10–Q, 10–K and 20–F and, in addition, extending the requirement to the Form 40–F annual report and to Forms 8–K and 6–K that contain revised or updated financial statements.[183] Under the new rules, filers also will be required to provide interactive data for transition reports on Forms 10–Q, 10–K, or 20–F.

We are extending the interactive data requirements to Form 40–F when used as an annual report because we believe that the effort required to satisfy the requirement and the benefits from doing so would be comparable to the effort and benefits associated with the other periodic reports to which the requirement will apply. In response to our solicitation of comment on whether to require interactive data in connection with Forms 40–F, one commenter urged us to at least permit filers to submit interactive data in order to avoid placing filers of that form at a competitive disadvantage.[184]

As discussed above, we are extending the interactive data requirements to Forms 8–K and 6–K that contain updated interim financial statements or financial statements that have been revised to reflect the effects of certain subsequent events. These financial statements typically are not filed as amendments to forms for which we proposed to require interactive data, but

[172] *See, e.g.*, the letters from ACLI/AIA, FEI, IBM, and Intel.

[173] *See, e.g.*, letter from SCS.

[174] *See, e.g.*, letter from Intel.

[175] *See, e.g.*, letter from FEI.

[176] *See, e.g.*, letter from ABA.

[177] *See, e.g.*, letter from CSG.

[178] *See, e.g.*, letters from Comcast, Constellation, EEI, Ernst & Young LLP (E&Y), Morgan Stanley, National Association of Real Estate Investment Trusts (NAREIT), and Southern.

[179] *See, e.g.*, letters from Intel, Morgan Stanley, and SCS.

[180] *See* letter from USS.

[181] *See* Rules 5–04 and 7–05 of Regulation S–X and Items 17 and 18 of Form 20–F.

[182] Revised interactive data will be required so that the financial information will be the same in both the traditional format filing and the interactive data file. If the financial statements are not revised in connection with an amended registration statement, periodic report, or transition report, the exhibit index will indicate that the interactive data file was already provided.

[183] Form 40–F may be filed by a Canadian company filing in accordance with the MJDS. Similar to Form 20–F, it may be used as an annual report or an Exchange Act registration statement.

[184] *See* letter from CP.

they provide timely financial information comparable to that contained in such forms and may be incorporated by reference into registration statements for which interactive data requirements generally apply.[185] In this regard, several commenters noted that registrants use Form 8–K to file financial statements that reflect changes for reasons other than to correct accounting errors.[186]

c. Registration Statements Under the Securities Act Covered by the Rules

We are adopting substantially as proposed a requirement that, subject to the phase-in period described above, registration statements filed under the Securities Act,[187] include interactive data when financial statements are included directly in the registration statement, rather than being incorporated by reference. This requirement will apply to the issuer's financial statements for all periods included in the registration statement as required by Regulation S–X and our other rules. As proposed, the rules would apply from the first filing of a registration statement. The rules as adopted, however, require that interactive data be submitted only after a price or price range has been determined and any time thereafter when the financial statements are changed. We believe analysts, investors, the public, and others will benefit from the enhanced ability of interactive data to locate and compare financial data included in registration statements. Further, under the new rules, interactive data will be required for the acquiring company, the filer, but not for the company being acquired, in the context of a business combination.

Some commenters opposed requiring the submission of interactive data with registration statements for initial public offerings under the Securities Act.[188] Some of these objections included the burdens for newly public companies.[189] However, a number of commenters favored requiring interactive data for initial public offering registration statements, other Securities Act registration statements or both.[190] Some commenters recommended that interactive data be required to be submitted only after the registration statement becomes effective, given the effort in preparing an initial public offering and the frequency with which initial public offering efforts never come to fruition.[191]

We believe that the interactive data requirements for Securities Act registration statements in general and, in particular, as limited to filings only after a price or price range has been determined and any time thereafter when the financial statements are changed, strike an appropriate balance between the alternatives of requiring interactive data submissions with each pre-effective amendment or waiting until a registration statement has been declared effective. In our experience, most issues related to the staff's review of offerings typically are resolved or near resolution by the time a price range is determined, and, as a result, there typically would be relatively few changes to the financial statements contained in additional amendments. As a result, issuers would be required to tag information that likely is in substantially final form. Consequently, the information would be useful to investors and issuers would be unlikely to need to revise the information significantly in a way that would trigger multiple submissions of interactive data. As each submission would be tagged to indicate that the information in the submission has been revised, we believe investors should be able to monitor changes in the interactive data efficiently. Further, the rules as adopted provide that a company's first filing to be subject to the interactive data requirement would be a quarterly report or, for a foreign private issuer not required to file quarterly reports, an annual report. Accordingly, interactive data exhibits will not be required for initial public offerings.

d. Registration Statements Under the Exchange Act Covered by the Rules

We are not adopting a requirement to submit interactive data for the financial statements contained in registration statements under the Exchange Act on Forms 10, 20–F and 40–F. Although we only expressly proposed to require interactive data in connection with Securities Act registration statements, the proposing release solicited comment on whether to require interactive data for the financial statements in Forms 40–F and in registration statements under the Exchange Act on Forms 10 and 20–F.

One commenter suggested waiting in order to evaluate experience with interactive data submission before requiring submission of Exchange Act registration statements.[192] Another commenter stated that the interactive data requirements should apply to Canadian issuers that report in accordance with U.S. GAAP and, ultimately, IFRS as issued by the IASB.[193] The rules as adopted will not require interactive data files to be submitted as an exhibit to Forms 10, 20–F or 40–F when used as Exchange Act registration statements. However, a filer is permitted to voluntarily submit an interactive data exhibit with these registration statements.

4. Initial Filing Grace Period

As noted above, interactive data will be required at the same time as the rest of the filing to which it relates. However, each company's initial interactive data submission, regardless of filing type, will have a 30 day grace period, and therefore will be permitted as an amendment to a:

- Periodic report on Form 10–K, 20–F, 40–F or 10–Q within 30 days after the earlier of the due date or filing date of the related report;
- Securities Act registration statement within 30 days after the filing date of the price or price range as part of the related registration statement;[194] or
- Report on Form 8–K or 6–K that contains revised or updated financial statements that have been revised to reflect a subsequent event rather than the correction of an error within 30 days after the filing date of the related report.

In addition, as noted above, in year two for the first filing that is required to have footnotes and schedules tagged using all levels of detail, the interactive data exhibit will be required within 30 days after the due date or filing date of the related registration statement or periodic, current or transition report or Form 6–K, as applicable.

In the voluntary program, filers were permitted to provide the interactive data at the time of filing or at any later time,

[185] Issuers would not be required or permitted to submit an interactive data exhibit to a Form 8–K or 6–K under any circumstances other than those specified. *See* note 74 above.

[186] *See, e.g.*, letters from Deloitte, E&Y, and KPMG LLP (KPMG).

[187] The requirement will apply to registration statements under the Securities Act on Forms S–1, S–3, S–4, F–9, F–10, S–11, F–1, F–3, and F–4. This includes registration statements for annuity contracts that are filed on Forms S–1 and S–3. As proposed, however, the requirement that we are adopting will not apply to registration statements on Form N–3, N–4, or N–6, which are used to register variable annuity contracts and variable life insurance policies.

[188] *See, e.g.*, letters from ABC, National City, NYCBA, and Gary Purnhagen (Purnhagen).

[189] *See, e.g.*, letter from ABC.

[190] *See, e.g.*, letters from AICPA, Grant Thornton, PricewaterhouseCoopers LLP (PWC), CAQ, CalPERS, CFA, UTC, Morgan Stanley, and E&Y.

[191] *See, e.g.*, letters from BDO, CAQ, and PWC.

[192] *See* letter from UTC.

[193] *See* letter from EDGAROnline.

[194] The 30 day grace period would begin for a Securities Act registration statement once the price or price range is filed as part of it because it is at that time the interactive data filing requirement becomes applicable.

without a deadline.[195] We believe that, consistent with our view regarding the potential value of widespread market use of the interactive data, companies should be required to provide the interactive data at the time the registration statement or report is filed or required to be filed, whichever is earlier. We do not believe this timing requirement will place undue pressure on filers as experience with tagging financial statements grows and software and taxonomies develop. We believe, for example, based on our experience with the voluntary program, that the time period for the quarterly or annual report is sufficient for filers to convert their ASCII or HTML financial statements into interactive data format and that the initial grace periods help to alleviate concerns over timing burdens.

Commenters overwhelmingly supported a 30 day grace period for the initial submission and initial detail tagged footnote submission of interactive data and many supported a 30 day grace period for additional submissions during the phase-in and, in some cases, beyond.[196]

Some commenters suggested that the grace period apply either for all interactive data submissions during the first two years of the phase-in period,[197] or for every submission made during the entire phase-in period.[198] These commenters generally reasoned that during the time specified, companies and service providers still would be familiarizing themselves and developing expertise related to the tagging process and, as a result, would need time to complete the tagging process. Some of those that supported additional grace periods noted that the tagging process will be an additional step to financial statement preparation for years to come and that it will take time to integrate the interactive data process with the financial statement preparation process.[199] One commenter noted that the grace period following the filing of a Form 10–K offers little relief for smaller companies due to the number of filings prepared shortly thereafter. Specifically, this commenter noted that at many smaller companies, the staff responsible for the preparation of a Form 10–K immediately turn their time and attention to the preparation of the company's proxy statement after filing the Form 10–K. The commenter stated that a Form 10–Q is not followed by a similar series of reporting obligations, so a grace period following this report is consequently more helpful in assisting companies avoid excessive expense and burden.[200]

A few commenters suggested a grace period for submissions after the phase-in period. Some stated that technical difficulties and the limited availability of support services would necessitate the permanent or temporary extension of a grace period and proposed, on an on-going basis after the initial phase-in period, that interactive data files be due within 4 or more days after the related official filing is filed. Further, these commenters believed that this type of extension would not ultimately impair the usefulness of interactive data while moving the tagging procedures out of the financial reporting preparation timeframe but still providing it to investors in a timely fashion.[201] However, other commenters were concerned that a grace period beyond the periods proposed would diminish the usefulness of interactive data submitted beyond the due date of the related official filing.[202]

We acknowledge all of these concerns and suggestions, and while we are adopting the grace periods substantially as proposed, we are deferring the start of the phase-in which we believe may help to alleviate potential burdens by giving more time to prepare the initial submission. We also believe that the eventual dropping of the grace period after the initial submissions will help to make the interactive data files more useful and relevant to investors by requiring the submissions at the same time as the related official filing.

Many commenters suggested that grace period submissions be filed as exhibits to Form 8–K or 6–K rather than as exhibits to amendments to Exchange Act periodic reports, so as to avoid negative connotations associated with the filing of an amendment.[203] One commenter even suggested the creation of new forms for these amendments to distinguish them from substantive amendments to periodic reports.[204] We acknowledge these concerns, but note that grace period submissions filed with amended periodic reports need contain only the relevant interactive data as an exhibit and therefore there should not be any confusion that the amended report is being filed for any other reason. In this regard we note that Rule 12b–15 under the Exchange Act[205] generally provides that any amendment to a filing that required a certification must contain another certification; however, we clarify that, consistent with the exclusion of interactive data from the disclosure certification requirements discussed in part II.C.4 below, an amendment whose sole purposes is to submit interactive data as an exhibit is not subject to the certification requirements of Rule 12b–15 under the Exchange Act. We therefore adopt the rules as proposed as they relate to submitting interactive data as part of an amendment to the form containing the related traditional format financial statements.

5. Web Site Posting of Interactive Data

We believe interactive data, consistent with our new rules, should be easily accessible for all investors and other market participants. As such disclosure becomes more widely available, advances in interactive data software, online viewers, search engines and other Web tools may in turn facilitate improved access to and usability of the data, promoting its awareness and use. Encouraging widespread accessibility to filers' financial information furthers our mission to promote fair, orderly, and efficient markets, and facilitate capital formation. We believe Web site availability of the interactive data will encourage its widespread dissemination, thereby contributing to lower access costs for users. We therefore are requiring, generally as proposed, that each filer covered by the new rules provide the same interactive data that it will be required to provide to the Commission on its corporate Web site, if it has one, on the earlier of the calendar day it filed or was required to file the related registration statement or report, as applicable.[206] The interactive

[195] The voluntary program permits filers to provide financial information in interactive data form as an exhibit to a report on Form 8–K or Form 6–K when the related traditional format financial statements appear in a registration statement or periodic report. The new rules, however, will require that interactive data be provided as an exhibit to the registration statement or periodic report that contains the related traditional format financial statements.

[196] *See, e.g.,* letters from ACLI/AIA, AICPA, AllState, Astoria, CNW Group (CNW), Comcast, Constellation, and EEI.

[197] *See, e.g.,* letters from Constellation, EEI, and IBM.

[198] *See, e.g.,* letters from AllState, Astoria, Comcast, Foley & Lardner (Foley), Pfizer, and UBmatrix.

[199] *See, e.g.,* letters from FEI and SCS.

[200] *See* letter from ABA.

[201] *See, e.g.,* letters from AllState, EEI, SCS, and Southern.

[202] *See, e.g.,* letters from CFA and EDGAR Online.

[203] *See, e.g.,* letters from AICPA, Constellation, Institute of Management Accountants (IMA), NAREIT, Purnhagen, and Teva Pharmaceutical Industries Limited (Teva).

[204] *See* letter from IBM.

[205] 17 CFR 240.12b–15.

[206] New Rule 405 of Regulation S–T contains the Web site posting requirement. We also are providing, however, that Web site posting of the interactive data will not be required until the end of any applicable grace period that applies to the submission of the interactive data to the Commission. Similarly, we are providing that Web

Continued

data should be accessible through the issuer's Web site address the issuer normally uses to disseminate information to investors.[207] Finally, the interactive data will be required to be posted for at least 12 months, which is consistent with issuers' full one year reporting cycle.

We believe that access to the interactive data on corporate Web sites will enable search engines and other data aggregators to more quickly and cheaply aggregate the data and make them available to investors because the data will be available directly from the filer, instead of through third-party sources that may charge a fee. It could also transfer reliability costs of data availability to the public sector by reducing the likelihood that investors cannot access the data through the Commission's Web site due to down-time for maintenance or to increased network traffic. We also believe that availability of interactive data on corporate Web sites will make it easier and faster for investors to collect information on a particular filer if the interactive data is on the filer's Web site already, rather than if investors would be required to visit separately (for example, by hyperlink) and search the Commission's Web site for information, particularly if the investor is already searching the issuer's Web site. To help further our goals of decreasing user cost and increasing availability, we will not allow companies to comply with the Web posting requirement by including a hyperlink to the Commission's Web site.

We believe this requirement will be consistent with the increasing role that corporate Web sites perform in supplementing the information filed electronically with the Commission by delivering financial and other disclosure directly to investors. We also believe that this requirement can provide an incentive for corporations to add content to or otherwise enhance their Web sites, thereby improving investor experience. For example, we note that since 2003 issuers with corporate Web sites have been required to post on their Web sites, directly or by hyper linking to a third-party Web site such as the Commission's Web site, beneficial ownership reports filed with respect to their securities on Forms 3, 4, and 5. We also note that many companies provide on their Web sites access to their periodic reports, proxy statements, and other Commission filings.[208] The new rules will expand such Web site posting by requiring companies with Web sites to post their interactive data as well.[209]

Commenters had mixed views on the proposed Web site posting requirement. Some commenters stated that it would be appropriate for a company to post interactive data on its Web site because, for example, many users of financial statements access such types of information through corporate Web sites.[210] Other commenters objected to the Web site posting requirement, citing reasons including cost,[211] lack of investor benefit,[212] and facilitating use of information out of context.[213] Finally, some commenters addressed posting details such as when the interactive data must be posted and for how long it must remain accessible.

We believe that issuers that already have corporate Web sites can post interactive data at a reasonable cost[214] and that such posting can benefit investors by facilitating their access to interactive data[215] and, as a result, facilitating their automated parsing and analysis of financial information. Investors and analysts routinely parse information out of filed financial statements, whether in paper or electronic format. Interactive data merely facilitates the parsing.[216] In this regard, an issuer that wishes to provide access to context beyond the posted interactive data would be free to indicate on its Web site where a user could access the Commission filing to which the interactive data is an exhibit. Similarly, an issuer could provide access to the remainder of the filing directly on its Web site or by hyperlink to the Commission's Web site.

Several commenters suggested that issuers not be required to post interactive data on corporate Web sites on the same day they are submitted to the Commission because that would be too burdensome.[217] Commenters suggested grace periods to post such data such as 24 hours[218] or, in the case of foreign private issuers, two business days[219] after the related form has been filed with the Commission. As proposed, issuers would have been required to post the interactive data by the end of the business day on the earlier of the date the interactive data is submitted or is required to be submitted to the Commission. In order to make it easier for issuers to satisfy the posting requirement by providing several more hours in which to comply but still have the posted information available in a timely manner, the new rules, as adopted, will require posting by the end of the calendar rather than business day specified.

One commenter recommended that the Commission clarify the length of time that issuers would be required to keep interactive data posted.[220] As a result, we are revising the proposed rules to require that an issuer keep the information posted for at least 12 months. As we stated in connection with adopting a 12-month posting period for Forms 3, 4 and 5,[221] we believe that such a period strikes an appropriate balance between the issuer effort needed to post and the investor benefit from having access to the posted material through the additional source

site posting of the interactive data will not be required before submission of the interactive data when submission of the data is delayed in accordance with and during the term of any applicable hardship exemption provided under Rule 201 or 202 as proposed to be revised. Revisions to Rules 201 and 202 are more fully discussed below in Part II.E.

[207] If the issuer has a corporate Web site but does not normally disseminate information to investors through its Web site, it should provide access to the interactive data through a location on its Web site that it reasonably believes will facilitate user access to the forms. We took a similar approach to Web site posting location and 12 month time frame in connection with requiring that issuers with corporate Web sites post on their Web sites beneficial ownership reports filed with respect to their securities on Forms 3, 4 and 5 under Section 16(a) of the Exchange Act. *See* Section 16(a)(4)(C) [15 U.S.C. 78p(a)(4)(C)], Rule 16a–3(k) [17 CFR 240.16a–3(k)] and Release No. 33–8230 (May 7, 2003) [68 FR 25788].

[208] Companies filing registration statements and accelerated filers and large accelerated filers in their periodic reports are required to disclose whether or not they make available free of charge on or through their Web site, if they have one, their annual report on Form 10–K, quarterly reports on Form 10–Q, current reports on Form 8–K, and amendments to those reports. Companies that do not make their reports available in that manner also must disclose the reasons they do not do so and whether they voluntarily provide electronic or paper copies of their filings free of charge upon request. *See* Item 101(e) of Regulation S–K.

[209] As further discussed in Part II.E, under the new rules a company that fails to post its interactive data as required will be deemed ineligible to use short form registration Forms S–3, S–8, and F–3 and will be deemed not to have adequate public information available for purposes of Rule 144(c)(1) unless and until it posted.

[210] *See, e.g.*, letters from FEI, CFA and UTC.

[211] *See, e.g.*, letters from IBM and Starkman.

[212] *See, e.g.*, letters from Starkman and VEC.

[213] *See, e.g.*, letters from ABA and SCS.

[214] *See* Part IV.

[215] One commenter stated that an issuer should be able to satisfy its posting requirement through a hyperlink. *See* letter from IBM. Similarly, another commenter suggested dropping the posting requirement because the information would be available on the Commission's Web site and the requirement would be difficult to monitor. *See* letter from E&Y. We believe, however, that search engines and other data aggregators might be better able to access the posted information directly from issuers' Web sites.

[216] We believe that parsing information in a filing is useful but we continue to emphasize the need to evaluate the entirety of a filing.

[217] *See, e.g.*, letters from Foley, Liberty Global, Inc. (LGI), NYCBA, Southern, and Teva.

[218] *See, e.g.*, letter from LGI.

[219] *See, e.g.*, letter from Teva.

[220] *See* letter from ABA.

[221] Rule 16a–3(k) [17 CFR 240.16a–3(k)].

of the issuer's Web site. In this regard, we note that the interactive data would be available indefinitely on the Commission's Web site.[222]

C. Accuracy and Reliability of Interactive Data

1. Voluntary Program

Data must be accurate to be useful to investors. To help assure the accuracy of interactive data in the voluntary program, the data, upon receipt by our electronic filing system, undergoes a validation separate from the normal validation of the traditional format filing.[223] Potential liability also helps ensure the accuracy and reliability of the data. Although the voluntary program has provided limited protections from liability under the federal securities laws [224] and excluded interactive data from being subject to officer certification requirements under Exchange Act Rules 13(a)–14 and 15d–14,[225] interactive data in the voluntary program are subject to the anti-fraud provisions of the federal securities laws. The voluntary program also encourages participants' efforts to create accurate and reliable interactive data that is the same as the corresponding disclosure in the traditional electronic format filing by providing that a participant is not liable for information in its interactive data that reflects the same information that appears in the corresponding portion of the traditional format filing, to the extent that the information in the corresponding portion of the traditional format filing was not materially false or misleading. To further encourage reasonable efforts to provide accurate interactive data, the voluntary program treats interactive data that do not reflect the same information as the official version as reflecting the official version if the volunteer meets several conditions. The volunteer must have made a good faith and reasonable attempt to reflect the same information as appears in the traditional format filing and, as soon as reasonably practicable after becoming aware of any difference, the volunteer must amend the interactive data to cause them to reflect the same information.[226]

2. Use of Technology To Detect Errors

Complete, accurate, and reliable financial statements and other disclosures are essential to investors and the proper functioning of the securities markets. Our new requirement to submit interactive data with registration statements and reports is designed to provide investors with new tools to obtain, review, and analyze information from public filers more efficiently and effectively. To satisfy these goals, interactive data must meet investor expectations of reliability and accuracy. Many factors, including companies' policies and procedures as buttressed by incentives provided by the application of technology by the Commission, market forces and the liability provisions of the federal securities laws, help further those goals.

