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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, April 14, 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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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0302; Directorate Identifier 2009–NE–09–AD; Amendment 39–15881; AD 2009–08–08]

RIN 2120–AA64

Airworthiness Directives; Turbomeca Arriel 1B, 1D, 1D1, 2B, and 2B1 Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

During production of Arriel 1 and Arriel 2 power turbine (PT) wheels, geometric non-conformances on blade fir tree roots have been detected by Turbomeca. Potentially non-conforming PT blades have been traced as having been installed on Module M04 (PT) listed in Alert Mandatory Service Bulletin (MSB) A292 72 0827 for Arriel 1 engines and A292 72 2833 for Arriel 2 engines. The geometric non-conformities of the blades may potentially lead to