Building on the validation criteria referenced above for interactive data in the voluntary program, we plan to use validation software to check interactive data for compliance with many of the applicable technical requirements and to help the Commission identify data that may be problematic. For example, we expect the Commission's technology to:

- Check if required conventions (such as the use of angle brackets to separate data) are applied properly for standard and, in particular, non-standard special labels and tags;
- Identify, count, and provide the staff with easy access to non-standard special labels and tags; [227]
- Identify the use of practices, including some the XBRL U.S. Preparers Guide contains, that enhance usability; [228]
- Facilitate comparison of interactive data with disclosure in the corresponding traditional format filing;
- Check for mathematical errors; and
- Analyze the way that companies explain how particular financial facts relate to one another.[229]

The availability of interactive data to the staff may also enhance its review of company filings. After the FDIC required submission of interactive data, it reported that its analysts were able to increase the number of banks they reviewed by 10% to 33%, and that the number of bank reports that failed to fully meet filing requirements fell from 30% to 0%.[230]

We believe analysts, individual investors and others outside the Commission that use the interactive data submitted to us also will make use of software and other tools to evaluate the interactive data and, as a result, market forces will encourage companies to provide interactive data that accurately reflects the corresponding traditional format data in the traditional format filing. For example, the use of non-standard special labels or tags (extensions) could introduce errors, but we expect the open source and public nature of interactive data and the list of tags for U.S. financial statement reporting would enable software easily to detect and identify any modifications or additions to the approved list of tags. Based on our knowledge of the existing software market, we believe such software and other technology will be widely available for free or at reasonable cost. Investors, analysts, and other users therefore would be able to identify the existence and evaluate the validity of any such modifications or additions. We also anticipate that companies preparing their interactive data and investors, analysts, and other users will use such devices to search for and detect any changes made to the standard list of tags. The ability of analysts and other users to discover mistakes or alterations not consistent with the desired use of interactive data may give filers an additional incentive to prepare such data with care and promptly to correct any errors.

3. Application of Federal Securities Laws

An interactive data file generally will be subject to the federal securities laws in a modified manner similar to that of the voluntary program under new Rule 406T if the filer submits the interactive data file within 24 months of the time the filer first is required to submit

[222] *See* Release No. 33–8230 (May 7, 2003) [68 FR 25788].

[223] If the traditional format filing meets its validation criteria, but any interactive data fail their own validation criteria, all interactive data are removed and the traditional format filing is accepted and disseminated without the interactive data file.

[224] Rule 402 under Regulation S–T provides these liability protections.

[225] *See* Rules 13a–14(f) [17 CFR 240.13(a)–14(f)] and 15d–14(f) [17 CFR 240.15d–14(f)].

[226] 17 CFR 232.402(b).

[227] For example, if a company uses the word ''liabilities'' as the caption for a value data tagged as ''assets,'' the software would flag the filing and bring it to the staff's attention. In contrast, if the company used ''Total Assets'' or ''Assets, Total,'' the software would identify the use of these terms as a low risk discrepancy.

[228] The XBRL U.S. Preparers Guide, available from the XBRL U.S. Web site, provides guidance to facilitate preparing information in the interactive data format.

[229] The technology used to show these relationships is known as a ''linkbase.'' Linkbases are part of an XBRL taxonomy and serve one of two primary purposes: (1) To define additional information about a particular concept (for example to express the definition for Inventory or to express the authoritative references for Inventory); and (2) to express relationships between different concepts (for example Inventory adds up to Current Assets or Inventory appears after Accounts Receivable on the balance sheet, but before Prepaid Expenses). The Commission will seek to ensure that linkbases not only comply with technical requirements but also are not used to evade accounting standards.

[230] These bank reports require information that is more structured and less varied than the information we will require. As a result, the FDIC's efficiency gains from the use of interactive data likely would be greater than ours.

interactive data files[231] but no later than October 31, 2014.[232] Rule 406T provides that during the time a filer's interactive data files are treated in this modified manner, they will be:

- Subject to specified anti-fraud provisions[233] except in connection with a failure to comply with the tagging requirements that occurs despite a good faith attempt to comply and is corrected promptly after the filer becomes aware of the failure;
- Deemed not filed or part of a registration statement or prospectus for purposes of Sections 11 or 12 of the Securities Act and not otherwise subject to liability under these sections;
- Deemed not filed for purposes of Section 18 of the Exchange Act or Section 34(b) of the Investment Company Act and not otherwise subject to liability under these sections; and
- Deemed filed for purposes of (and, as a result, benefit from) Rule 103 under Regulation S–T.[234]

In regard to correcting an interactive data file, we are adding the term ''promptly'' to the list of defined terms in Rule 11 under Regulation S–T. Rule 11 defines ''promptly'' as ''as soon as reasonably practicable under the facts and circumstances at the time.'' The definition is followed by a non-exclusive safe harbor. The safe harbor generally provides that a correction made by the later of 24 hours or 9:30 a.m. on the next business day after the filer becomes aware of the need for the correction is deemed promptly made. If a filer fails to correct within the safe harbor timeframe, the filer still may have corrected promptly depending on the applicable facts and circumstances.

Despite the modified treatment of interactive data files under the federal securities laws, a filer would be subject to actions under circumstances where the protections of new Rule 406T do not apply. For example, the Commission could bring an action against a filer under Section 13(a) of the Exchange Act if the filer submits an interactive data file with a periodic report and the interactive data file fails to comply with the tagging requirements despite a good faith attempt, where the filer fails to correct the interactive data file promptly after it discovers the failure. On the other hand, the Commission would not be able to bring an action against a filer under Sections 17(a)(2) and (3) under the Securities Act if the filer submits an interactive data file with a Securities Act registration statement if the interactive data file fails to comply despite a good faith effort but the filer acted negligently.

New Rule 406T differs from proposed Rule 406 primarily by omitting reference to interactive data in viewable form and applying only for a specified time.

We believe that interactive data in viewable form are best addressed in relation to interactive data files and traditional concepts of liability. Interactive data in viewable form that are displayed on the Commission's Web site will reflect the related interactive data file and, as a result, such interactive data in viewable form should be treated in the same manner as the related interactive data file in regard to a filer's failure to correctly tag an interactive data file that results in a failure of the interactive data in viewable form to reflect the related official filing. Interactive data in viewable form that are displayed on other Web sites would be subject to general anti-fraud principles applicable to republication of another person's statements.[235] Consistent with traditional concepts of liability, a filer would incur no additional liability for a failure that occurs in both an interactive data file and the related interactive data in viewable form.

We believe that limiting the modified application of the federal securities laws to a specified period improves the balance between avoiding unnecessary cost and expense and encouraging accuracy in regard to interactive data because it recognizes that issuers and service providers likely will grow increasingly skilled at and comfortable with the tagging requirements.

In the proposing release, the Commission sought comment on modified treatment of interactive data under the federal securities laws. Commenters overwhelmingly supported limiting liability,[236] with a fair number of commenters supporting the proposed approach, and a fair number suggesting that the proposed approach be made less stringent. One expressed the concern that the proposed approach should be made more stringent.[237] A significant number stated that the regulatory text was confusing or unclear, especially as to viewable interactive data. Finally, a few commenters made other liability-related suggestions, sought clarification of the liability applicable to situations not intended to be addressed expressly by the proposed rules or expressed other concerns.

Commenters supporting the proposed approach generally supported having interactive data files be deemed furnished rather than filed.[238] New Rule 406T is consistent with the proposals and these comments because it deems interactive data files not filed for purposes of various provisions under the federal securities laws.

Commenters suggesting that the proposed approach be made less stringent did so explicitly and implicitly. For example, while the proposals generally provided that an interactive data file would be protected from federal securities law liability if the issuer made a good faith attempt to prepare it correctly, one commenter criticized the good faith requirement explicitly[239] and others did so implicitly by stating there should be no liability where there is no affirmative intent to mislead.[240] The commenter that criticized the good faith requirement explicitly stated that it would be problematic because there would be litigation over its fulfillment. Upon further reflection and in light of

[231] The 24-month period would be exclusive of a grace period. For example, a large accelerated filer first required to submit interactive data for financial statements in a Form 10–Q for the fiscal period ended June 30, 2009, would be required to submit the interactive data by 30 days after the Form 10–Q's August 10, 2009 due date but its 24-month period would end August 10, 2011.

[232] In regard to liability and also similar to the voluntary program, we are adopting as proposed an exclusion for interactive data files from the officer certification requirements of Rules 13a–14 and 15d–14 of the Exchange Act. That exclusion is discussed further below in Part II.C.4.

[233] The specified anti-fraud provisions are Section 17(a)(1) of the Securities Act [15 U.S.C. 77q(a)(1)], Section 10(b) [15 U.S.C. 78j(b)] of Rule 10b–5 [17 CFR 240.10b–5] under the Exchange Act and Section 206(1) [15 U.S.C. 80b–6(1)] of the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 *et seq.*].

[234] Interactive data files will be deemed filed for purposes of Rule 103 under Regulation S–T [17 CFR 232.103] and, as a result, the issuer will not be subject to liability for electronic transmission errors beyond its control if the issuer corrects the problem through an amendment as soon as reasonably practicable after the issuer becomes aware of the problem. Interactive data files will be deemed filed for purposes of Rule 103 regardless of whether they are eligible for the modified treatment provided by Rule 406T at the time submitted. Rule 406T expressly provides that interactive data files are deemed filed for purposes of Rule 103 to remove any negative inference that otherwise might be drawn due to the fact that Rule 406T deems interactive data files to be not filed for other specified purposes.

[235] These general anti-fraud principles include the concepts of aiding and abetting and control person liability. In addition, liability for interactive data in viewable form displayed by third parties would depend in part on whether that information is attributable to the filer. *See, e.g.*, Release No. 34–58288 (Aug. 7, 2008) at Section II.B.2.

[236] *See, e.g.*, letters from ABA and IBM.

[237] *See* letter from CII.

[238] *See, e.g.*, letters from AICPA, Deloitte, NYCBA, SavaNet LLC (SavaNet), and UTC.

[239] *See* letter from S&C.

[240] *See, e.g.*, letters from Angel, Intel, LG, SCS, Southern, and USS.

these comments, new Rule 406T requires a ''good faith attempt'' to comply with the tagging requirements rather than the proposed ''good faith and reasonable attempt.'' We believe that omission of the reference to ''reasonable'' should not result in a lesser degree of effort by issuers but should help to avoid litigation over fulfillment of the requirement. As discussed in detail above, under new Rule 406T additional liability protection occurs when a filer makes a good faith attempt and corrects any failure to comply with the tagging requirements promptly after the filer becomes aware of the failure. In this context, we interpret ''good faith'' as not having the scienter required for purposes of the anti-fraud provisions.[241] In a further effort to help clarify what constitutes adequate effort for purposes of receiving additional liability protection and as also discussed in detail above, we have adopted a definition for the term ''promptly'' that includes a non-exclusive safe harbor.

Three commenters suggested that, at least at the outset of the interactive data submission requirement, there should be essentially no liability based on interactive data files or viewable interactive data.[242] Two of these commenters stated that there should be no liability because tagging would be a ''new'' process.[243] The third commenter stated that interactive data are merely a repetition, in another format, of information already required and there would be little risk that issuers would affirmatively try to introduce differences between the formats because any such differences would be transparent. Similarly, one commenter stated there should be no liability attributable to the posting of an interactive data file because the information would be out of context.[244] We acknowledge these comments but, in general, believe the measured level of liability that would apply at the outset of the mandated program is appropriate in light of the current level of development in tagging processes and the effect this level of liability should have on helping to assure that interactive data are reliable.[245]

Some commenters that supported limited liability at least at the outset of the interactive data submission requirement suggested that liability be revisited[246] or increased[247] later. Similarly, one commenter suggested that the imposition of liability on viewable interactive data be conditioned on the maturity of the tagging and rendering technology.[248] In that regard, three commenters suggested that the good faith exception proposed for the interactive data file in part could form the basis for an exemption for viewable interactive data.[249] As discussed above, we have decided to limit liability at the outset of the mandated program but phase out the limitation of liability over time. We believe that treatment of interactive data in viewable form that appears on our Web site in a manner analogous to the treatment of the related interactive data file for liability purposes is appropriate in light of the maturity of tagging and rendering technology. Similarly, we believe that treatment of interactive data in viewable form that appears on other Web sites under general anti-fraud principles applicable to republication of another person's statements also is appropriate in light of the maturity of such technology.

Commenters stated that the regulatory text was confusing or unclear in various ways, with a focus on viewable interactive data. In terms of specific items, commenters singled out, for example, the proposed Rule 406(c)(3)(C) provision attempting to draw a distinction between substantive content and compliance with the tagging provisions of proposed Rule 405.[250] In terms of general items and viewable interactive data, commenter concerns often related to the fact that the proposed rules expressly addressed viewable interactive data only to the extent, as converted by the Commission's viewer, it appeared identical in all material respects to the related official filing. As a result, commenters indicated that it was unclear what liability applied to viewable interactive data as rendered by the Commission's viewer, *not* identical in all material respects to the related official filing; and as rendered by a non-Commission viewer.[251] We believe that new Rule 406T clarifies or omits the provisions of proposed Rule 406 that commenters found confusing. As to viewable interactive data in particular, we now omit reference in the rule to one particular situation in favor of addressing viewable interactive data in general under traditional legal and liability concepts as discussed in detail above.

We did not propose to permit or require legends for interactive data files. One commenter expressly approved the absence of a legend requirement,[252] but four commenters suggested variously that the Commission require a legend that states people should not rely on the interactive data,[253] that they should not rely on it because of limited liability,[254] or that people should not use the interactive data in isolation.[255] We believe that attempting to place in interactive data legends of the type suggested would be impracticable because interactive data will often be accessed in their machine-readable form and, even if they were accessed in viewable form, might not be accessed in a place where the legend would appear. As to a legend that states people should not rely on the interactive data in particular, such a legend would be unnecessary because there is no reason the data should not be reliable and, were they not reliable, they would have little value.

To assist filers in ensuring the accuracy of their interactive data submissions, we plan to make available to filers the opportunity to make a test submission with the Commission. The test submission will enable the filer to learn how the validation system would respond if the test submission were a live submission and then, if the filer wishes, use the Commission's pre-viewer to see the viewable interactive data that would be displayed on the Commission Web site if the interactive data were accepted and disseminated.[256] If the validation system finds an error, it will advise the filer of the nature of the error and as to whether the error was major or minor. As occurs in the voluntary program, a major error in an interactive data exhibit that was part of a live filing will cause the exhibit to be held in suspense in the electronic filing system. The rest of the filing will be accepted and disseminated if there are no major errors outside of the interactive data exhibit. If that were to happen, the filer will need to revise the interactive data exhibit to eliminate

[241] *See* Ernst & Ernst v. Hochfelder, 425 U.S. 185, 206 (1976).

[242] *See* letters from NYCBA, Safeway, and S&C.

[243] *See* letters from NYCBA and Safeway.

[244] *See* letter from SCS.

[245] *See* Part II.B.5 for a discussion of commenter concerns regarding interactive data's being out of context.

[246] *See, e.g.*, letters from AICPA, E&Y, and Grant Thornton.

[247] *See, e.g.*, letters from SavaNet and UTC.

[248] *See* letter from ABA.

[249] *See, e.g.*, letters from ABA, E&Y, and IBM.

[250] *See* letters from ABA, Intel, and SCS.

[251] *See, e.g.*, letters from ABA and S&C.

[252] *See* letter from CFA. Under the current voluntary program, the filing with which interactive data are submitted must disclose that the purpose of the interactive data is to test the related format and technology and, as a result, investors should not rely on the interactive data in making investment decisions.

[253] *See, e.g.*, letters from AICPA, CAQ and PWC.

[254] *See* letters from CAQ and PWC.

[255] *See* letter from ABA.

[256] The EDGAR Filer Manual addresses test submissions primarily at Section 6.6.5 of Volume II.

the major error and submit the exhibit as an amendment to the filing to which it is intended to appear as an exhibit. A minor error in an interactive data exhibit that is part of a live filing will not prevent the interactive data exhibit from being accepted and disseminated together with the rest of the filing if there are no major errors in the rest of the filing. We believe it will be appropriate to accept and disseminate a filing without the interactive data exhibit submitted with it if only the exhibit has a major error, in order to disseminate at least as much information at least as timely as would have been disseminated were there no interactive data requirement.

Some commenters sought clarifications on whether there might be auditor liability on interactive data files.[257] There is no additional basis for auditor liability based on data tagging. Also, an auditor will not be required to apply AU Sections 550, 711 or 722 to interactive data provided in an exhibit or to the related viewable interactive data.[258]

In this regard, we also note that we are not requiring that filers involve third parties, such as auditors or consultants, in the creation of their interactive data filings. We are taking this approach after considering various factors, including:

- Commenters' views;
- The availability of a comprehensive list of tags for U.S. financial statement reporting from which appropriate tags can be selected, thus reducing a filer's need to develop new elements;[259]
- The availability of user-friendly software with which to create the interactive data file;
- The multi-year phase-in for each filer, the first year of which entails the relatively straightforward process of tagging face financial statements, as was done during the voluntary program, and block tagging footnotes and financial statement schedules;
- The availability of interactive data technology specifications, and of other XBRL U.S., XBRL International, and Commission resources for preparers of tagged data;[260]
- The advances in rendering/presentation software and validation tools for use by preparers of tagged data that can identify the existence of certain tagging errors;
- The expectation that preparers of tagged data will take the initiative to develop practices to promote accurate and consistent tagging; and
- The filer's and preparer's liability for the accuracy of the traditional format version of the financial statements.

Many commenters believed that issuers should not be required to obtain auditor assurance on their interactive data submissions at least at the outset of the interactive data submission requirement,[261] but a few commenters favored requiring assurance to enhance reliability.[262] Some commenters suggested monitoring interactive data submissions and considering whether to introduce an assurance requirement in the future.[263] We acknowledge the concerns of the commenters that believe we should require assurance on interactive data. For the reasons discussed above, however, we believe an assurance requirement is not now necessary.

A number of commenters, including many representing the auditing profession, recommended that the Commission and the PCAOB provide guidance to issuers and auditors for situations where an issuer wanted to voluntarily obtain some form of auditor assurance on interactive data.[264] We note that issuers can obtain third-party assurance under the PCAOB Interim Attestation Standard—AT sec. 101, Attest Engagements on interactive data, and can start and stop obtaining assurance whenever they choose.[265] We understand that the PCAOB is aware of sentiment in favor of interactive data-specific attestation standards.

Auditing firms generally did not support requiring issuers to obtain auditor assurance on data tagging, and stated their concern that users of interactive data financial statements may incorrectly assume that auditor assurance has been provided on the data tagging.[266] These auditing firms recommended:

- Requiring issuers' filings to specify clearly the extent of auditor involvement with the interactive data exhibit;[267]
- Requiring the interactive data submission to state that it is not subject to assurance when no assurance has been provided;[268]
- Prohibiting tagging the auditor's report;[269] and
- Revising the standard audit report to clarify the extent to which, if any, the audit extends to interactive data.[270]

Some commenters suggested monitoring the interactive data submission program and considering whether to introduce an assurance requirement in the future.[271] As stated previously, the Commission does not believe that auditor involvement is necessary with respect to the interactive data file. We also believe that the rules as adopted address some of the commenters' concerns regarding the perception of auditor involvement in the creation of the interactive data exhibit. Although Rule 405 as adopted does not include a requirement that auditors' reports be tagged, the rules do not prohibit issuers from indicating in the financial statements (such as in a footnote) the degree of auditor involvement in the tagging process. Accordingly, we believe that an issuer can make clear the level of auditor involvement or lack thereof in the creation of the interactive data exhibit.

4. Officer Certifications and Integration of Interactive Data and Business Information Processing

Rules 13a–14 and 15d–14 generally require officers to certify in periodic reports to various matters relating to internal control over financial

[257] *See e.g.*, letter from E&Y.

[258] *See* Part II.C.4 below for a further discussion of AU Sections 550, 711 and 722.

[259] We expect the same will be true with respect to the tags for reporting under IFRS as issued by the IASB.

[260] An example of Commission resources includes the EDGAR Filer Manual.

[261] *See, e.g.*, letters from AICPA, Deloitte, FEI, Gen. Mills, IMA, Illinois Society of Certified Public Accountants (ILSCPA), and Teva.

[262] *See, e.g.*, letters from CalPERS, CFA and CII. In connection with stating their concerns about the lack of auditor assurance, two of these commenters also stated their concern about the absence of management certification of interactive data under the proposed exclusion of interactive data from the officer certification requirements of Rules 13a–14 and 15d–14. *See* letters from CFA and CII.

[263] *See, e.g.*, letters from AICPA, CAQ, Deloitte, E&Y, Grant Thornton, and KPMG.

[264] These included tagging in general (*see, e.g.*, letters from AICPA and UTC); extensions (*see, e.g.*, letters from AICPA and UTC); and correct associated data (*see, e.g.*, letter from UTC).

[265] If an issuer wishes to refer in a filing to third party assurance voluntarily obtained from an auditor or other party, the issuer must comply with applicable consent requirements.

[266] *See, e.g.*, letters from CAQ, Deloitte, E&Y, Grant Thornton, KPMG, and PWC.

[267] *See, e.g.*, letters from Deloitte, Grant Thornton, and PWC.

[268] *See, e.g.*, letters from Deloitte, E&Y and Grant Thornton.

[269] *See, e.g.*, letters from CAQ, Deloitte, E&Y, Grant Thornton, and KPMG.

[270] *See, e.g.*, letter from Deloitte.

[271] *See* letters from AICPA, CAQ, Deloitte, E&Y, GT, and KPMG.

reporting[272] and disclosure controls and procedures.[273]

We are adopting amendments that exclude interactive data from the officer certification requirements of Rules 13a–14 and 15d–14. We believe that adopting these amendments is part of striking an appropriate balance between avoiding unnecessary cost and expense and encouraging accuracy in regard to interactive data. A number of commenters stated that interactive data submissions should not be included within the scope of officer certifications,[274] but two commenters expressed concern about the exclusion[275] and one commenter recommended that they be included after the two-year phase-in period.[276] The commenters supporting the exclusion cited varying reasons including, for example, that an officer should not be required to certify to data that is not human-readable[277] and that inclusion would result in increased expense and exposure without commensurate investor benefit.[278] The commenters expressing concern cited the exclusion together with the absence of an auditor assurance requirement as together resulting in less confidence in the interactive data than in traditional format information. As stated above in regard to liability generally, we believe that adopting the officer certification exclusion is part of striking an appropriate balance between avoiding unnecessary cost and expense and encouraging accuracy. We intend to monitor implementation and, if necessary, make appropriate adjustments in the future regarding officer certifications.

As the technology associated with interactive data improves, issuers may integrate interactive data technology into their business information processing, and such integration may have implications regarding internal control over financial reporting no different than any other controls or procedures related to the preparation of financial statements. If this integration occurs, the preparation of financial statements may become interdependent with the interactive data tagging process and an issuer and its auditor should evaluate these changes in the context of their reporting on internal control over financial reporting. However, this evaluation is separate from the preparation and submission of the interactive data file, and as such the results of the evaluation would not require management to assess or an auditor to separately report on the issuer's interactive data file provided as an exhibit to a filer's reports or registration statements.

Some commenters sought clarification of whether the basis for the proposed exclusion of interactive data from officer certification is that interactive data are not within the scope of disclosure controls and procedures.[279] In this regard, one of the commenters noted that the Commission did not propose amendments related to Sarbanes-Oxley requirements to Items 307 (disclosure controls and procedures), 308 (internal control over financial reporting) or 601 (exhibits) of Regulation S–K. As a result, the commenter recommended that the final rule explicitly address these areas to avoid misunderstandings and potential delays in implementation.[280] As discussed above, we are excluding interactive data from the officer certification requirements as part of our effort to strike an appropriate balance between avoiding unnecessary cost and expense and encouraging accuracy in regard to interactive data. Interactive data would fall within the definition of ''disclosure controls and procedures'' and, accordingly, we are not adopting the exclusion on that basis.

SAS 8 (AU Section 550) was issued in December 1975 to address an auditor's consideration of information in addition to audited financial statements and the independent auditor's report on the audited financial statements included in documents that are published by an entity (*e.g.*, an annual periodic report). Similarly, paragraph 18(f) of SAS 100 (AU Section 722) addresses an auditor's consideration of other information that accompanies interim financial statements included in quarterly periodic reports. With respect to registration statements, SAS 37 (AU Section 711) was issued in April 1981 to address the auditor's responsibilities in connection with filings under the federal securities statutes.

As we stated in the proposing release in regard to the proposed rules, with respect to the adopted rules, an auditor will not be required to apply AU Sections 550, 722, or 711 to the interactive data provided as an exhibit in a company's reports or registration statements, or to the viewable interactive data. Several commenters agreed that an auditor would not be required to apply AU Sections 550, 711 or 722 to the interactive data provided as an exhibit or to the related viewable interactive data but wanted the PCAOB to formalize that view.[281] We understand that the PCAOB is aware of this matter.

5. Continued Traditional Format

The new rules will not eliminate or alter existing filing requirements that financial statements and financial statement schedules be filed in traditional format. We believe investors and analysts may wish to use the traditional format to obtain an electronic or printed copy of the entire registration statement or report either in addition to or instead of disclosure formatted using interactive data.

The vast majority of commenters stated that the Commission should continue to require human-readable financial statements in traditional format even if it required interactive data format as well.[282] Most of these commenters also stated that the Commission should monitor the development of technology that could enable companies to file information in a manner that provides the processing benefits of interactive data and the visual clarity of the traditional format. These commenters reasoned that when such technology is developed, it would be appropriate to require only the single resulting format.

[272] Exchange Act Rules 13a–15(f) [17 CFR 240.13a–15(f)] and 15d–15(f) [17 CFR 240.15d–15(f)] define the term ''internal control over financial reporting,'' in general, as a process designed by or under the supervision of specified persons and effected by the issuer's board of directors, management and other personnel ''to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with [GAAP] and includes [specified] policies and procedures.'' Rules 13a–15 and 15d–15 generally require specified issuers to maintain internal control over financial reporting and require the management of those issuers to evaluate the effectiveness of the issuer's internal control over financial reporting. In addition, the certifications specified by Item 601(b)(31) of Regulation S–K and Instruction B(e) of Form 20–F that relate to these specified issuers, generally must address the establishment, maintenance, design, changes in and deficiencies and material weaknesses related to the issuer's internal control over financial reporting.

[273] Rules 13a–15(e) and 15d–15(e) define the term ''disclosure controls and procedures'' as ''controls and other procedures of an issuer that are designed to ensure that information required to be disclosed by the issuer in [its periodic] reports * * * is recorded, processed, summarized and reported within the time periods [required].''

[274] *See, e.g.*, letters from FirstEnergy, LGI, NYCBA, Safeway, Southern, Teva, USS, and WellPoint.

[275] *See* letters from CFA and CII.

[276] *See* letter from AICPA.

[277] *See* letter from Safeway.

[278] *See* letter from NYCBA.

[279] *See, e.g.*, letters from Deloitte and KPMG.

[280] *See* letter from KPMG.

[281] *See, e.g.*, letters from BDO, CAQ Deloitte, E&Y and PWC.

[282] *See, e.g.*, letters from Southern, AICPA, IBM, National City, NYSSCPA, and UTC.

D. Required Items

1. Data Tags

To comply with the proposed rules, filers using U.S. GAAP will be required to tag their financial statements using the most recent list of tags for U.S. financial statement reporting, as released by XBRL U.S. and required by the EDGAR Filer Manual.[283] Each company will be required to use one or more of the five standard industry-specific lists identified in the EDGAR Filer Manual, as is appropriate for its business.[284]

Regular updates to the list of tags for U.S. financial statement reporting will likely be posted annually and be available for downloading. In addition, interim extensions may be made available for download in order to reflect changes in accounting and reporting standards. To provide companies sufficient time to become familiar with any such updates, we anticipate giving advance notice before requiring use of an updated list of tags. Based on experience to date with the most recent update to the list of tags, we believe that it is sufficiently developed to support the interactive data disclosure requirements in the new rules.

Similarly, filers using IFRS as issued by the IASB will be required to tag their financial information using the most recent list of tags for international financial reporting, as released by the IASCF and specified in the EDGAR Filer Manual.[285] Although IFRS tags are not currently supported by EDGAR, the Commission will give notice when filers can voluntarily submit filings using the IFRS taxonomy.

One of the principal benefits of interactive data is its extensibility—that is, the ability to add to the standard list of tags in order to accommodate unique circumstances in a filer's particular disclosures. The use of customized tags, however, may also serve to reduce the ability of users to compare similar information across companies. This was the source of a significant amount of comment. Some commenters were concerned that currently available standard taxonomies do not cover many company specific extension needs and any increase in customized taxonomy extensions would directly interfere with the comparability of inter-company data.[286] A number of commenters suggested ways to facilitate interactive data tagging, which included monitoring,[287] cataloging,[288] and discouraging[289] extension use as well as revising the Preparers Guide to put it in plain English.[290]

We acknowledge these concerns. In order to promote comparability across companies, the new rules, as proposed, will limit the use of extensions to circumstances where the appropriate financial statement element does not exist in the standard list of tags. The new rules also require that wherever possible and when a standard element is appropriate, preparers change the label for a financial statement element that exists in the standard list of tags, instead of creating a new customized tag. For example, the standard list of tags for U.S. GAAP includes the financial statement element ''gross profit.'' The list does not include ''gross margin,'' because this is definitionally the same as ''gross profit''—both are generally used to mean ''excess of revenues over the cost of revenues.'' A filer using the label ''gross margin'' in its income statement should use the tag corresponding to the financial statement element ''gross profit.'' It would then change the label for this item on the standard list to ''gross margin.''

Finally, under Item 401(c) of Regulation S–T, voluntary filers' interactive data elements must reflect the same information as the corresponding traditional format elements. Further, no data element can be ''changed, deleted or summarized'' in the interactive data file.[291] We are not changing this equivalency standard for financial statements provided in interactive data format as required by the new rules.

2. Regulation S–T and the EDGAR Filer Manual

The new rules require that filers provide interactive data in the form of exhibits to related registration statements and reports.[292] Interactive data will be required to comply with our Regulation S–T[293] and the EDGAR Filer Manual. The EDGAR Filer Manual is available on our Web site. It includes technical information for making electronic filings with the Commission. Volume II of this manual includes guidance on the preparation, submission, and validation of interactive data submitted under the voluntary program.

In addition to both Regulation S–T, which will include rules we are adopting, and the instructions in our EDGAR Filer Manual, filers may access other sources for guidance in tagging their financial information. These include the XBRL U.S. Preparers Guide; user guidance accompanying tagging software; and financial printers and other service providers. New software and other forms of third-party support for tagging financial statements using interactive data are also becoming widely available.

E. Consequences of Non-Compliance and Hardship Exemption

The new rules provide, as proposed, that if a filer does not make the required interactive data submission, or post the interactive data on the company Web site, by the required due date, the filer will be unable to use short form registration statements on Forms S–3, F–3, or S–8.[294] This disqualification will last until the interactive data are provided. During the period of disqualification, the filer also will be deemed not to have available adequate current public information for purposes of the resale exemption safe harbor

[283] The latest list of data tags for U.S. financial statement reporting was released on April 28, 2008 and is available at *http://xbrl.us/pages/us-gaap.aspx*. See XBRL U.S. Press Release, XBRL U.S. Finalizes U.S. GAAP Taxonomies and Preparers Guide with Delivery to SEC (May 2, 2008).

[284] We note that the vast majority of companies will fall under the Commercial and Industrial industry group. Additional guidance on the industry-specific lists is expected to appear in the EDGAR Filer Manual.

[285] The International Accounting Standards Committee Foundation has been developing the IFRS financial reporting tag list since 2002. *See http://www.iasb.org/xbrl/index.html*. The 2008 version of the IFRS financial reporting tag list was, as noted above, finalized in June 2008 and is planned to be updated annually for changes in accounting and reporting standards.

[286] *See, e.g.*, letter from EuropeanIssuers.

[287] *See, e.g.*, letter from CFA.

[288] *See, e.g.*, letter from ABA.

[289] *See, e.g.*, letters from Grant Thornton, CFA, Morgan Stanley, and Rivet.

[290] *See, e.g.*, letter from Grant Thornton.

[291] Item 401(c)(2) of Regulation S–T.

[292] The requirement to submit XBRL data as an exhibit will appear in Item 601(b)(101) of Regulation S–K, paragraph 101 of the Information Not Required to be Delivered to Offerees or Purchasers of both Form F–9 and F–10, Item 101 of the Instructions to Exhibits of Form 20–F, paragraph B.7 of the General Instructions to Form 40–F and paragraph C.6 of the General Instructions to Form 6–K.

[293] Rule 405 of Regulation S–T directly sets forth the basic tagging and posting requirements for the XBRL data and requires compliance with the EDGAR Filer Manual. Consistent with Rule 405, the EDGAR Filer Manual will contain the detailed tagging requirements.

[294] Forms S–3, F–3, and S–8 are regarded as short form registration statements because they enable eligible issuers to register securities for offer and sale under the Securities Act by providing information in a more streamlined manner than they otherwise could. In order to be eligible to use these short forms, an issuer must meet specified requirements, including being current in its filing of Exchange Act reports. In general, an issuer is current if it has filed all of its required Exchange Act reports for the twelve months before filing the registration statement. Filers that are unable to use short form registration also are unable to incorporate by reference certain information into Forms S–4 and F–4. See Item 12 of Forms S–4 and F–4.

provided by Rule 144.[295] Once a filer complies with the interactive data submission and posting requirements—provided it previously filed its financial statement information in traditional format on a timely basis—it will be deemed to be timely and current in its periodic reports.

We believe that precluding the use of short form registration statements during any period of failure to comply will appropriately direct attention to the interactive data reporting requirement. Allowing filers to reestablish their current status by later complying with the interactive data reporting requirement will strike a reasonable balance of negative consequences and recognition that the company's traditional format reports will have been filed.

Consistent with the treatment of other applicable reporting obligations, we are adopting hardship exemptions for the inability to timely submit interactive data. Rule 201 under Regulation S–T provides for temporary hardship exemptions. Rule 202 under Regulation S–T provides for continuing hardship exemptions.[296]

Rule 201 generally provides a temporary hardship exemption from electronic submission of information, without staff or Commission action, when a filer experiences unanticipated technical difficulties that prevent timely preparation and submission of an electronic filing. The temporary hardship exemption permits the filer to initially submit the information in paper but requires the filer to submit a confirming electronic copy of the information within six business days of filing the information in paper. Failure to file the confirming electronic copy by the end of that period results in short form ineligibility.[297]

We recognize the inherently electronic nature of interactive data. In light of this and the consequences to an issuer of not timely submitting interactive data, we are revising Rule 201, as proposed, to provide a temporary hardship exemption that does not depend upon filing a paper version. This exemption will apply without staff or Commission action if a filer experiences unanticipated technical difficulties that prevent the timely preparation and electronic submission of interactive data. The revised temporary hardship exemption will cause the filer to be deemed current for purposes of incorporation by reference, short form registration, and Rule 144 for a period of up to six business days from the date the interactive data were required to be submitted.[298] If the filer does not electronically submit the interactive data by the end of that period, from the seventh business day forward the filer will not be deemed current until it does electronically submit the interactive data. Similarly, we are revising Rule 201 to provide an essentially mirror-image exemption from the new requirement for an issuer that has a corporate Web site to post the interactive data on its Web site.

Rule 202 permits a filer to apply in writing for a continuing hardship exemption if information otherwise required to be submitted in electronic format cannot be so filed without undue burden or expense. If the Commission or the staff, through authority delegated from the Commission, grants the request, the filer must file the information in paper by the applicable due date and file a confirming electronic copy if and when specified in the grant of the request.

We are revising Rule 202, as proposed, to provide that a grant of a continuing hardship exemption for interactive data will not require a paper submission and that the filer will be deemed current until the end of the period for which the exemption is granted. Rule 202 also provides that, if the exemption was granted for only a specified period rather than indefinitely, the filer will be deemed current up to the end of that period. If the filer does not electronically submit the interactive data by the end of that period, from the next business day forward the filer will not be deemed current until it does electronically submit the interactive data. Similarly, we are revising Rule 202 to provide an essentially mirror-image exemption from the new requirement for an issuer that has a corporate Web site to post the interactive data on its Web site.

A few commenters generally supported the proposed consequences for late submissions and Web site postings of interactive data files,[299] but several objected.[300] Some commenters objected to all of the proposed consequences for late submissions and postings as, for example, unduly harsh in general[301] or inappropriate because the same information would be on file already in traditional format.[302] One commenter claimed that in analogous situations the Commission decided not to impose similar consequences. The commenter noted that in Release No. 34–49424,[303] the Commission decided not to impose short form eligibility or Rule 144 current public information loss for failure to provide timely certain disclosures required by Form 8–K.[304] The disclosures involved, however, were required by items that we stated ''may require management to make rapid materiality and other judgments within the compressed Form 8–K filing timeframe'' and issuers would not have been able to reestablish short form eligibility upon compliance because they would have been deemed not timely rather than not current.

We acknowledge these concerns, but in adopting the rules as proposed we believe that the consequences imposed will provide a useful compliance incentive and that commenters' concerns are mitigated somewhat by the availability of the temporary and continuing hardship exemptions and the ability of filers to reestablish their

[295] Rule 144 under the Securities Act creates a safe harbor for the resale of securities under the exemption from Securities Act registration set forth in Section 4(1) of the Securities Act [15 U.S.C. 77d(1)]. In order for some resales of securities to comply with Rule 144, the issuer of the securities must be deemed to have adequate current public information available as specified by Rule 144(c)(1) [17 CFR 230.144(c)(1)]. Rule 144(c)(1) deems an issuer required to file reports under the Exchange Act to have adequate public information available if it is current in its filing of Exchange Act periodic reports. In general, an issuer would be deemed current for this purpose if it has filed all of its required Exchange Act periodic reports for the twelve months before the sale of securities for which the Rule 144 safe harbor is sought.

[296] We have amended Rule 12b–25 [17 CFR 240.12b–25] under the Exchange Act, which, in general, deals with notification of the inability to timely file or submit all or part of specified forms and deems such forms to be timely filed under specified conditions. We added paragraph (h) to state that the provisions of the rule do not apply to interactive data files and that filers unable to submit or post interactive data files when required must comply with the hardship exemption requirements of either Rule 201 or 202 of Regulation S–T. New paragraph (h) will treat interactive data files in a manner similar to that which current Rule 12b–25(g) treats electronic filings in general. When Rule 12b–25 provides that the financial statements in traditional format are deemed filed timely even though actually filed later, the related interactive data exhibit must be submitted and posted on the date the related traditional format financial statements are actually filed, not when they are deemed to be filed under Rule 12b–25.

[297] Rule 201 of Regulation S–T.

[298] The information would not have to be filed in paper first, as this would be meaningless in the case of interactive data.

[299] *See, e.g.*, letters from CFA, E&Y, Grant Thornton, LG, and UTC.

[300] *See, e.g.*, letters from ABA, CSG, LGI, NYCBA, SCS, Southern, and USS.

[301] *See, e.g.*, letter from NYCBA.

[302] *See, e.g.*, letter from CSG.

[303] Release No. 34–49424 (March 16, 2004) [69 FR 15594].

[304] *See* letter from ABA. This commenter also pointed out that in Release No. 34–46464 (Apr. 8, 2003) [67 FR 58480], Release No. 34–46464A (Sept. 5, 2003) [67 FR 17880] the Commission stated that it considered making Web site posting of reports a condition to short form eligibility but concluded such an approach would be overly burdensome.

current status upon complying with their interactive data requirements.

III. Paperwork Reduction Act

A. Background

The amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995, or PRA.[305] The purpose of the amendments is to make financial information easier for investors to analyze and to assist issuers in automating regulatory filings and business information processing. We published a request for comment on the collection of information requirements in the proposing release, and submitted a request to the Office of Management and Budget (OMB), for review in accordance with the PRA.[306] OMB responded that it will not act on the request until the Commission supplements the request at the adopting stage with a discussion that includes the Commission's response to comments received on the proposed rules. Our new estimates that take into account variations between what we proposed and what we are adopting reflect a burden that is not significantly different than the estimates from the proposing release. When we receive OMB clearance, we will publish notice in the **Federal Register**. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a currently valid OMB control number.

The title for the new collection of information the amendments will establish is ''Interactive Data'' (OMB Control No. 3235–0645). This collection of information relates to already existing regulations and forms adopted under the Securities Act and the Exchange Act that set forth financial disclosure requirements for registration statements as well as periodic, current and transition reports and Forms 6–K. The amendments will require issuers to submit specified financial information to the Commission and post it on their corporate Web sites, if any, in interactive data form. The specified financial information already is and will continue to be required to be submitted to the Commission in traditional format under existing registration statement as well as periodic, current, and transition report and Form 6–K requirements. Compliance with the amendments will be mandatory according to the phase-in schedule previously described.[307] Issuers not yet phased-in, however, could comply voluntarily with the amendments when the appropriate taxonomies are supported by EDGAR. The information required to be submitted would not be kept confidential by the Commission.

B. Reporting and Cost Burden Estimates

1. Registration Statement and Periodic Reporting

Form S–1 (OMB Control No. 3235–0065), Form S–3 (OMB Control No. 3235–0073), Form S–4 (OMB Control No. 3235–0324), and Form S–11 (OMB Control No. 3235–0067) prescribe information that a filer must disclose to register certain offers and sales of securities under the Securities Act. Form F–1 (OMB Control No. 3235–0258), Form F–3 (OMB Control No. 3235–0256), Form F–4 (OMB Control No. 3235–0325), Form F–9 (OMB Control No 3235–0377), and F–10 (OMB Control No. 3235–0380) prescribe information that a foreign private issuer must disclose to register certain offers and sales of securities under the Securities Act. Form 10–K (OMB Control No. 3235–0063) prescribes information that a filer must disclose annually to the market about its business. Form 10–Q (OMB Control No. 3235–0070) prescribes information that a filer must disclose quarterly to the market about its business. Form 10 (OMB No. 3235–0064) prescribes information that a filer must disclose when registering a class of securities pursuant to the Exchange Act. Form 8–K (OMB No. 3235–0060) prescribes information an issuer must disclose to the market upon the occurrence of certain specified events and enables an issuer to disclose other information voluntarily. Form 20–F (OMB Control No. 3235–0288) and Form 40–F (OMB No. 3235–0381) are used by a foreign private issuer both to register a class of securities under the Exchange Act as well as to provide its annual report required under the Exchange Act. Form 6–K (OMB No. 3235–0116) prescribes information that a foreign private issuer must disclose regarding certain specified changes to its business and securities pursuant to the Exchange Act and enables an issuer to disclose other information voluntarily.

As previously noted, we are adopting the amendments substantially as proposed. We expect the variations between what we proposed and what we adopted to lessen the collection of information burden, even after accounting for the amendments requiring companies to submit interactive data for financial statements contained in additional forms—Securities Act registration statements on Forms F–9 and F–10, periodic reports on Forms 40–F and current reports on Forms 8–K and reports on Forms 6–K that contain updated financial statements that have been revised to reflect a subsequent event rather than the correction of an error.

While we are adopting the proposed requirement to tag separately each amount within a footnote (*i.e.*, monetary value, percentage, and number), in contrast to the proposals, we will permit, but not require, filers to tag, to the extent they choose, each narrative disclosure. As a result, the cost estimates for detailed tagging in the adopting release are reduced by 30%, to 70 hours for the first filing, and 35 hours for subsequent filings. Permitting rather than requiring filers to tag each narrative footnote disclosure contributes significantly to lessening the estimated collection of information burden.[308]

As noted above, in contrast to the proposals, we are adopting amendments requiring companies to submit interactive data for financial statements contained in additional forms—Securities Act registration statements on Forms F–9 and F–10, periodic reports on Forms 40–F and current reports on Forms 8–K and reports on Forms 6–K that contain updated financial statements that have been revised to reflect a subsequent event rather than the correction of an error. The amendments expanding the forms subject to the interactive data requirements tend to increase the estimated collection of information burden but this increase is more than offset by the factors that tend to decrease the collection of information burden.

We expect the following variations from the proposal will not affect the collection of information burden in more than a negligible and non-quantifiable way.

- The amendments will require that interactive data be submitted with a Securities Act registration statement filing only after a price or price-range has been determined and any later time when the financial statements are changed rather than, as proposed, requiring interactive data submissions with each filing.
- The timing of the required Web site posting has been eased. A filer must

[305] 44 U.S.C. 3501 *et seq.*

[306] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[307] *See* Part II.B.

[308] The other factor that contributes significantly to lessening the estimated collection of information burden is the reduction in the estimated number of filers subject to the interactive data requirements due to the elimination of issuers of asset-backed securities. Such issuers inadvertently were included in the estimate made in connection with the proposed rules.

post the interactive data exhibit on its corporate Web site not later than the end of the calendar day it submitted or was required to submit the interactive data exhibit, whichever is earlier. As proposed, Web site posting would have been required by the end of the business rather than calendar day.

- Interactive data will be required to be posted for at least 12 months on an issuer's Web site. The proposing release did not specify this, but commenters requested clarification.

The information required by the new collection of information we are adopting will correspond to specified financial information now required by these forms and will be required to appear in exhibits to these forms and on filers' corporate Web sites. The compliance burden estimates for the collection of information are based on the phase-in, beginning with approximately 500 large accelerated filers subject to the rules in the first year, followed by approximately 1,000 more filers in year two and approximately 8,700 more filers in year three. These numbers are estimated using the public float measured on the last day of the second quarter following the company's most recent fiscal year end—the same date used to determine a filer's accelerated filer status. The proposing release estimated a larger number of filers being phased in, including 1,300 in year two and 10,200 in year three. In those estimates, issuers of asset-backed securities, who annually file a Form 10–K, were included. Those issuers, however, typically are not required to and do not include their financial statements in Forms 10–K, and, as a result they would not be required to provide interactive data files under the proposed rules. Consequently, they were removed from the updated estimate reported here.

Based on estimates from the voluntary filer participant questionnaire results, we estimate that interactive data filers would incur the following average:

- Internal burden hours to tag the face financials:
  - 125 hours for the first filing under the requirements; and
  - 17 hours for each subsequent filing.
- Out-of-pocket cost for software and filing agent services: $6,140 for each filing.

Based on qualitative assessments of time and modifications to the proposed level four detailed tagging requirements that eliminate required tagging of the narrative, we estimate that interactive data filers would incur the following average internal burden hours:

- Footnotes
  - 7 hours to block tag for each filing made during the first year under the requirements;
  - 70 hours to detail tag for the first filing made in the second year under the requirements; and
  - 35 hours to detail tag for each subsequent filing.
- Schedules
  - 1 hour to block tag for each filing made during the first year under the requirements;
  - 7 hours to detail tag for the first filing made in the second year under the requirements; and
  - 3.5 hours to detail tag for each subsequent filing.
- Web site Posting: 4 hours to post all interactive data submissions made during each year.

In the proposing release, the number of hours to detail tag the footnotes in the second year of the requirements was estimated at 100 hours for the first filing, and 50 for subsequent filings. Several commenters provided alternative estimates. For example, one commenter [309] suggested that detailed tagging initially would require 80 hours of time, while another commenter indicated that 40 hours would be required on an ongoing basis.[310] Although both of these estimates are below our estimate, other commenters suggested that the time required for detailed tagging of the footnotes would be hundreds of hours,[311] three to four times higher than our estimate,[312] and an order of magnitude higher than our estimate.[313]

One of the considerations responsible for the wide variation in predicted time for detailed tagging was the proposed requirement to tag the narrative portion of the footnote. Unlike the discrete numerical values in the face financials that are well-defined and easy to quantify, the narrative portion of the footnotes provides a higher degree of variability in the number and structure of reported items. While we are adopting the proposed requirement to tag separately each amount within a footnote (*i.e.*, monetary value, percentage, and number), we will permit, but not require, filers to tag, to the extent they choose, each narrative disclosure. As a result, the cost estimates for detailed tagging in the adopting release are reduced by 30%, to 70 hours for the first filing, and 35 hours for subsequent filings. Nevertheless, it is reasonable to assume that many filers, particularly the largest filers with the most complex filings, may require more than 70 hours to comply with the detailed tagging requirement. It is also reasonable to assume that many filers will require significantly less time than 70 hours, and 70 hours seems to fall within the range suggested by commenters and what is anticipated by Commission staff. We believe that the proposed requirement to tag each narrative disclosure within a footnote that, as adopted, will be optional, probably was a significant component of the higher estimates provided by commenters. As discussed in greater detail above, a significant number of commenters objected, in particular, to the proposed detailed footnote tagging requirement and several of those commenters argued that detailed footnote tagging would require significant effort by the issuer.[314]

Based on the number of filers we expect to be phased in each of the first three years under the requirements, the number of filings that we expect those filers to make that would require interactive data [315] and the internal burden hour and out-of-pocket cost estimates described, we estimate that the average yearly burden of the requirements over the first three years would be 916,846 internal hours per year and $110.6 million in out-of-pocket expenses for software and filing agent services per year and would be incurred by an average of 4,055 filers for an average yearly burden per filer of 226.1 internal hours and $27,300 in out-of-pocket expenses. This estimate reflects a reduction in average yearly burden compared to the proposing release, where we estimated $1,164,690 internal hours per year and $129 million out-of-pocket expenses per year. This reduction is in part attributed to a smaller number of filers due to the elimination of issuers of asset-backed securities that inadvertently were included in the estimate made in connection with the proposed rules, and in part due to a lower estimate for detailed tagging due to making optional the proposed requirement to detail tag the narrative disclosures in footnotes. Together, these cost reductions outweighed the increased cost of requiring that interactive data be

[309] *See* letter from FirstEnergy. It is unclear whether this commenter believed that detailed tagging would require 80 hours on an ongoing basis.

[310] *See* letter from National City.

[311] *See* letter from Intel.

[312] *See* letter from IBM.

[313] *See* letter from Constellation Energy.

[314] *See* Part II.B.3.a.

[315] We include in the number of filings that would require interactive data both initial filings and amended filings but we estimate that the burden incurred in connection with an amended filing would be one half the burden that would be incurred if the amended filing were an initial filing.

submitted for the financial statements in additional forms.

By the fifth year under the requirements, filers generally will have been subject to the requirements for at least two years. As a result, filers generally would incur burdens applicable to interactive data filings made after the first filing in which the filer detail tagged footnotes and schedules. Consequently, we estimate that in the fifth year under the requirements, the burden on all filers would be 2,571,167 internal hours and $284 million in out-of-pocket expenses and would be incurred by 10,229 filers for an average burden per filer of 251 internal hours and $27,800 in out-of-pocket expenses.[316] The higher average burden reported for year five relative to the average from years one through three reflects the completed phase-in of all filers and all requirements, including detailed tagging, by that time.

2. Regulation S–K and Regulation S–T

Regulation S–K (OMB Control No. 3235–0071) specifies information that a registrant must provide in filings under both the Securities Act and the Exchange Act. Regulation S–T (OMB Control No. 3235–0424) specifies the requirements that govern the electronic submission of documents. The changes to these items that we are adopting will add and revise rules under Regulations S–K and S–T. The additional collection of information burden that will result from these changes, however, are included in the burden estimate for the new collection of information ''Interactive Data.'' The rules in Regulations S–K and S–T do not impose any separate burden. We assign one burden hour each to Regulations S–K and S–T for administrative convenience to reflect the fact that these regulations do not impose any direct burden on companies.

C. Comments on Collection of Information Burden

We solicited comments in the proposing release on the PRA estimates we provided there. One commenter addressed the PRA directly, while others commented generally on the time and cost burden of the amendments. The commenter that addressed the PRA directly stated that our PRA cost estimates appeared low and that our estimates understated software and non-software costs such as planning and ongoing quality assurance.[317] As discussed in detail above, other commenters provided their own estimates of the amount of time it would take to tag financial statements and footnotes.[318]

Some commenters who opposed the amendments generally asserted that interactive data would not improve the usefulness of financial information to analysts or investors[319] or that the Commission underestimated the complexity or cost of compliance in general[320] and implementing interactive data would add significant costs to purchase software, and pay for assistance and annual maintenance fees for that software and that the costs of using interactive data outweighed the benefits.[321]

In contrast, some commenters that supported the required submission of interactive data believed it would improve the usefulness of financial information to companies and investors, and that mandated interactive data use would provide the incentives to drive sufficient investment in software to enable widespread adoption of interactive data.[322] Also in contrast, commenters that provide interactive data services stated that issuers would need to expend only modest cost and effort to comply with the requirements.[323] One commenter stated that it expected that costs would fall quickly, especially for small companies, as interactive data became part of standard corporate accounting software packages.[324] Another commenter stated that, based on its experience in the voluntary program, costs would fall significantly for subsequent submissions.[325]

We acknowledge the concerns some commenters hold regarding usefulness and cost but believe that interactive data have the potential to increase the speed, accuracy and usability of financial disclosure, and eventually reduce costs and that the phase-in schedule and the grace periods will provide issuers the time to learn more cost-effective ways to comply. We also believe that the third year phase-in for smaller reporting companies will permit them to learn from the experience of the earlier filers. Further, as noted previously, we will be monitoring the experiences of issuers during the phase-in periods to assess commenters' concerns.

IV. Cost-Benefit Analysis

A. Benefits

Requiring issuers to file their financial statement information using the interactive data format would enable investors, analysts, and the Commission staff to capture and analyze that information more quickly and at a lower cost than is possible using the same financial information provided in a static format.[326] Even though the new regime does not require any new information to be disclosed or reported, certain benefits may accrue when issuers use an interactive data format to provide their financial reports. These include the following.

1. More Financial Information Available to Investors

Interactive data reporting could increase the amount of financial data available to investors in at least three ways. First, there is likely to be an increase in coverage of smaller reporting companies by commercially available products that provide corporate financial data. Second, the level of financial data available in electronic format by these and other services will likely increase as a result of interactive data tagging. Finally, there is likely to be an increase in the number of suppliers of financial services products because of requiring companies to provide interactive data. As a result, many smaller filers will have greater investor awareness because of interactive data reporting, and investors will have more financial data readily available in machine-readable format to consider for all filers.

At present, many small companies are not included in commercially available products that provide corporate financial data, possibly due to high data collection costs relative to the value of providing coverage. For example, two commonly used financial information vendors cover approximately 70% of Commission filers.[327] For the large number of firms whose financial

[316] We provide an estimate of the burden in the fifth year under the new requirements because we believe the burden in the fifth year may help indicate what the burden would be under the new requirements on an ongoing basis.

[317] *See* letter from Credit Suisse.

[318] *See* Part III.B.1.

[319] *See* letters from EEC, EuropeanIssuers, and FISD.

[320] *See,* for example, letters from CAQ, E&Y, FPL, Intel and SCS.

[321] *See* letter from FPL.

[322] *See, e.g.,* letters from ABC, AICPA, National City, NYSSCPA, and UTC.

[323] *See* letters from ECI, EDGARFilings and UBMatrix.

[324] *See* letter from Angel.

[325] *See* letter from Pepsico.

[326] *See* Part I.

[327] Compustat and Thomson One Banker are two widely used, fee-based vendors of corporate financial data that is formatted for interactive data use. This analysis was performed by matching the unique Commission issued Central Index Key (CIK) numbers from all Forms 10–K, 10–KSB, 20–F, and 40–F filed in calendar year 2007, but not including issuers of asset backed securities within Standard Industrial Classification (SIC) code 6189, to the universe of companies covered by both Standard and Poor's Compustat and Thomson One Banker.

statements are not currently reported in these databases, their absence may reduce the likelihood that they receive coverage by financial analysts who use commercially available products to assess issuer performance. Consequently, if interactive data reporting increases coverage of smaller companies by commercially available financial information products, and this increases their exposure to analysts and investors, then lower search costs for capital could result. In other words, smaller companies could realize a lower cost of capital, or less costly financing.

While an increase in coverage could occur for some issuers, it is possible that less than full coverage will remain in more sophisticated products that provide analysis or reporting items beyond basic financial information. This conclusion is based on an assumption that many commercially available product offerings provide information beyond what is reported in basic financial information, and the costs of providing this additional information for every company may make 100% coverage prohibitive. In particular, the smallest issuers may not offer sufficient market capitalization to make investment worthwhile to larger investors, for whom these commercial products are primarily designed.

It is also possible that information quality in financial markets could be higher if interactive data reporting were required than if not, leading to more efficient capital allocation. Since financial tagging will include footnotes and supplemental tables, as well as the base financials reported in the standard tables, it is likely that as a result of interactive data tagging, there will be more information available to investors in a machine-readable format. That is, information not currently collected on a broad scale by data aggregators because of the costs of manual key entry, particularly data found in the footnotes and supplemental tables, will be available to investors in a tagged, machine-readable format. With more information readily available to investors on all filers, they may be able to better distinguish the merits of various investment choices, thereby facilitating capital flow into the favored investment prospects. This outcome is the main tenet of improved market efficiency, whereby providing more widespread access to information concerning the value of a financial asset, such as a company's shares, results in better market pricing. Consequently, reducing the costs of accessing, collecting and analyzing information about the value of a financial asset facilitates this end.

Finally, it is possible that requiring companies to provide interactive data could improve the quality of financial information available to end users, and help spur interactive data-related innovation in the supply of financial services products, resulting from a potential increased competition among suppliers of such products due to lower entry barriers as a result of lower data collection costs.

2. Less Costly and More Timely Financial Information

It is likely that the new interactive data requirements will lower the cost of collecting corporate financial data in a machine-readable format and allow it to be analyzed by investors and other end-users more quickly than without interactive data. At present, financial information is made available to investors in text formatted documents that require manual key-entry of the data into a format that allows statistical analysis and aggregation. Investors seeking broad financial coverage of companies must either spend considerable time manually collecting the data, or subscribe to a financial service provider that specializes in this data aggregation process, but passes on the expense of the data collection effort.

Requiring companies to report interactive data should lower both the time and expense for investors to access this data. Since company financial data will be tagged and immediately downloadable into a larger, more comprehensive database that includes other filers, there will be no need for manual key entry of the data, eliminating this expense. Moreover, with this manual key entry effort no longer necessary, the delay between when the financial data are first filed and when the data is available in machine-readable format will reduce substantially. For instance, one unpublished study reports that as recently as 2004, the average time required for one large data aggregator to make financial data available to investors was 10.8 days.[328] With interactive data reporting, company financials can be integrated into subscriber databases within a matter of hours or minutes. As a result of having data made available more quickly to investors and other end-users, newly revealed information can be more quickly priced into the market by a larger number of investors, consistent with tenets of improved market efficiency.

If interactive data serves to lower the data aggregation costs as expected, then it is further expected that smaller investors will have greater access to financial data than before. In particular, many investors that had neither the time nor financial resources to procure broadly aggregated financial data prior to interactive data will have lower cost access than before interactive data. Lower data aggregation costs will allow investors to either aggregate the data on their own, or purchase it at a lower cost than what would be required prior to interactive data. Hence, smaller investors will have fewer informational barriers that separate them from larger investors with greater financial resources.

It is also likely that a filer that uses a standardized interactive data format at earlier stages of its reporting cycle also may increase the usability of its internal financial information. For example, filers that use interactive data may be able to consolidate enterprise financial information more quickly and potentially more reliably across operating units with different accounting systems.[329] There has been a growing development of software products to assist filers to tag their financial statements using interactive data helping make interactive data increasingly useful.[330]

Interactive data also could provide a significant opportunity for issuers to automate their regulatory filings and business information processing, with the potential to increase the speed, accuracy, and usability of financial disclosure. This reporting regime may in turn reduce filing and processing costs.

3. Fewer Errors

Because a substantial portion of each financial report makes use of the same information, a filer that uses a standardized interactive data format at earlier stages of its reporting cycle may also increase the accuracy of its financial disclosure by reducing the need for repetitive data entry that could contribute human error and enhancing the ability of a filer's in-house financial professionals to identify and correct errors in the issuer's registration statements and periodic reports filed in traditional electronic format. It is also possible that there will be fewer errors in the aggregated financial data used by

[328] Julia D'Souza, K. Ramesh, and M. Shen, ''The interdependence between institutional investor stock ownership and information dissemination by capital market data aggregators,'' Michigan State University working paper, available at: *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1010834*.

[329] However, we recognize that at the outset, filers would most likely prepare their interactive data as an additional step after their financial statements have been prepared.

[330] Press Release No. 2007–253 (Dec. 5, 2007).

investors since manual key entry of data will no longer be required by either the investor or a data aggregating service.

4. Increased Comparability and Interpretation of Financial Data

Another potential information consequence of the new requirements may be changes to the precision and comparability of the information disseminated by data service providers since the interactive data requirements would shift the source of data formatting that allows aggregation and facilitates comparison and analysis from end-users to issuers submitting interactive data. At present, data service providers manually key financial information into a format that allows aggregation. As a result, the data service provider makes interpretive decisions on how to aggregate reported financial items so that they can be compared across all companies. Consequently, when a subscriber of the commercial product offered by a data service provider uses this aggregated data, it can expect consistent interpretation of the reported financial items. In contrast, a requirement for issuers to submit interactive data information would require the issuers to independently decide within the confines of applicable requirements which financial ''tag'' best describes each financial item—lessening the amount of interpretation required by data service providers or end-users of the data. Once a standard tag is chosen, comparison to other companies is straightforward. However, since companies have some discretion in how to select tags, and can extend the taxonomy (create new tags) when an appropriate tag does not exist, unique interpretations by each company could result in reporting differences from what current data service providers and other end-users would have chosen. This view suggests that the issuer-submitted information disseminated by data service providers may be, on the one hand, less comparable because they have not normalized it across issuers but, on the other hand, more accurate because the risk of human error in the manual keying and interpretation of filed information would be eliminated and more precise because it will reflect decisions by the issuers themselves. Replicating prior methods would still be possible, however, because issuers would continue to be required to file financial information in traditional format. As a result, nothing would prohibit data service providers from continuing to provide data in the same manner that they did before. Nonetheless, interactive data benefits could diminish if other reporting formats are required for clarification in data aggregation.

B. Costs

The primary cost of the rulemaking is the cost of filers' implementation of the rule, which includes the costs of submitting and posting interactive data. We discuss this cost element extensively below. In addition, because the rule allows an increase in the flow of financial information being reported directly to analysts and investors, there will be a cost of learning on the part of the investors in using and analyzing financial information at the interactive data level. Finally, because interactive data provides a standardized reporting format—a set of common tags from which filers can select—this might affect a company's ability to communicate its unique financial attributes to investors.

As for the cost of implementation of the rule, based on currently available data, we estimate the average direct costs of submitting and posting interactive data-formatted financial statements and other information for all issuers under the proposed rules would, based on certain assumptions, be as follows:

TABLE 1—ESTIMATED DIRECT COSTS OF SUBMITTING INTERACTIVE DATA-FORMATTED FINANCIAL STATEMENTS AND OTHER INFORMATION

	First submission with block-text footnotes & schedules	Subsequent submission with block-text footnotes & schedules	First submission with detailed footnotes & schedules	Subsequent submission with detailed footnotes & schedules
Preparation face financials [331]	$31,370	$4,310	$4,310	$4,310
Preparation footnotes [332]	1,750	1,750	17,500	8,750
Preparation schedules—Software and filing agent services [333]	250	250	1,750	875
	6,140	6,140	6,140	6,140
Web site posting [334]	1,000	1,000	1,000	1,000
Total cost	40,510	13,450	30,700	21,075
Upper bound	82,220	21,340	60,150	37,940

The above estimates are based in part on questionnaire responses from 22 issuers that have participated in the voluntary program. Thirty-five participants were sent questionnaires, corresponding to a response rate of 63%. These responses provided detail on the projected costs of preparing the face financials and for purchasing software or related filing agent services. [335] The estimated total cost reported in Table 1 reflects expenditures on

[331] Estimates based on voluntary filer program questionnaire responses, excluding participants with an interactive data-related business interest. These data suggest that the time required for tagging the face financials decreases by approximately 85% between the first and second submissions, from 125.47 hours to 17.25 hours, numbers which are rounded to 125 and 17 for PRA calculations. A $250 wage rate is assumed for all preparation cost estimates.

[332] The costs associated with block-tagging of footnotes and schedules are assumed to remain constant in subsequent filings. In contrast, anticipated learning benefits from more complicated detailed tagging of footnotes and schedules are assumed to result in a 50% reduction in cost for subsequent filings.

[333] Software licensing and the use of a print agent can be substitutionary—companies can choose to do one or other, or do both—and are thus aggregated.

[334] This is an annual cost, and as such, will not be incurred for subsequent filings within the same year.

[335] Voluntary program participants were not required to tag financial statement footnotes or schedules related to the financial statements except that registered management investment company participants were required to tag one specified schedule. Similarly, voluntary program participants were not required to post on their corporate Web sites, if any, the interactive data information they submitted. Consequently, the costs of requirements to tag financial statement footnotes and schedules related to financial statements and post interactive data information are not derived from the voluntary program participant questionnaire responses or discussed in our analysis of those responses.

interactive data-related software, consulting or filing agent services used, and the market rate for all internal labor hours spent (including training) to prepare, review and submit the first interactive data format information face financial statements. The major assumptions used for this analysis are as follows.

- Labor cost is estimated at $250 per hour, commensurate with the wage rate of an external accountant; [336]
- Voluntary program participants reported a 85% average reduction in time required to prepare face financials from the first to second filing;
- Block tagging of footnotes is estimated at 7 hours for the first filing, with a 50% reduction in time for subsequent filings; and
- Detailed tagging of footnotes is estimated at 70 hours for the first filing, with a 50% reduction in time for the subsequent filings.

1. Potential Variability in the Cost Estimate

We report an upper bound for the estimated total cost based on (1) the variation in responses from the voluntary program participants and the likelihood of sampling error—respondents represent approximately 0.21% of all issuers that ultimately would be required to submit interactive data [337]—and (2) the likelihood of sample selection bias due to non random participation by filers in the voluntary filing program. In particular, we estimate that:

- Average cost estimates increase by 20% after removing voluntary program participants in an interactive data-related business.
- Due to sampling error,[338] there is a 1% chance that the true costs are underestimated by up to 80%.

The upper bound reported in Table 1 is $82,220 for the first filing compared to the average of $40,510. This upper bound is calculated based on the 1% likelihood that costs are underestimated by 80%, and after removing responses from five participants in an interactive data-related business. These voluntary filer program participants, including filing agents, financial services providers, and other consulting agents, may have incentives and skill sets unrepresentative of the average issuer that may cause their costs to depart from the likely submission cost of the average issuer when interactive data is required.

The costs in Table 1 do not reflect the following factors that could also affect the total cost of compliance.

- Smaller financial issuers appear to have less complex financials and labor costs that tend to be 20–30% lower than for other issuers to submit interactive data information.
- There also is some evidence to suggest that the smallest (non-accelerated) issuers might have submission costs or compliance difficulties in excess of other issuers.
- The lists of tags used to prepare the face financial statements by those issuers that responded to the questionnaire for the voluntary program have been updated for the required program.[339]

The voluntary program questionnaire evidence is based on responses of predominantly large issuers, and their cost experience may not be representative of the smaller issuers or non-participating larger issuers. In particular, voluntary program participants that responded to the questionnaire are found among the largest of all issuers, with more than 88% considered large accelerated filers (measured as greater than $700 million in public float). In contrast, only 1,529 of 10,229 filers (15%) expected to be subject to the rule were considered large accelerated filers in their fiscal year-end 2007.

A size bias is plausible, since there are reasons to believe that the reported submission costs vary with the size of the issuer. For instance, larger issuers might have lower interactive data submission costs than smaller issuers, since they have a larger pool of internal resources to draw from, allowing them to more efficiently allocate available skill sets from their labor pools to implement interactive data reporting technology. Moreover, larger organizations might have greater excess capacity in their internal labor pool such that they are better able to absorb the short-term labor needs of ''learning'' interactive data. If so, the effect of sample selection in this instance may be to underreport the interactive data submission costs for smaller issuers.

Alternatively, smaller issuers could have lower submission costs than larger issuers if their operations are less complex. This reasoning suggests that simpler business operations lead to simpler financial statements, requiring less effort to tag and submit using interactive data. Hence, any reduction in available resources to allocate to interactive data submission may be offset by lesser demand for resources. This view suggests a trade-off in submission costs as issuers become smaller, and as a typical result, less complex.

The balance of evidence suggests that smaller filers will have, on average, lower submission costs than larger filers. Although the U.S. voluntary filer program contains data predominantly on larger filers, and as a result cannot directly address this issue, evidence from the Japanese interactive data pilot program reveals a 20 to 30% reduction in the time required to comply with their first interactive data filing for the smaller filers relative to the largest filers.[340] This percent reduction is consistent with the percent reduction in U.S. filing complexity across filer size. In particular, we find that the number of financial statement items reported in periodic reports falls by 15 to 20% for the smallest filers compared to largest filers. Hence, the reduction in time required in the Japanese study is broadly consistent with the filing complexity—measured by the number of filing elements—among U.S. filers.

Nevertheless, there remain concerns for the smallest filers. The Japanese study reveals that compliance costs begin to increase as filer size goes from smaller to smallest, although the costs are not more than those of the largest filers—costs for the smallest Japanese filers are roughly 15% lower than the largest filers, but about 25% higher than the lowest cost smaller filers. Moreover, the smallest Japanese filers had the highest likelihood of delayed filing in

[336] These estimates are from the Securities Industry and Financial Markets Association's Management and Professional Earnings in the Securities Industry 2007, modified to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[337] This is based on 10,672 domestic and foreign issuers that filed an annual report in calendar year 2007. Under our proposed rules, not all foreign private issuers would be required to submit interactive data; only those foreign private issuers that prepare their financial statements in accordance with U.S. GAAP or IFRS as issued by the IASB would be required to submit interactive data. Foreign private issuers that report in accordance with other structures and reconcile to U.S. GAAP would not be required to submit interactive data.

[338] In general, sampling error is the error that arises as a function of sampling in general and the sample chosen in particular.

[339] For example, the related list of tags would differ between the voluntary and proposed required program. When we adopted the voluntary program, the list of tags for U.S. GAAP financial statement reporting contained approximately 4,000 data elements. The list of tags released on April 28, 2008 contains approximately 13,000 data elements, with the most significant additions relating to the development of elements for standard U.S. GAAP footnote disclosure.

[340] Starting in April 2008, Japanese filers were required to report financial statements with their Financial Services Agency (JFSA) using interactive data technology. Before this requirement, 1,233 Japanese companies participated in a pilot program; 768 participants described their interactive data submission experience through a JFSA survey. For our previous fuller discussion of the JFSA survey, see the proposing release.

their first submission: 25% did not file by the mandated date compared to 5% for the largest filers. These risk factors motivate a phase-in schedule that allows smaller filers to lag larger filers in mandated reporting compliance.

2. Cost Estimates for Footnote Tagging and for Software

While the required time to prepare face financials is estimated based on responses from the voluntary filer participants, the same is not true for tagging of footnotes. At the time of the questionnaire, footnote tagging was not prevalent among voluntary filers and a cost estimate from their experience could not be obtained. In the proposing release, block tagging was estimated at seven hours for the first filing, and detailed tagging estimated at 100 hours. In both cases, a 50% reduction in preparation time was assumed between the first and subsequent filings, which is a more conservative learning rate than what was observed for tagging of face financial (85% reduction). In the adopting release, detailed tagging of the narrative is no longer required, and as a result, the cost estimates for detailed tagging in the adopting release are reduced by 30%, to 70 hours for the first filing, and 35 hours for subsequent filings. Nevertheless, it is reasonable to assume that many filers, particularly the largest filers with the most complex filings, may require more than 70 hours to comply with the detailed tagging requirement. It is also reasonable to assume that many filers will require significantly less time than 70 hours, and 70 hours seems to fall within the range suggested by commenters and what is anticipated by Commission staff. As discussed in more detail above, we believe that the proposed requirement to tag each narrative disclosure within a footnote that, as adopted, will be optional, probably was a significant component of the higher estimates provided by commenters.[341]

The software costs assumed in the cost estimate also include anticipated print agent and filing service fees. The experience of voluntary filer participants suggests that many filers have not yet determined the optimal compliance method, and several pursued simultaneous approaches. So while some participants prepared and filed their documents on their own, and others contracted the entire experience to a print agent, many pursued some combination of the two. As a result of the complexity with which filers reported their experience, we aggregated all of their software and print agent costs into one category. We estimate the total cost for software and filing agent services at $6,140 per filing.

It is possible that filers will experience a lower cost than $6,140. For instance, one service provider[342] charges a flat fee of $1,995 for both Form 10–K and Form 10–Q periodic reports. Nevertheless, some commenters were concerned about the availability and rising cost of software. For instance, one commenter reported a 65% increase in software costs from one vendor after the Commission released its interactive data proposal in May of 2008.[343] Another commenter worried that third party vendors will not be ready in time for the proposed phase-in of the rule.[344]

Until the rule is phased in on a broad scale, it is hard to predict what equilibrium price of software, consulting, and filing agent services will prevail. The roles of each potential kind of service provider within the interactive data market are likely to develop further and are not yet clear, and there are many potential participants to consider, including the software vendors, financial reporting system providers (*i.e.*, providers of widely used financial products), print/filing agents, and other consultants. Until the market of issuers that submit interactive data information grows substantially larger (either by requirement or by expansion of the number of volunteers), many different potential solutions are possible. For example, issuers may adopt solutions that create interactive data submissions using third party software, a so-called ''bolt-on'' approach, or may seek integrated solutions that enable issuers to prepare interactive data submissions from their existing financial services software. Moreover, filing agents may maintain their role as an intermediary by offering interactive data technology or other service providers may cause that role to change. Others with financial and technical expertise may participate in the technology that may yield different results.

Combining the uncertainty over the source of future interactive data services with increased demand for these services could result in a new market price that is different from what is currently reported by voluntary program participants. This price could be higher if the demand for interactive data services increases (from 76 voluntary program participants at the time of the cost analysis to more than 10,000 total participants) at a faster rate than the supply for these same services. More broadly, if an interactive data requirement resulted in clients subscribing for interactive data services faster than the rate at which these services can be supplied, then prices could increase. A phase-in schedule that limits the number of participants in the first year is likely to mitigate this concern to the extent that the rate of phase-in allows interactive data service suppliers to keep pace with demand.

3. Interpretability of Standardized Tagging

Since interactive data formatting provides a standard set of tags from which companies select when they report their financial data, one potential consequence of the proposed requirements is that companies will be less able to communicate their unique financial attributes to investors. A standard set of tags helps facilitate easier comparability between companies, but this benefit might come at a cost of less precise information about a company if the selected tag is different from what the company would have labeled the information without interactive data reporting. While it is possible for a company to create an extension (a new tag) to reflect unique financial information when it is not otherwise described by a standard tag, this information will no longer be easily aggregated across other companies.

Nevertheless, the risk of interpretability of reported financial data already exists in the current data aggregation process. According to current practices, financial data service providers manually key financial information into a format that allows aggregation so that they can resell it to investors. As a result, the data service provider makes interpretive decisions on how to aggregate reported financial items so that they can be compared across all companies. This is done so that a subscriber of the commercial product offered by a data service provider can expect consistent interpretation of the reported financial items, allowing comparability in the same way that it is intended with interactive data. Hence, from one perspective, adoption of interactive data will shift the burden of making the interpretive decision on how to label a financial item from financial service providers to the companies making the filings. To the extent that the company is better able to classify financial data for comparability to other companies through interactive data tagging than a financial data service provider who manually keys and classifies financial data from standard paper based filings,

[341] *See* Part III.B.1.

[342] *See* letter from Rivet.

[343] *See* letter from FPL.

[344] *See* letter from Comcast.

then interpretability of reported financial data should not worsen with adoption of interactive data reporting.

4. Corporate Web Site Posting

Filers must also post their interactive data files to their corporate Web site if they have one. The direct cost estimate of doing so is four hours of time, or $1,000. In relation to the other costs of interactive data adoption, this cost is low. Although the estimated cost of mandatory posting is low compared to other costs of interactive data compliance and it is possible that many companies would post this data even if it were not mandatory, it is difficult to quantify specific benefits of mandatory posting beyond the benefit of having this same document posted on the Commission's Web site. Nevertheless, potential benefits of required corporate Web site posting include the following:

- Encouraging widespread accessibility and dissemination of interactive data, promoting its awareness and use;
- Making it easier and faster for investors to collect information on a particular filer required to post, particularly if the investor is already searching the Web site;
- Transferring reliability costs of data availability to the public companies by reducing the likelihood that investors cannot access the data through the Commission's Web site, due to down-time for maintenance or due to increased network traffic;
- Enhancing access to corporate financial data by Web crawlers searching for such information that face access restrictions on EDGAR; and
- Providing incentive for corporations to add content or enhance their Web site improving the investor experience.

Although there is potential to realize each of these stated benefits, there are also reasons why they may not manifest. The most likely reason that benefits will not accrue to investors from mandatory Web site posting is that a key feature of interactive data that makes them valuable to investors is the ability to aggregate financial data across companies. Since filers will use common tags that allow aggregation of firm financials, company performance can be compared in ways that are far less costly and time consuming than doing so without interactive data. Facilitating this comparison, however, is expected to be less likely to occur at a specific corporate Web site than it is at a third party Web site that provides a wide range of companies to analyze. Since companies are not required to post interactive data for other filers, this leaves investors two options for assembling aggregated financial data. The investor can obtain the data from separate visits to each corporate Web site of interest, or the investor can visit a third party Web site—such as EDGAR or commercial sources—and obtain the necessary data from a single source. The latter option is far more efficient, not only because of time savings, but also because central depositories of financial information provide access to companies for which an investor might not otherwise know to look. In other words, a filer may only know to investigate a company by having it reside in a location adjacent to where the investor is already searching. For instance, a feature of many third party information forums is to provide, without prompting, a set of comparable firms to the firm that an investor is currently researching using the provider's tools. There is no duty for a company to provide on its Web site a similar set of comparables for a visiting investor.

As a result, it is likely that individual corporate Web site posting of data could potentially offer a faster source of financial data to an investor only if the investor is not interested in broad data aggregation. If an investor is interested in interactive data for several companies, then identifying the unique Web address for each company, and locating where on the Web site the interactive data resides, will consume far more of an investor's time than going to a central location with only a single Web address and a single Web site design to navigate. If, on the other hand, an investor is interested only in the information from a specific company, then interactive data offer fewer benefits to the investor relative to other file formats, such as HTML, that offer data in a visually organized manner.

Similarly, data aggregators and Web crawling tools that search for corporate financial data will not necessarily benefit from mandatory corporate Web site posting of interactive data. For the same reason that an individual investor will find it easier to visit a central information depository for information rather than each individual corporate Web site, so will data aggregators and Web crawlers. Programming a Web crawling tool to search thousands of Web sites whose addresses and layouts are continually changing is more complex than doing the same for a single Web site. Moreover, investors face similar risks at corporate Web sites of restricted Web crawler activity, the Web site going down for maintenance, and slow connections due to high network traffic as they would at a central information depository such as EDGAR. This is particularly true to the extent that smaller corporate filers have fewer resources to maintain their Web site than the Commission or other third party sources of financial information.

V. Consideration of Burden on Competition and Promotion of Efficiency, Competition, and Capital Formation

Section 23(a)(2) of the Exchange Act [345] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Furthermore, Section 2(b) [346] of the Securities Act, Section 3(f) [347] of the Exchange Act, and Section 2(c) [348] of the Investment Company Act require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

The amendments requiring issuers to submit interactive data to the Commission and post it on their corporate Web sites are intended to make financial information easier for investors to analyze. In particular, we believe that the amendments will enable investors and others to search and analyze the financial information dynamically; facilitate comparison of financial and business performance across issuers, reporting periods and industries; and, possibly, provide a significant opportunity to automate regulatory filings and business information processing with the potential to increase the speed, accuracy, and usability of financial disclosure. Further, we believe that the amendments may lead to more efficient capital formation and allocation. As discussed in detail above, we suggest that smaller public companies could benefit from increased analyst and investor coverage if interactive data increases the availability, or reduces the cost of collecting and analyzing, corporate financial data. As a result, interactive data may reduce some of the information barriers that make it costly for companies to find appropriate sources of external finance, thus

[345] 15 U.S.C. 78w(a)(2).
[346] 15 U.S.C. 77b(b).
[347] 15 U.S.C. 78c(f).
[348] 15 U.S.C. 80a–2(c).

lowering their cost of capital and increasing the efficiency of capital formation.

We understand that private sector businesses such as those that access financial information and aggregate, analyze, compare or convert it into interactive format have business models and, as a result, competitive strategies that the new interactive data requirements might affect. Since interactive data technology is designed to remove an informational barrier, business models within the financial services industry that are currently adapted to traditional format document reporting may change, with possible consequences for the revenue stream of current product offerings due to the competitive effects of such a change. The competitive effects may relate to changes in the accessibility of financial information to investors, the nature of the information that investors receive, and the potential from new entry or innovation in the markets through which financial reports are transmitted from filers to investors. For example, lower entry barriers that result from lower data collection costs may increase competition among suppliers of financial services products and help spur interactive data-related innovation. It is also possible, however, that, increased competition from new market entrants could reduce industry profit margins, and, as a result, the quality of financial services may suffer. For example—and illustration purposes only—assume that an Internet service company develops an interactive data-based tool that easily provides company base financial data for free to all subscribers, and it uses this product as a loss leader to increase viewership and advertising revenue. If the data provided is of the same quality as data provided through subscription to other available commercial products, then there should be no informational efficiency loss and the quality of financial data services should not be impaired. However, if the incumbent financial service providers provide a higher quality of information that improves investor interpretation beyond base financials, but they find that it is no longer profitable to produce this information as a result of subsidized products from inferior providers, then these financial data service providers may reduce the supply of higher quality information to investors.

We requested comment on whether the amendments would promote efficiency, competition, and capital formation or have an impact or burden on competition.

A few commenters expressly addressed the amendments' competitive effects. One commenter argued that the amendments would harm competition and innovation in computer operating systems because interactive data are restricted on non-Windows operating systems.[349] This commenter stated that interactive data source code was not available to the public and that there were no interactive data viewers that worked under Macintosh or Linux platforms. We have considered the commenter's views. In this regard, we note that the XBRL form of interactive data that the rules require, with appropriate software, could be used on non-Windows operating systems and seen in human-readable form through viewers that worked under Macintosh or Linux platforms. We also note that XBRL is an ''open standard'' format and its technological specifications are widely available to the public royalty-free at no cost.

Several commenters questioned the efficiency of interactive data. In this regard, commenters addressed the comparability of interactive data and the corporate Web site posting requirement.

Some commenters stated that interactive data would be hard for investors to use in the manner it was intended to be made part of the interactive data requirements because there would be a lack of comparability due to the Commission's permitting issuers to use taxonomies with thousands of standard elements and additional extensions.[350] We believe that the combination of a robust list of standard elements and the ability to add extensions where necessary, strikes an appropriate balance between comparability and specificity. We also believe that if certain extensions become common, new standard elements can be added to eliminate the need to use these extensions and, thereby, enhance comparability.

A commenter questioning the efficiency of the Web site posting requirement expressed concern about the risk of hosting delays, and the potential for errors and duplication of effort. This commenter suggested that a hyperlink to the interactive data on the Commission's Web site would be more effective and would be consistent with the current practice of some companies linking to their periodic reports on the Commission's site.[351] As noted above, we believe that corporate Web site availability of interactive data will encourage its widespread dissemination, thereby contributing to lower access costs for users. Users that prefer to access the interactive data through another source such as the Commission's Web site would be free to do so.

Commenters addressed competition in terms of the opportunity to participate in submitting interactive data and the costs imposed by the requirement to submit interactive data. A commenter argued for the expansion of interactive data's use in order to promote competition. Specifically, this commenter suggested that issuers be permitted to submit interactive data with MJDS forms to enable MJDS issuers to avoid a competitive disadvantage that would result from the inability to submit interactive data.[352] As discussed above, the new rules generally will require issuers to submit interactive data for their MJDS forms. One commenter stated that the additional costs of the interactive data requirements would make the U.S. market less attractive to foreign issuers.[353] Another commenter recommended that foreign private issuers be excluded from the phase-in period, asserting that foreign issuers would face more difficulty due to factors such as language differences and less access to service suppliers.[354] We acknowledge these concerns about cost and effort but believe that the adopted requirements are appropriate in light of the potential interactive data have to increase the speed, accuracy and usability of financial disclosure, and eventually reduce costs.

VI. Final Regulatory Flexibility Act Analysis

This Final Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to amendments that will require issuers to provide their financial statements to the Commission and on their corporate Web sites in interactive data format.

A. Reasons for, and Objectives of, the Adopted Amendments

The main purpose of the amendments is to make financial information easier for investors to analyze while assisting in automating regulatory filings and business information processing. Currently, issuers are required to file the financial statements in their registration statements, quarterly and annual reports, and transitional reports and revised or updated financial statements in their current reports on Form 8–K

[349] *See* letter from Jay Starkman.

[350] *See* letters from Haynsworth and SavaNet.

[351] *See* letter from IBM.

[352] *See* letter from CP.

[353] *See* letter from EuropeanIssuers.

[354] *See* letter from CSG.

and reports on Form 6–K in a traditional format that provides static text-based information. We believe that providing these financial statements in interactive data format will:

- Enable investors and others to search and analyze the information dynamically;
- Facilitate comparison of financial and business performance across issuers, reporting periods and industries; and
- Provide an opportunity to automate regulatory filings and business information processing with the potential to increase the speed, accuracy, and usability of financial disclosure.

B. Significant Issues Raised by Public Comment

The Initial Regulatory Flexibility Act Analysis appeared in the proposing release (IRFA). We requested comment on any aspect of the IRFA, including the number of small entities that may be affected by the amendments, the nature of the potential impact of the amendments on small entities, and how to quantify the impact of the amendments. We asked those submitting comments to provide empirical data supporting the extent of the impact.

One commenter, while acknowledging that the largest filers included in the first phase should be able to effectively deal with the amendments' requirements, expressed concern about the capacity of smaller filers to do so.[355] This filer suggested that the Commission thoroughly study the initial phase-in period to determine whether smaller filers will have the resources and staff to be able to comply with the requirements of the rule in the time period proposed. This filer also believed that smaller issuers with less than $50 million of public float should be able to opt out of the requirements of the amendments but voluntarily comply if they so choose. One commenter noted that the grace period following the filing of a Form 10–K offers little relief for smaller companies due to the number of filings prepared shortly thereafter. Specifically, this commenter noted that at many smaller companies, the staff responsible for the preparation of a Form 10–K immediately turn their time and attention to the preparation of the company's proxy statement after filing the Form 10–K. The commenter stated that a Form 10–Q is not followed by a similar series of reporting obligations, so a grace period following this report is consequently more helpful in assisting companies avoid excessive expense and burden.[356]

We also note that commenters that provide interactive data services stated that issuers would need to expend only modest cost and effort to comply with the proposed requirements.[357] One commenter stated that it expected that costs would fall quickly, especially for small companies, as interactive data became part of standard corporate accounting software packages.[358] As noted throughout the release, we are sensitive to the impact of the amendments on small companies and while we recognize that requiring interactive data financial reporting will likely result in start-up expenses for such companies, these expenses may be substantially lower than those of larger filers, given that smaller filers tend to have simpler financial statements than larger companies, with fewer elements and disclosures to tag. We expect that the phase-in will foster the improvement and availability of inexpensive software. We also believe that the third year phase-in for smaller reporting companies will permit them to learn from the experience of the earlier filers and give them a longer period of time across which to spread first-year data tagging costs.

C. Small Entities Subject to the Amendments

The amendments will affect issuers that are small entities. Exchange Act Rule 0–10(a)[359] defines an issuer, other than an investment company, to be a ''small business'' or ''small organization'' for purposes of the Regulatory Flexibility Act if it had total assets of $5 million or less on the last day of its most recent fiscal year.[360] We estimate that there are approximately 1,100 issuers that file reports under the Exchange Act and may be considered small entities.[361] All of these issuers would become subject to the amendments in year three of the phase-in.

D. Reporting, Recordkeeping and Other Compliance Requirements

All issuers subject to the amendments will be required to submit financial information to the Commission in interactive data format and, if they have a corporate Web site, post the interactive data on their Web site. We believe that, in order to submit financial information in interactive data format, issuers in general and small entities in particular likely will need to prepare and then submit the interactive data by expending internal labor hours in connection with either or both of;

- Purchasing, learning, and using software packages designed to prepare financial information in interactive format; and
- Hiring and working with a consultant or filing agent.[362]

We believe that issuers will incur relatively little cost in connection with the requirement to post the interactive data on the issuer's corporate Web site because the requirement applies only to issuers that already have a corporate Web site.[363]

E. Agency Action To Minimize the Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the amendments, we considered several alternatives, including the following:

- Establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities;
- Further clarifying, consolidating or simplifying the requirements;
- Using performance rather than design standards; and

[355] *See* letter from NYSSCPA.

[356] *See* letter from ABA.

[357] *See* letters from ECI, EDGARFilings and UBMatrix.

[358] *See* letter from James J. Angel.

[359] 17 CFR 240.0–10(a).

[360] Securities Act Rule 157(a) [17 CFR 230.157(a)] generally defines an issuer, other than an investment company, to be a ''small business'' or ''small entity'' for purposes of the Regulatory Flexibility Act if it had total assets of $5 million or less on the last day of its most recent fiscal year and it is conducting or proposing to conduct a securities offering of $5 million or less. For purposes of our analysis of issuers other than investment companies in this Part VI of the release, however, we use the Exchange Act definition of ''small business'' or ''small entity'' because that definition includes more issuers than does the Securities Act definition and, as a result, assures that the definition we use would not itself lead to an understatement of the impact of the amendments on small entities.

[361] The estimated number of small entities that report under the Exchange Act is based on 2007 data including the Commission's internal computerized filing system and Thompson Financial's Worldscope database.

[362] Some issuers such as those that have participated in the voluntary program may already prepare financial information in interactive data format or already have the expertise and software to prepare financial information in interactive data format. Those issuers would incur fewer costs as a result of the new requirements. Based on our experience with the voluntary program, however, we believe that it would be unlikely that those issuers would include many small entities.

[363] The internal labor and external costs required to comply with the new rules are discussed more fully in Parts III and IV above.

• Providing an exemption from the requirements, or any part of them, for small entities.

We believe that, as to small entities, differing compliance, reporting or non-phase-in timetable requirements, a partial or complete exemption from the amendments or the use of performance rather than design standards would be inappropriate because these approaches would detract from the long-term completeness and uniformity of the interactive data format financial information database. Less long-term completeness and uniformity would reduce the extent to which the amendments would enable investors and others to search and analyze the information dynamically; facilitate comparison of financial and business performance across issuers, reporting periods and industries; and, possibly, provide an opportunity to automate regulatory filings and business information processing with the potential to increase the speed, accuracy, and usability of financial disclosure. We note, however, that small entities will not be subject to the amendments until year three of the phase-in and, as all other issuers, will not be required to tag in detail the footnotes and schedules to their financial statements until their second year subject to the requirements.[364] We solicited comment on whether differing compliance, reporting or timetable requirements, a partial or complete exemption, or the use of performance rather than design standards would be consistent with our described main goal of making financial information easier for investors to analyze while assisting in automating regulatory filings and business information processing. One commenter stated that at some future point, all filers should be required to submit their financial statements in interactive data.[365] This commenter also stated, however, that smaller filers should, for now, be able to opt out of the requirement to submit interactive data. In this regard, the commenter stated that it did not believe there would be sufficient analyst interest in these filers to justify the costs the filers would incur. We acknowledge the commenter's views. We note, however, that even if there were relatively little analyst interest in smaller filers, the interactive data requirements are intended not only to facilitate access to and use of information by analysts but by others as well. In addition, we note that the interactive data requirements also are intended to provide an opportunity to automate regulatory filings and business information processing, with the potential to increase the speed, accuracy and usability of financial disclosure.

Based in part on our experience with the voluntary program, we believe that the amendments are sufficiently clear and straightforward.

VII. Statutory Authority and Text of Amendments

We are adopting the amendments outlined above under Sections 7, 10, 19(a) and 28 of the Securities Act,[366] Sections 3, 12, 13, 14, 15(d), 23(a), 35A, and 36 of the Exchange Act,[367] Sections 314 and 319 of the Trust Indenture Act[368] and Sections 6(c), 8, 24, 30, and 38 of the Investment Company Act[369] and Section 3(a) of the Sarbanes-Oxley Act.[370]

List of Subjects

17 CFR Parts 229, 230, 232, 239, 240 and 249

Reporting and recordkeeping requirements, Securities.

■ For the reasons set out in the preamble, we amend Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

■ 1. The authority citation for Part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 777iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 2. Amend § 229.601 by revising the exhibit table in paragraph (a) and by revising paragraph (b)(100) and adding paragraph (b)(101) to read as follows:

§ 229.601 (Item 601) Exhibits.

(a) * * *

Exhibit Table

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EXHIBIT TABLE

	Securities Act forms								Exchange Act forms				
	S–1	S–3	S–4 [1]	S–8	S–11	F–1	F–3	F–4 [1]	10	8–K [2]	10–D	10–Q	10–K
(1) Underwriting agreement	X	X	X	.....	X	X	X	X	.....	X	.....	.....	.....
(2) Plan of acquisition, reorganization, arrangement, liquidation or succession	X	X	X	.....	X	X	X	X	X	X	.....	X	X
(3)(i) Articles of incorporation	X	.....	X	.....	X	X	.....	X	X	X	X	X	X
(ii) Bylaws	X	.....	X	.....	X	X	.....	X	X	X	X	X	X
(4) Instruments defining the rights of security holders, including indentures	X	X	X	X	X	X	X	X	X	X	X	X	X
(5) Opinion re legality	X	X	X	X	X	X	X	X	.....	.....	.....	.....	.....
(6) [Reserved]	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

[364] In this regard, in Part II.B.2 of this release we note that the additional phase-in time for companies not required to submit interactive data in year one of the phase-in period is intended to permit them to plan for and implement the interactive data reporting process after having the opportunity to learn from the experience of year one filers. We also there note that the additional phase-in time also is intended to enable us to monitor implementation and, if necessary, make appropriate adjustments to the phase-in period.

[365] *See* letter from NYSSCPA.

[366] 15 U.S.C. 77g, 77j, 77s(a) and 77z–3.

[367] 15 U.S.C. 78c, 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*, and 78mm.

[368] 15 U.S.C. 77nnn and 77sss.

[369] 15 U.S.C. 80a–6(c), 80a–8, 80a–24, 80a–29, and 80a–37.

[370] Public Law No. 107–204, 116 Stat. 745.

EXHIBIT TABLE—Continued

	Securities Act forms								Exchange Act forms				
	S–1	S–3	S–4 [1]	S–8	S–11	F–1	F–3	F–4 [1]	10	8–K [2]	10–D	10–Q	10–K
(7) Correspondence from an independent accountant regarding non-reliance on a previously issued audit report or completed interim review	.....	.....	.....	.....	.....	.....	.....	.....	.....	X	.....	.....	.....
(8) Opinion re tax matters	X	X	X	.....	X	X	X	X	.....	.....	.....	.....	.....
(9) Voting trust agreement	X	.....	X	.....	X	X	.....	X	X	.....	.....	.....	X
(10) Material contracts	X	.....	X	.....	X	X	.....	X	X	.....	X	X	X
(11) Statement re computation of per share earnings	X	.....	X	.....	X	X	.....	X	X	.....	.....	X	X
(12) Statements re computation of ratios	X	X	X	.....	X	X	.....	X	X	.....	.....	.....	X
(13) Annual report to security holders, Form 10–Q or quarterly report to security holders [3]	.....	.....	X	.....	.....	.....	.....	.....	.....	.....	.....	.....	X
(14) Code of Ethics	.....	.....	.....	.....	.....	.....	.....	.....	.....	X	.....	.....	X
(15) Letter re unaudited interim financial information	X	X	X	X	X	X	X	X	.....	.....	.....	X	.....
(16) Letter re change in certifying accountant [4]	X	.....	X	.....	X	.....	.....	.....	X	X	.....	.....	X
(17) Correspondence on departure of director	.....	.....	.....	.....	.....	.....	.....	.....	.....	X	.....	.....	.....
(18) Letter re change in accounting principles	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	X	X
(19) Report furnished to security holders	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	X	.....
(20) Other documents or statements to security holders	.....	.....	.....	.....	.....	.....	.....	.....	.....	X	.....	.....	.....
(21) Subsidiaries of the registrant	X	.....	X	.....	X	X	.....	X	X	.....	.....	.....	X
(22) Published report regarding matters submitted to vote of security holders	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	X	X	X
(23) Consents of experts and counsel	X	X	X	X	X	X	X	X	.....	X [5]	X [5]	X [5]	X [5]
(24) Power of attorney	X	X	X	X	X	X	X	X	X	X	.....	X	X
(25) Statement of eligibility of trustee	X	X	X	.....	.....	X	X	X	.....	.....	.....	.....	.....
(26) Invitation for competitive bids	X	X	X	.....	.....	X	X	X	.....	.....	.....	.....	.....
(27) through (30) [Reserved]	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
(31) (i) Rule 13a–14(a)/15d–14(a)													
Certifications (ii) Rule 13a–14/15d–14 Certifications	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	X	X
												.....	X
(32) Section 1350 Certifications [6]	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	X	X
(33) Report on assessment of compliance with servicing criteria for asset-backed issuers	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	X
(34) Attestation report on assessment of compliance with servicing criteria for asset-backed securities	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	X
(35) Servicer compliance statement	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	X
(36) through (98) [Reserved]	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(99) Additional exhibits	X	X	X	X	X	X	X	X	X	X	X	X	X
(100) XBRL-Related Documents	.....	.....	.....	.....	.....	.....	.....	.....	X	X	.....	X	X
(101) Interactive Data File	X	X	X	.....	X	X	X	X	.....	X	.....	X	X

[1] An exhibit need not be provided about a company if: (1) With respect to such company an election has been made under Form S–4 or F–4 to provide information about such company at a level prescribed by Form S–3 or F–3; and (2) the form, the level of which has been elected under Form S–4 or F–4, would not require such company to provide such exhibit if it were registering a primary offering.

[2] A Form 8–K exhibit is required only if relevant to the subject matter reported on the Form 8–K report. For example, if the Form 8–K pertains to the departure of a director, only the exhibit described in paragraph (b)(17) of this section need be filed. A required exhibit may be incorporated by reference from a previous filing.

[3] Where incorporated by reference into the text of the prospectus and delivered to security holders along with the prospectus as permitted by the registration statement; or, in the case of the Form 10–K, where the annual report to security holders is incorporated by reference into the text of the Form 10–K.

[4] If required pursuant to Item 304 of Regulation S–K.
[5] Where the opinion of the expert or counsel has been incorporated by reference into a previously filed Securities Act registration statement.
[6] Pursuant to §§ 240.13a–13(b)(3) and 240.15d–13(b)(3) of this chapter, asset-backed issuers are not required to file reports on Form 10–Q.

(b) * * *

(100) *XBRL-Related Documents*. Only an electronic filer that prepares its financial statements in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*) is permitted to participate in the voluntary XBRL (eXtensible Business Reporting Language) program and, as a result, may submit XBRL–Related Documents (§ 232.11 of this chapter) in electronic format as an exhibit to: the filing to which they relate; an amendment to such filing; or a Form 8–K (§ 249.308 of this chapter) that references such filing, if the Form 8–K is submitted no earlier than the date of filing. Rule 401 of Regulation S–T (§ 232.401 of this chapter) sets forth further details regarding eligibility to participate in the voluntary XBRL program.

(101) *Interactive Data File*. An Interactive Data File (§ 232.11 of this chapter) is:

(i) *Required to be submitted and posted*. Required to be submitted to the Commission and posted on the registrant's corporate Web site, if any, in the manner provided by Rule 405 of Regulation S–T (§ 232.405 of this chapter) if the registrant does not prepare its financial statements in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*) and is described in paragraph (b)(101)(i)(A), (B) or (C) of this Item, except that an Interactive Data File: first is required for a periodic report on Form 10–Q (§ 249.308a of this chapter), Form 20–F (§ 249.220f of this chapter) or Form 40–F (§ 249.240f of this chapter), as applicable; is required for a registration statement under the Securities Act only if the registration statement contains a price or price range; and is required for a Form 8–K (§ 249.308 of this chapter) only when the Form 8–K contains audited annual financial statements that are a revised version of financial statements that previously were filed with the Commission that have been revised pursuant to applicable accounting standards to reflect the effects of certain subsequent events, including a discontinued operation, a change in reportable segments or a change in accounting principle, and, in such case, the Interactive Data File would be required only as to such revised financial statements regardless whether the Form 8–K contains other financial statements:

(A) A large accelerated filer (§ 240.12b–2 of this chapter) that had an aggregate worldwide market value of the voting and non-voting common equity held by non-affiliates of more than $5 billion as of the last business day of the second fiscal quarter of its most recently completed fiscal year that prepares its financial statements in accordance with generally accepted accounting principles as used in the United States and the filing contains financial statements of the registrant for a fiscal period that ends on or after June 15, 2009;

(B) A large accelerated filer not specified in paragraph (b)(101)(i)(A) of this Item that prepares its financial statements in accordance with generally accepted accounting principles as used in the United States and the filing contains financial statements of the registrant for a fiscal period that ends on or after June 15, 2010; or

(C) A filer not specified in paragraph (b)(101)(i)(A) or (B) of this Item that prepares its financial statements in accordance with either generally accepted accounting principles as used in the United States or International Financial Reporting Standards as issued by the International Accounting Standards Board, and the filing contains financial statements of the registrant for a fiscal period that ends on or after June 15, 2011.

(ii) *Permitted to be submitted*. Permitted to be submitted to the Commission in the manner provided by Rule 405 of Regulation S–T (§ 232.405 of this chapter) if the:

(A) Registrant prepares its financial statements:

(*1*) In accordance with either:

(*i*) Generally accepted accounting principles as used in the United States; or

(*ii*) International Financial Reporting Standards as issued by the International Accounting Standards Board; and

(*2*) Not in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*); and

(B) Interactive Data File is not required to be submitted to the Commission under paragraph (b)(101)(i) of this Item.

(iii) *Not permitted to be submitted*. Not permitted to be submitted to the Commission if the registrant prepares its financial statements in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*).

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 3. The authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l*, 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

■ 4. Amend § 230.144 by revising paragraph (c)(1) and the Note to § 230.144(c) to read as follows:

§ 230.144 Persons deemed not to be engaged in a distribution and therefore not underwriters.

* * * * *

(c) * * *

(1) *Reporting issuers*. The issuer is, and has been for a period of at least 90 days immediately before the sale, subject to the reporting requirements of section 13 or 15(d) of the Exchange Act and has:

(i) Filed all required reports under section 13 or 15(d) of the Exchange Act, as applicable, during the 12 months preceding such sale (or for such shorter period that the issuer was required to file such reports), other than Form 8–K reports (§ 249.308 of this chapter); and

(ii) Submitted electronically and posted on its corporate Web site, if any, every Interactive Data File (§ 232.11 of this chapter) required to be submitted and posted pursuant to Rule 405 of Regulation S–T (§ 232.405 of this chapter), during the 12 months preceding such sale (or for such shorter period that the issuer was required to submit and post such files); or

* * * * *

Note to § 230.144(*c*). With respect to paragraph (c)(1), the person can rely upon:

1. A statement in whichever is the most recent report, quarterly or annual, required to be filed and filed by the issuer that such issuer has:

a. Filed all reports required under section 13 or 15(d) of the Exchange Act, as applicable, during the preceding 12 months (or for such shorter period that the issuer was required to file such reports), other than Form 8–K reports (§ 249.308 of this chapter), and has been subject to such filing requirements for the past 90 days; and

b. Submitted electronically and posted on its corporate Web site, if any, every Interactive Data File (§ 232.11 of this chapter) required to be submitted and posted pursuant to Rule 405 of Regulation S–T (§ 232.405 of this chapter), during the preceding 12 months (or for such shorter period that the

issuer was required to submit and post such files); or

2. A written statement from the issuer that it has complied with such reporting, submission or posting requirements.

3. Neither type of statement may be relied upon, however, if the person knows or has reason to believe that the issuer has not complied with such requirements.

* * * * *

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 5. The authority citation for Part 232 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*, 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, and 7201 *et seq.*; and 18 U.S.C. 1350.

* * * * *

■ 6. Amend § 232.11 by adding definitions for ''Interactive Data File,'' ''Promptly,'' and ''Related Official Filing'' in alphabetical order to read as follows:

§ 232.11 Definition of terms used in part 232.

* * * * *

Interactive Data File. The term *Interactive Data File* means the machine-readable computer code that presents information in eXtensible Business Reporting Language (XBRL) electronic format pursuant to § 232.405.

* * * * *

Promptly. The term *Promptly* means as soon as reasonably practicable under the facts and circumstances at the time. An amendment to the Interactive Data File made by the later of 24 hours or 9:30 a.m. Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect, on the next business day after the electronic filer becomes aware of the need for such amendment shall be deemed to be ''promptly'' made.

* * * * *

Related Official Filing. The term *Related Official Filing* means the ASCII or HTML format part of the official filing with which an Interactive Data File appears as an exhibit.

* * * * *

■ 7. Amend § 232.201 by:

■ a. Revising paragraph (a) introductory text;

■ b. Amending paragraph (b) by revising the headings to Notes 1 and 2; and

■ c. Adding paragraph (c).

The revisions and addition read as follows:

§ 232.201 Temporary hardship exemption.

(a) If an electronic filer experiences unanticipated technical difficulties preventing the timely preparation and submission of an electronic filing, other than a Form 3 (§ 249.103 of this chapter), a Form 4 (§ 249.104 of this chapter), a Form 5 (§ 249.105 of this chapter), a Form ID (§§ 239.63, 249.446, 269.7 and 274.402 of this chapter), a Form TA–1 (§ 249.100 of this chapter), a Form TA–2 (§ 249.102 of this chapter), a Form TA–W (§ 249.101 of this chapter), a Form D (§ 239.500 of this chapter) or an Interactive Data File (§ 232.11 of this chapter), the electronic filer may file the subject filing, under cover of Form TH (§§ 239.65, 249.447, 269.10 and 274.404 of this chapter), in paper format no later than one business day after the date on which the filing was to be made.

* * * * *

(b) * * *

Note 1 to paragraph (b): * * *

Note 2 to paragraph (b): * * *

(c) If an electronic filer experiences unanticipated technical difficulties preventing the timely preparation and—

(1) Submission of an Interactive Data File (§ 232.11) as an exhibit as required pursuant to Rule 405 of Regulation S–T (§ 232.405), the electronic filer still can timely satisfy the requirement to submit the Interactive Data File in the following manner:

(i) Substitute for the Interactive Data File in the required exhibit a document that sets forth the following legend:

IN ACCORDANCE WITH THE TEMPORARY HARDSHIP EXEMPTION PROVIDED BY RULE 201 OF REGULATION S–T, THE DATE BY WHICH THE INTERACTIVE DATA FILE IS REQUIRED TO BE SUBMITTED HAS BEEN EXTENDED BY SIX BUSINESS DAYS; and

(ii) Submit the required Interactive Data File no later than six business days after the Interactive Data File originally was required to be submitted.

(2) Posting on its corporate Web site of an Interactive Data File as required pursuant to Rule 405 of Regulation S–T, the electronic filer still can timely satisfy the requirement to post the Interactive Data File by so posting the Interactive Data File within six business days after the Interactive Data File was required to be submitted to the Commission.

Note to paragraph (c): Electronic filers unable to submit or post, as applicable, the Interactive Data File under the circumstances specified by paragraph (c), must comply with the provisions of this section and cannot use Form 12b–25 (§ 249.322 of this chapter) as a notification of late filing. Failure to submit or post, as applicable, the Interactive Data File as required by the end of the six-business-day period specified by paragraph (c) of this section will result in ineligibility to use Forms S–3, S–8 and F–3 (§§ 239.13, 239.16b, and 239.33 of this chapter) and constitute a failure to have filed all required reports for purposes of the current public information requirements of Rule 144(c)(1) (§ 230.144(c)(1) of this chapter).

■ 8. Amend § 232.202 by:

■ a. Revising paragraphs (a) introductory text, (a)(2), (b)(2), and (b)(3);

■ b. Revising paragraph (c);

■ c. Revising paragraph (d);

■ d. Revising the headings to Notes 1, 2, and 3 to the section; and

■ e. Adding Note 4 to the section.

The revisions and addition read as follows:

§ 232.202 Continuing hardship exemption.

(a) An electronic filer may apply in writing for a continuing hardship exemption if all or part of a filing, group of filings or submission, other than a Form ID (§§ 239.63, 249.446, 269.7, and 274.402 of this chapter) or a Form D (§ 239.500 of this chapter), otherwise to be filed or submitted in electronic format or, in the case of an Interactive Data File (§ 232.11), to be posted on the electronic filer's corporate Web site, cannot be so filed, submitted or posted, as applicable, without undue burden or expense. Such written application shall be made at least ten business days before the required due date of the filing(s), submission(s) or posting of the proposed filing, submission, or posting date, as appropriate, or within such shorter period as may be permitted. The written application shall contain the information set forth in paragraph (b) of this section.

* * * * *

(2) If the Commission, or the staff acting pursuant to delegated authority, denies the application for a continuing hardship exemption, the electronic filer shall file or submit the required document or Interactive Data File in electronic format or post the Interactive Data File on its corporate Web site, as applicable, on the required due date or the proposed filing or submission date, or such other date as may be permitted.

* * * * *

(b) * * *

(2) The burden and expense to employ alternative means to make the electronic submission or posting, as applicable; and/or

(3) The reasons for not submitting electronically the document, group of documents or Interactive Data File or not posting the Interactive Data File, as

well as the justification for the requested time period.

(c) If the request is granted with respect to:

(1) Electronic filing of a document or group of documents, not electronic submission or posting of an Interactive Data File, then the electronic filer shall submit the document or group of documents for which the continuing hardship exemption is granted in paper format on the required due date specified in the applicable form, rule or regulation, or the proposed filing date, as appropriate and the following legend shall be placed in capital letters at the top of the cover page of the paper format document(s):

IN ACCORDANCE WITH RULE 202 OF REGULATION S–T, THIS (specify document) IS BEING FILED IN PAPER PURSUANT TO A CONTINUING HARDSHIP EXEMPTION.

(2) Electronic submission of an Interactive Data File, then the electronic filer shall substitute for the Interactive Data File in the exhibit in which it was required a document that sets forth one of the following legends, as appropriate:

IN ACCORDANCE WITH A CONTINUING HARDSHIP EXEMPTION OBTAINED UNDER RULE 202 OF REGULATION S–T, THE DATE BY WHICH THE INTERACTIVE DATA FILE IS REQUIRED TO BE SUBMITTED HAS BEEN EXTENDED TO (specify date); or

IN ACCORDANCE WITH A CONTINUING HARDSHIP EXEMPTION OBTAINED UNDER RULE 202 OF REGULATION S–T, THE INTERACTIVE DATA FILE IS NOT REQUIRED TO BE SUBMITTED.

(3) Web site posting by an electronic filer of its Interactive Data File, the electronic filer need not post on its Web site any statement with regard to the grant of the request.

(d) If a continuing hardship exemption is granted for a limited period of time for:

(1) Electronic filing of a document or group of documents, not electronic submission or posting of an Interactive Data File, then the grant may be conditioned upon the filing of the document or group of documents that is the subject of the exemption in electronic format upon the expiration of the period for which the exemption is granted. The electronic format version shall contain the following statement in capital letters at the top of the first page of the document:

This document is a copy of the (specify document) filed on (date) pursuant to a Rule 202(d) continuing hardship exemption.

(2) Electronic submission or posting of an Interactive Data File, then the grant may be conditioned upon the electronic submission and posting, as applicable, of the Interactive Data File that is the subject of the exemption upon the expiration of the period for which the exemption is granted.

Note 1 to § 232.202: * * *

Note 2 to § 232.202: * * *

Note 3 to § 232.202: * * *

Note 4 to § 232.202: Failure to submit or post, as applicable, the Interactive Data File as required by Rule 405 by the end of the continuing hardship exemption if granted for a limited period of time, will result in ineligibility to use Forms S–3, S–8, and F–3 (§§ 239.13, 239.16b and 239.33 of this chapter) and constitute a failure to have filed all required reports for purposes of the current public information requirements of Rule 144(c)(1) (§ 230.144(c)(1) of this chapter).

■ 9. Amend § 232.305 by revising paragraph (b) to read as follows:

§ 232.305 Number of characters per line; tabular and columnar information.

* * * * *

(b) Paragraph (a) of this section does not apply to HTML documents, Interactive Data Files (§ 232.11) or XBRL-Related Documents (§ 232.11).

■ 10. Amend § 232.401, paragraph (a), by adding a new first sentence to read as follows:

§ 232.401 XBRL-Related Document submissions.

(a) Only an electronic filer that is an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), a ''business development company'' as defined in section 2(a)(48) of that Act, or an entity that reports under the Exchange Act and prepares its financial statements in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*) is permitted to participate in the voluntary XBRL (eXtensible Business Reporting Language) program. * * *

* * * * *

■ 11. Amend § 232.402 by removing the phrase ''Public Utility Act,'' from the first sentence of paragraph (b).

§§ 232.403 and § 232.404 [Reserved].

■ 12. Reserve § 232.403 and § 232.404.

■ 13. Add § 232.405 and § 232.406T to read as follows:

§ 232.405 Interactive Data File submissions and postings.

Preliminary Note 1. Sections 405 and 406T of Regulation S–T (§§ 232.405 and 232.406T) apply to electronic filers that submit or post Interactive Data Files. Item 601(b)(101) of Regulation S–K (§ 229.601(b)(101) of this chapter), paragraph 101 of the Information Not Required to be Delivered to Offerees or Purchasers of both Form F–9 (§ 239.39 of this chapter)and Form F–10 (§ 239.40 of this chapter), Item 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter), paragraph B.7 of the General Instructions to Form 40–F (§ 249.240f of this chapter) and paragraph C.6 of the General Instructions to Form 6–K (§ 249.306 of this chapter) specify when electronic filers are required or permitted to submit or post an Interactive Data File (§ 232.11), as further described in the Note to § 232.405.

Preliminary Note 2. Section 405 imposes content, format, submission and Web site posting requirements for an Interactive Data File, but does not change the substantive content requirements for the financial and other disclosures in the Related Official Filing (§ 232.11).

Preliminary Note 3. Section 406T addresses liability related to Interactive Data Files.

(a) *Content, format, submission and posting requirements—General.* An Interactive Data File must:

(1) Comply with the content, format, submission and Web site posting requirements of this section;

(2) Be submitted only by an electronic filer either required or permitted to submit an Interactive Data File as specified by Item 601(b)(101) of Regulation S–K, paragraph 101 of the Information Not Required to be Delivered to Offerees or Purchasers of either Form F–9 or Form F–10, Item 101 of the Instructions as to Exhibits of Form 20–F, paragraph B.7 of the General Instructions to Form 40–F or paragraph C.6 of the General Instructions to Form 6–K, as applicable, as an exhibit to:

(i) A form that contains the disclosure required by this section or

(ii) An amendment to a form that contains the disclosure required by this section if the amendment is filed no more than 30 days after the earlier of the due date or filing date of the form and the Interactive Data File is the first Interactive Data File the electronic filer submits or the first Interactive Data File the electronic filer submits that complies or is required to comply, whichever occurs first, with paragraphs (d)(1) through (d)(4), (e)(1) and (e)(2) of this section;

(3) Be submitted in accordance with the EDGAR Filer Manual and, as applicable, either Item 601(b)(101) of Regulation S–K, paragraph 101 of the Information Not Required to be Delivered to Offerees or Purchasers of either Form F–9 or Form F–10, Item 101

of the Instructions as to Exhibits of Form 20–F, paragraph B.7 of the General Instructions to Form 40–F or paragraph C.6 of the General Instructions to Form 6–K; and

(4) Be posted on the electronic filer's corporate Web site, if any, in accordance with, as applicable, either Item 601(b)(101) of Regulation S–K, paragraph 101 of the Information Not Required to be Delivered to Offerees or Purchasers of either Form F–9 or Form F–10, Item 101 of the Instructions as to Exhibits of Form 20–F, paragraph B.7 of the General Instructions to Form 40–F or paragraph C.6 of the General Instructions to Form 6–K.

(b) *Content—Categories of information presented.* An Interactive Data File must consist of only a complete set of information for all periods required to be presented in the corresponding data in the Related Official Filing, no more and no less, from all of the following categories:

(1) The complete set of the electronic filer's financial statements (which includes the face of the financial statements and all footnotes); and

(2) All schedules set forth in Article 12 of Regulation S–X (§§ 210.12–01—210.12–29) related to the electronic filer's financial statements.

Note to paragraph (b): It is not permissible for the Interactive Data File to present only partial face financial statements, such as by excluding comparative financial information for prior periods.

(c) *Format—Generally.* An Interactive Data File must comply with the following requirements, except as modified by paragraph (d) or (e) of this section, as applicable, with respect to the corresponding data in the Related Official Filing consisting of footnotes to financial statements or financial statement schedules as set forth in Article 12 of Regulation S–X:

(1) *Data elements and labels.*

(i) *Element accuracy.* Each data element (*i.e.*, all text, line item names, monetary values, percentages, numbers, dates and other labels) contained in the Interactive Data File reflects the same information in the corresponding data in the Related Official Filing;

(ii) *Element specificity.* No data element contained in the corresponding data in the Related Official Filing is changed, deleted, or summarized in the Interactive Data File;

(iii) *Standard and special labels and elements.* Each data element contained in the Interactive Data File is matched with an appropriate tag from the most recent version of the standard list of tags specified by the EDGAR Filer Manual. A tag is appropriate only when its standard definition, standard label and other attributes as and to the extent identified in the list of tags match the information to be tagged, except that:

(A) *Labels.* An electronic filer must create and use a new special label to modify a tag's existing standard label when that tag is an appropriate tag in all other respects (*i.e.*, in order to use a tag from the standard list of tags only its label needs to be changed); and

(B) *Elements.* An electronic filer must create and use a new special element if and only if an appropriate tag does not exist in the standard list of tags for reasons other than or in addition to an inappropriate standard label; and

(2) *Additional mark-up related content.* The Interactive Data File contains any additional mark-up related content (*e.g.*, the eXtensible Business Reporting Language tags themselves, identification of the core XML documents used and other technology related content) not found in the corresponding data in the Related Official Filing that is necessary to comply with the EDGAR Filer Manual requirements.

(d) *Format—Footnotes—Generally.* The part of the Interactive Data File for which the corresponding data in the Related Official Filing consists of footnotes to financial statements must comply with the requirements of paragraphs (c)(1) and (c)(2) of this section, as modified by this paragraph (d), unless the electronic filer is within one of the categories specified in paragraph (f) of this section. Footnotes to financial statements must be tagged as follows:

(1) Each complete footnote must be block-text tagged;

(2) Each significant accounting policy within the significant accounting policies footnote must be block-text tagged;

(3) Each table within each footnote must be block-text tagged; and

(4) Within each footnote,

(i) Each amount (*i.e.*, monetary value, percentage, and number) must be tagged separately; and

(ii) Each narrative disclosure may be tagged separately to the extent the electronic filer chooses.

(e) *Format—Schedules—Generally.* The part of the Interactive Data File for which the corresponding data in the Related Official Filing consists of financial statement schedules as set forth in Article 12 of Regulation S–X must comply with the requirements of paragraphs (c)(1) and (c)(2) of this section, as modified by this paragraph (e), unless the electronic filer is within one of the categories specified in paragraph (f) of this section. Financial statement schedules as set forth in Article 12 of Regulation S–X must be tagged as follows:

(1) Each complete financial statement schedule must be block-text tagged; and

(2) Within each financial statement schedule,

(i) Each amount (*i.e.*, monetary value, percentage and number) must be tagged separately; and

(ii) Each narrative disclosure may be tagged separately to the extent the electronic filer chooses.

(f) *Format—Footnotes and Schedules Eligible for Phased-In Detail.* The following electronic filers must comply with paragraphs (c)(1) and (c)(2) of this section as modified by paragraphs (d) and (e) of this section, except that they may choose to comply with paragraph (d)(1) of this section rather than paragraphs (d)(1) through (d)(4) of this section and may choose to comply with paragraph (e)(1) of this section rather than paragraphs (e)(1) and (e)(2) of this section:

(1) Any large accelerated filer (§ 240.12b–2 of this chapter) that had an aggregate worldwide market value of the voting and non-voting common equity held by non-affiliates of more than $5 billion as of the last business day of the second fiscal quarter of its most recently completed fiscal year that prepares its financial statements in accordance with generally accepted accounting principles as used in the United States, if none of the financial statements for which an Interactive Data File is required is for a fiscal period that ends on or after June 15, 2010;

(2) Any large accelerated filer not specified in paragraph (f)(1) of this section that prepares its financial statements in accordance with generally accepted accounting principles as used in the United States, if none of the financial statements for which an Interactive Data File is required is for a fiscal period that ends on or after June 15, 2011; and

(3) Any filer not specified in paragraph (f)(1) or (f)(2) of this section that prepares its financial statements in accordance with either generally accepted accounting principles as used in the United States or International Financial Reporting Standards as issued by the International Accounting Standards Board, if none of the financial statements for which an Interactive Data File is required is for a fiscal period that ends on or after June 15, 2012.

(g) *Posting.* Any electronic filer that maintains a corporate Web site and is required to submit an Interactive Data File must post that Interactive Data File on that Web site by the end of the calendar day on the earlier of the date

the Interactive Data File is submitted or is required to be submitted and the Interactive Data File must remain accessible on that Web site for at least a 12-month period.

Note to § 232.405: Item 601(b)(101) of Regulation S–K specifies the circumstances under which an Interactive Data File must be submitted as an exhibit and be posted to the issuer's corporate Web site, if any, and the circumstances under which it is permitted to be submitted as an exhibit, with respect to Forms S–1 (§ 239.11 of this chapter), S–3 (§ 239.13 of this chapter), S–4 (§ 239.25 of this chapter), S–11 (§ 239.18 of this chapter), F–1 (§ 239.31 of this chapter), F–3 (§ 239.33 of this chapter), F–4 (§ 239.34 of this chapter), 10–K (§ 249.310 of this chapter), 10–Q (§ 249.308a of this chapter) and 8–K (§ 249.308 of this chapter). Paragraph 101 of the Information Not Required to be Delivered to Offerees or Purchasers of both Form F–9 and Form F–10 specifies the circumstances under which an Interactive Data File must be submitted as an exhibit and be posted to the issuer's corporate Web site, if any, and the circumstances under which it is permitted to be submitted as an exhibit, with respect to Form F–9 and Form F–10, respectively. Item 101 of the Instructions as to Exhibits of Form 20–F specifies the circumstances under which an Interactive Data File must be submitted as an exhibit and be posted to the issuer's corporate Web site, if any, and the circumstances under which it is permitted to be submitted as an exhibit, with respect to Form 20–F. Paragraph B.7 of the General Instructions to Form 40–F and Paragraph C.6 of the General Instructions to Form 6–K specify the circumstances under which an Interactive Data File must be submitted as an exhibit and be posted to the issuer's corporate Web site, if any, and the circumstances under which it is permitted to be submitted as an exhibit, with respect to Form 40–F and Form 6–K, respectively. Item 601(b)(101) of Regulation S–K, paragraph 101 of the Information Not Required to be Delivered to Offerees or Purchasers of both Form F–9 and Form F–10, Item 101 of the Instructions as to Exhibits of Form 20–F, paragraph B.7 of the General Instructions to Form 40–F and paragraph C.6 of the General Instructions to Form 6–K all prohibit submission of an Interactive Data File by an issuer that prepares its financial statements in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*).

§ 232.406T Temporary rule related to Interactive Data Files.

(a) *Scope.* Section 232.406T addresses the liability for the Interactive Data File. An Interactive Data File is subject to the same liability provisions as the Related Official Filing except as provided in paragraphs (b) and (c) of this section.

(b) *In general.* The Interactive Data File, regardless of whether it is an exhibit to a document incorporated by reference into filings:

(1) Is subject to the anti-fraud provisions of section 17(a)(1) of the Securities Act, section 10(b) of the Exchange Act, § 240.10b–5 of this chapter, and section 206(1) of the Investment Advisers Act except as provided in paragraph (c) of this section;

(2) Is deemed not filed or part of a registration statement or prospectus for purposes of sections 11 or 12 of the Securities Act, is deemed not filed for purposes of section 18 of the Exchange Act or section 34(b) of the Investment Company Act, and otherwise is not subject to liability under these sections; and

(3) Is deemed filed for purposes of § 232.103.

(c) *Good faith attempts and prompt correction.* Subject to paragraph (b) of this section, the Interactive Data File shall be subject to liability for a failure to comply with § 232.405, but shall be deemed to have complied with § 232.405 and would not be subject to liability under the anti-fraud provisions set forth in paragraph (b)(1) of this section or under any other liability provision if the electronic filer:

(1) Makes a good faith attempt to comply with § 232.405; and

(2) After the electronic filer becomes aware that the Interactive Data File fails to comply with § 232.405, promptly amends the Interactive Data File to comply with § 232.405.

(d) *Temporary section.* Section 232.406T is a temporary section that applies to an Interactive Data File submitted to the Commission less than 24 months after the electronic filer first was required to submit an Interactive Data File to the Commission pursuant to § 232.405, not taking into account any grace period, but no later than October 31, 2014. After these dates, an Interactive Data File is subject to the same liability provisions as the Related Official Filing. This temporary section will expire on October 31, 2014.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 14. The authority citation for Part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78u–5, 78w(a), 78ll, 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

■ 15. Amend § 239.13 by revising paragraph (a)(8) to read as follows:

§ 239.13 Form S–3, for registration under the Securities Act of 1933 of securities of certain issuers offered pursuant to certain types of transactions.

* * * * *

(a) * * *

(8) *Electronic filings.* In addition to satisfying the foregoing conditions, a registrant subject to the electronic filing requirements of Rule 101 of Regulation S–T (§ 232.101 of this chapter) shall have:

(i) Filed with the Commission all required electronic filings, including electronic copies of documents submitted in paper pursuant to a hardship exemption as provided by Rule 201 or Rule 202(d) of Regulation S–T (§ 232.201 or § 232.202(d) of this chapter); and

(ii) Submitted electronically to the Commission and posted on its corporate Web site, if any, all Interactive Data Files required to be submitted and posted pursuant to Rule 405 of Regulation S–T (§ 232.405 of this chapter) during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on this Form (or for such shorter period of time that the registrant was required to submit and post such files).

■ 16. Amend Form S–3 (referenced in § 239.13) by revising paragraph I.A.8 of the General Instructions to read as follows:

Note: The text of Form S–3 does not and this amendment will not appear in the Code of Federal Regulations.

Form S–3

* * * * *

General Instructions

I. * * *

A. * * *

8. *Electronic filings.* In addition to satisfying the foregoing conditions, a registrant subject to the electronic filing requirements of Rule 101 of Regulation S–T (§ 232.101 of this chapter) shall have:

(a) Filed with the Commission all required electronic filings, including electronic copies of documents submitted in paper pursuant to a hardship exemption as provided by Rule 201 or Rule 202(d) of Regulation S–T (§ 232.201 or § 232.202(d) of this chapter); and

(b) Submitted electronically to the Commission and posted on its corporate Web site, if any, all Interactive Data Files required to be submitted and posted pursuant to Rule 405 of Regulation S–T (§ 232.405 of this chapter) during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on this Form (or for such shorter period of time that the

registrant was required to submit and post such files).

* * * * *

■ 17. Amend § 239.16b by revising paragraph (b) to read as follows:

§ 239.16b Form S–8, for registration under the Securities Act of 1933 of securities to be offered to employees pursuant to employee benefit plans.

* * * * *

(b) *Electronic filings.* In addition to satisfying the foregoing conditions, a registrant subject to the electronic filing requirements of Rule 101 of Regulation S–T (§ 232.101 of this chapter) shall have:

(1) Filed with the Commission all required electronic filings, including electronic copies of documents submitted in paper pursuant to a hardship exemption as provided by Rule 201 or Rule 202(d) of Regulation S–T (§ 232.201 or § 232.202(d) of this chapter); and

(2) Submitted electronically to the Commission and posted on its corporate Web site, if any, all Interactive Data Files required to be submitted and posted pursuant to Rule 405 of Regulation S–T (§ 232.405 of this chapter) during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on this Form (or for such shorter period of time that the registrant was required to submit and post such files).

■ 18. Amend Form S–8 (referenced in § 239.16b) by revising paragraph A.3 of the General Instructions to read as follows:

Note: The text of Form S–8 does not and this amendment will not appear in the Code of Federal Regulations.

Form S–8

* * * * *

General Instructions

A. * * *

3. *Electronic filings.* In addition to satisfying the foregoing conditions, a registrant subject to the electronic filing requirements of Rule 101 of Regulation S–T (§ 232.101 of this chapter) shall have:

(a) Filed with the Commission all required electronic filings, including electronic copies of documents submitted in paper pursuant to a hardship exemption as provided by Rule 201 or Rule 202(d) of Regulation S–T (§ 232.201 or § 232.202(d) of this chapter); and

(b) Submitted electronically to the Commission and posted on its corporate Web site, if any, all Interactive Data Files required to be submitted and posted pursuant to Rule 405 of Regulation S–T (§ 232.405 of this chapter) during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on this Form (or for such shorter period of time that the registrant was required to submit and post such files).

* * * * *

■ 19. Amend § 239.33 by revising paragraph (a)(6) to read as follows:

§ 239.33 Form F–3, for registration under the Securities Act of 1933 of securities of certain foreign private issuers offered pursuant to certain types of transactions.

* * * * *

(a) * * *

(6) *Electronic filings.* In addition to satisfying the foregoing conditions, a registrant subject to the electronic filing requirements of Rule 101 of Regulation S–T (§ 232.101 of this chapter) shall have:

(i) Filed with the Commission all required electronic filings, including electronic copies of documents submitted in paper pursuant to a hardship exemption as provided by Rule 201 or Rule 202(d) of Regulation S–T (§ 232.201 or § 232.202(d) of this chapter); and

(ii) Submitted electronically to the Commission and posted on its corporate Web site, if any, all Interactive Data Files required to be submitted and posted pursuant to Rule 405 of Regulation S–T (§ 232.405 of this chapter) during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on this Form (or for such shorter period of time that the registrant was required to submit and post such files).

* * * * *

■ 20. Amend Form F–3 (referenced in § 239.33) by revising paragraph I.A.6 of the General Instructions to read as follows:

Note: The text of Form F–3 does not and this amendment will not appear in the Code of Federal Regulations.

Form F–3

* * * * *

General Instructions

I. * * *

A. * * *

6. *Electronic filings.* In addition to satisfying the foregoing conditions, a registrant subject to the electronic filing requirements of Rule 101 of Regulation S–T (§ 232.101 of this chapter) shall have:

(i) Filed with the Commission all required electronic filings, including electronic copies of documents submitted in paper pursuant to a hardship exemption as provided by Rule 201 or Rule 202(d) of Regulation S–T (§ 232.201 or § 232.202(d) of this chapter); and

(ii) Submitted electronically to the Commission and posted on its corporate Web site, if any, all Interactive Data Files required to be submitted and posted pursuant to Rule 405 of Regulation S–T (§ 232.405 of this chapter) during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on this Form (or for such shorter period of time that the registrant was required to submit and post such files).

* * * * *

■ 21. Amend Form F–9 (referenced in § 239.39) by reserving paragraphs (8) through (100) and adding paragraph 101 at the end of ''Part II—Information Not Required To Be Delivered to Offerees or Purchasers'' to read as follows:

Note: The text of Form F–9 does not and this amendment will not appear in the Code of Federal Regulations.

Form F–9

* * * * *

PART II—Information Not Required To Be Delivered to Offerees or Purchasers

* * * * *

(8) through (100) [Reserved]

(101) An Interactive Data File (§ 232.11 of this chapter) is:

(a) *Required to be submitted and posted.* Required to be submitted to the Commission and posted on the registrant's corporate Web site, if any, in the manner provided by Rule 405 of Regulation S–T (§ 232.405 of this chapter) if the Registrant does not prepare its financial statements in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*) and is described in paragraph (a)(i),(ii), (iii) of this Instruction 101, except that an Interactive Data File: First is required for a periodic report on Form 10–Q (§ 249.308a of this chapter), Form 20–F (§ 249.220f of this chapter) or Form 40–F (§ 249.240f of this chapter), as applicable; and is required for a registration statement under the Securities Act only if the registration statement contains a price or price range:

(i) A large accelerated filer (§ 240.12b–2 of this chapter) that had an aggregate worldwide market value of the voting and non-voting common equity held by non-affiliates of more than $5 billion as

of the last business day of the second fiscal quarter of its most recently completed fiscal year that prepares its financial statements in accordance with generally accepted accounting principles as used in the United States and the filing contains financial statements of the registrant for a fiscal period that ends on or after June 15, 2009;

(ii) A large accelerated filer not specified in paragraph (a)(i) of this Instruction (101) that prepares its financial statements in accordance with generally accepted accounting principles as used in the United States and the filing contains financial statements of the registrant for a fiscal period that ends on or after June 15, 2010; or

(iii) A filer not specified in paragraph (a)(i) or (a)(ii) of this Instruction (101) that prepares its financial statements in accordance with either generally accepted accounting principles as used in the United States or International Financial Reporting Standards as issued by the International Accounting Standards Board, and the filing contains financial statements of the registrant for a fiscal period that ends on or after June 15, 2011.

(b) *Permitted to be submitted.* Permitted to be submitted to the Commission in the manner provided by Rule 405 of Regulation S–T (§ 232.405 of this chapter) if the:

(i) Registrant prepares its financial statements:

(A) In accordance with either:

(*1*) Generally accepted accounting principles as used in the United States; or

(*2*) International Financial Reporting Standards as issued by the International Accounting Standards Board; and

(B) Not in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*); and

(ii) Interactive Data File is not required to be submitted to the Commission under paragraph (a) of this Instruction 101.

(c) *Not permitted to be submitted.* Not permitted to be submitted to the Commission if the registrant prepares its financial statements in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*).

* * * * *

■ 22. Amend Form F–10 (referenced in § 239.40) by reserving paragraphs (8) through (100) and adding paragraph 101 at the end of ''Part II—Information Not Required To Be Delivered to Offerees or Purchasers'' to read as follows:

Note: The text of Form F–10 does not and this amendment will not appear in the Code of Federal Regulations.

Form F–10

* * * * *

PART II—Information Not Required To Be Delivered to Offerees or Purchasers

* * * * *

(8) through (100) [Reserved]

(101) An Interactive Data File (§ 232.11 of this chapter) is:

(a) *Required to be submitted and posted.* Required to be submitted to the Commission and posted on the registrant's corporate Web site, if any, in the manner provided by Rule 405 of Regulation S–T (§ 232.405 of this chapter) if the Registrant does not prepare its financial statements in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*) and is described in paragraph (a)(i),(ii), (iii) of this Instruction 101, except that an Interactive Data File: first is required for a periodic report on Form 10–Q (§ 249.308a of this chapter), Form 20–F (§ 249.220f of this chapter) or Form 40–F (§ 249.240f of this chapter), as applicable; and is required for a registration statement under the Securities Act only if the registration statement contains a price or price range:

(i) A large accelerated filer (§ 240.12b–2 of this chapter) that had an aggregate worldwide market value of the voting and non-voting common equity held by non-affiliates of more than $5 billion as of the last business day of the second fiscal quarter of its most recently completed fiscal year that prepares its financial statements in accordance with generally accepted accounting principles as used in the United States and the filing contains financial statements of the registrant for a fiscal period that ends on or after June 15, 2009;

(ii) A large accelerated filer not specified in paragraph (a)(i) of this Instruction 101 that prepares its financial statements in accordance with generally accepted accounting principles as used in the United States and the filing contains financial statements of the registrant for a fiscal period that ends on or after June 15, 2010; or

(iii) A filer not specified in paragraph (a)(i) or (a)(ii) of this Instruction 101 that prepares its financial statements in accordance with either generally accepted accounting principles as used in the United States or International Financial Reporting Standards as issued by the International Accounting Standards Board, and the filing contains financial statements of the registrant for a fiscal period that ends on or after June 15, 2011.

(b) *Permitted to be submitted.* Permitted to be submitted to the Commission in the manner provided by Rule 405 of Regulation S–T (§ 232.405 of this chapter) if the:

(i) Registrant prepares its financial statements:

(A) In accordance with either:

(*1*) Generally accepted accounting principles as used in the United States; or

(*2*) International Financial Reporting Standards as issued by the International Accounting Standards Board; and

(B) Not in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*); and

(ii) Interactive Data File is not required to be submitted to the Commission under paragraph (a) of this Instruction (101).

(c) *Not permitted to be submitted.* Not permitted to be submitted to the Commission if the registrant prepares its financial statements in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*).

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 23. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 24. Amend § 240.12b–25 by adding paragraph (h) to read as follows:

§ 240.12b–25 Notification of inability to timely file all or any required portion of a Form 10–K, 20–F, 11–K, N–SAR, N–CSR, 10–Q, or 10–D.

* * * * *

(h) *Interactive data submissions.* The provisions of this section shall not apply to the submission or posting of an Interactive Data File (§ 232.11 of this chapter). Filers unable to submit or post an Interactive Data File within the time period prescribed should comply with either Rule 201 or 202 of Regulation S–T (§ 232.201 and § 232.202 of this chapter).

■ 25. Amend § 240.13a–14 by revising paragraph (f) to read as follows:

§ 240.13a–14 Certification of disclosure in annual and quarterly reports.

* * * * *

(f) The certification requirements of this section do not apply to:

(1) An Interactive Data File, as defined in Rule 11 of Regulation S–T (§ 232.11 of this chapter); or

(2) XBRL-Related Documents, as defined in Rule 11 of Regulation S–T.

■ 26. Amend § 240.15d–14 by revising paragraph (f) to read as follows:

§ 240.15d–14 Certification of disclosure in annual and quarterly reports.

* * * * *

(f) The certification requirements of this section do not apply to:

(1) An Interactive Data File, as defined in Rule 11 of Regulation S–T (§ 232.11 of this chapter); or

(2) XBRL-Related Documents, as defined in Rule 11 of Regulation S–T.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 27. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 28. Amend Form 10–Q (referenced in § 249.308a) by adding a paragraph with two check boxes to the cover page after the paragraph with two check boxes that starts ''Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months * * *'' to read as follows:

Note: The text of Form 10–Q does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–Q

* * * * *

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S–T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

Yes ☐ No ☐

* * * * *

■ 29. Amend Form 10–K (referenced in § 249.310) by adding a paragraph with two check boxes to the cover page after the paragraph with two check boxes that starts ''Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months * * *'' to read as follows:

Note: The text of Form 10–K does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–K

* * * * *

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S–T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

Yes ☐ No ☐

* * * * *

■ 30. Amend Form 20–F (referenced in § 249.220f) by:

■ a. Adding a paragraph with two check boxes to the cover page after the paragraph with two check boxes that starts ''Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months * * *;'' and

■ b. Revise paragraph 100 and add paragraph 101 at the end of ''Instructions as to Exhibits.''

The additions and revisions read as follows:

Note: The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 20–F

* * * * *

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S–T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

Yes ☐ No ☐

* * * * *

Instructions as to Exhibits

* * * * *

100. *XBRL-Related Documents.* Only a registrant that prepares its financial statements in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*) is permitted to participate in the voluntary XBRL (eXtensible Business Reporting Language) program and, as a result, may submit XBRL-Related Documents (§ 232.11 of this chapter). Rule 401 of Regulation S–T (§ 232.401 of this chapter) sets forth further details regarding eligibility to participate in the voluntary XBRL program.

101. *Interactive Data File.* An Interactive Data File (§ 232.11 of this chapter) is:

(a) *Required to be submitted and posted.* Required to be submitted to the Commission and posted on the registrant's corporate Web site, if any, in the manner provided by Rule 405 of Regulation S–T (§ 232.405 of this chapter) if the Form 20–F is an annual report and the registrant does not prepare its financial statements in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*) and is:

(i) A large accelerated filer (§ 240.12b–2 of this chapter) that had an aggregate worldwide market value of the voting and non-voting common equity held by non-affiliates of more than $5 billion as of the last business day of the second fiscal quarter of its most recently completed fiscal year that prepares its financial statements in accordance with generally accepted accounting principles as used in the United States and the filing contains financial statements of the registrant for a fiscal period that ends on or after June 15, 2009;

(ii) A large accelerated filer not specified in paragraph (a)(i) of this Instruction 101 that prepares its financial statements in accordance with generally accepted accounting principles as used in the United States and the filing contains financial statements of the registrant for a fiscal period that ends on or after June 15, 2010; or

(iii) A filer not specified in paragraph (a)(i) or (a)(ii) of this Instruction 101 that prepares its financial statements in accordance with either generally accepted accounting principles as used in the United States or International Financial Reporting Standards as issued by the International Accounting Standards Board, and the filing contains financial statements of the registrant for a fiscal period that ends on or after June 15, 2011.

(b) *Permitted to be submitted.* Permitted to be submitted to the Commission in the manner provided by Rule 405 of Regulation S–T (§ 232.405 of this chapter) if the:

(i) Registrant prepares its financial statements:

(A) In accordance with either:

(1) Generally accepted accounting principles as used in the United States; or

(2) International Financial Reporting Standards as issued by the International Accounting Standards Board; and

(B) Not in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*); and

(ii) Interactive Data File is not required to be submitted to the Commission under paragraph (a) of this Instruction 101.

(c) *Not permitted to be submitted.* Not permitted to be submitted to the Commission if the registrant prepares its financial statements in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*).

* * * * *

■ 31. Amend Form 40–F (referenced in § 249.240f) by:

■ a. Adding a paragraph with two check boxes to the cover page after the paragraph with two check boxes that starts ''Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months * * *;'' and

■ b. Add paragraph B.(7) to the General Instructions.

The additions read as follows:

Note: The text of Form 40–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 40–F

* * * * *

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S–T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the Registrant was required to submit and post such files).

Yes ☐ No ☐

* * * * *

General Instructions

* * * * *

B. * * *

(7) An Interactive Data File (§ 232.11 of this chapter) is:

(a) *Required to be submitted and posted.* Required to be submitted to the Commission and posted on the registrant's corporate Web site, if any, in the manner provided by Rule 405 of Regulation S–T (§ 232.405 of this chapter), and, as submitted, listed as exhibit 101, if the Form 40–F is an annual report and the registrant is does not prepare its financial statements in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*) and is:

(i) A large accelerated filer (§ 240.12b–2 of this chapter) that had an aggregate worldwide market value of the voting and non-voting common equity held by non-affiliates of more than $5 billion as of the last business day of the second fiscal quarter of its most recently completed fiscal year that prepares its financial statements in accordance with generally accepted accounting principles as used in the United States and the filing contains financial statements of the registrant for a fiscal period that ends on or after June 15, 2009;

(ii) A large accelerated filer not specified in paragraph (a)(i) of this Instruction 7 that prepares its financial statements in accordance with generally accepted accounting principles as used in the United States and the filing contains financial statements of the registrant for a fiscal period that ends on or after June 15, 2010; or

(iii) A filer not specified in paragraph (a)(i) or (a)(ii) of this Instruction 7 that prepares its financial statements in accordance with either generally accepted accounting principles as used in the United States or International Financial Reporting Standards as issued by the International Accounting Standards Board, and the filing contains financial statements of the registrant for a fiscal period that ends on or after June 15, 2011.

(b) *Permitted to be submitted.* Permitted to be submitted to the Commission in the manner provided by Rule 405 of Regulation S–T (§ 232.405 of this chapter) if the registrant lists it as exhibit 101 and the:

(i) Registrant prepares its financial statements:

(A) In accordance with either:

(*1*) Generally accepted accounting principles as used in the United States; or

(*2*) International Financial Reporting Standards as issued by the International Accounting Standards Board; and

(B) Not in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*); and

(ii) Interactive Data File is not required to be submitted to the Commission under paragraph (a) of this Instruction 7.

(c) *Not permitted to be submitted.* Not permitted to be submitted to the Commission if the registrant prepares its financial statements in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*).

* * * * *

■ 32. Amend Form 6–K (referenced in § 249.306) by revising paragraph (5) and paragraph (6) to General Instruction C to read as follows:

Note: The text of Form 6–K does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 6–K

* * * * *

General Instructions

* * * * *

C. * * *

(5) *XBRL-Related Documents.* Only a registrant that prepares its financial statements in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*) is permitted to participate in the voluntary XBRL (eXtensible Business Reporting Language) program and, as a result, may submit XBRL-Related Documents (§ 232.11 of this chapter). XBRL-Related Documents submitted as an exhibit to a Form 6–K must be listed as exhibit 100. Rule 401 of Regulation S–T (§ 232.401 of this chapter) sets forth further details regarding eligibility to participate in the voluntary XBRL program.

(6) *Interactive Data File.* An Interactive Data File (§ 232.11 of this chapter) is:

(a) *Required to be submitted and posted.* Required to be submitted to the Commission and posted on the registrant's corporate Web site, if any, in the manner provided by Rule 405 of Regulation S–T (§ 232.405 of this chapter) and, as submitted, listed as exhibit 101, if the registrant does not prepare its financial statements in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*) and is described in paragraph (a)(i), (ii) or (iii) of this Instruction (6), except that an Interactive Data File: first is required for a periodic report on Form 10–Q (§ 249.308a of this chapter), Form 20–F (§ 249.220f of this chapter) or Form 40–F (§ 249.240f of this chapter), as applicable; and is required for a Form 6–K (§ 249.306 of this chapter) only when the Form 6–K contains either of the following: audited annual financial statements that are a revised version of financial statements that previously were filed with the Commission that have been revised pursuant to applicable accounting standards to reflect the effects of certain subsequent events, including a discontinued operation, a change in reportable segments or a change in accounting principle; or current interim financial statements included pursuant to the nine-month updating requirement of Item 8.A.5 of Form 20–F, and, in either such case, the Interactive Data File would be required only as to such revised financial statements current interim financial statements regardless whether the Form 6–K contains other financial statements:

(i) A large accelerated filer (§ 240.12b–2 of this chapter) that had an aggregate worldwide market value of the voting and non-voting common equity held by non-affiliates of more than $5 billion as

of the last business day of the second fiscal quarter of its most recently completed fiscal year that prepares its financial statements in accordance with generally accepted accounting principles as used in the United States and the filing contains financial statements of the registrant for a fiscal period that ends on or after June 15, 2009;

(ii) A large accelerated filer not specified in paragraph (a)(i) of this Instruction (6) that prepares its financial statements in accordance with generally accepted accounting principles as used in the United States and the filing contains financial statements of the registrant for a fiscal period that ends on or after June 15, 2010; or

(iii) A filer not specified in paragraph (a)(i) or (ii) of this Instruction (6) that prepares its financial statements in accordance with either generally accepted accounting principles as used in the United States or International Financial Reporting Standards as issued by the International Accounting Standards Board, and the filing contains financial statements of the registrant for a fiscal period that ends on or after June 15, 2011.

(b) *Permitted to be submitted.* Permitted to be submitted to the Commission in the manner provided by Rule 405 of Regulation S–T (§ 232.405 of this chapter) if the:

(i) Registrant prepares its financial statements:

(A) In accordance with either:

(1) Generally accepted accounting principles as used in the United States; or

(2) International Financial Reporting Standards as issued by the International Accounting Standards Board; and

(B) Not in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*); and

(ii) Interactive Data File is not required to be submitted to the Commission under paragraph (a)(i) of this Instruction (6).

(iii) *Not permitted to be submitted.* Not permitted to be submitted to the Commission if the registrant prepares its financial statements in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*).

* * * * *

■ 33. Amend § 249.322 by adding paragraph (c) to read as follows:

§ 249.322 Form 12b–25–Notification of late filing.

* * * * *

(c) *Interactive data submissions.* This form shall not be used by electronic filers with respect to the submission or posting of an Interactive Data File (§ 232.11 of this chapter). Electronic filers unable to submit or post an Interactive Data File within the time period prescribed should comply with either Rule 201 or 202 of Regulation S–T (§ 232.201 and § 232.202 of this chapter).

■ 34. Amend Form 12b–25 (referenced in § 249.322) by adding paragraph 6 to the General Instructions to read as follows:

Note: The text of Form 12b–25 does not and this amendment will not appear in the Code of Federal Regulations.

Form 12b–25

* * * * *

General Instructions

* * * * *

6. *Interactive data submissions.* This form shall not be used by electronic filers with respect to the submission or posting of an Interactive Data File (§ 232.11 of this chapter). Electronic filers unable to submit or post an Interactive Data File within the time period prescribed should comply with either Rule 201 or 202 of Regulation S–T (§ 232.201 and § 232.202 of this chapter).

* * * * *

By the Commission.

Dated: January 30, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–2334 Filed 2–9–09; 8:45 am]

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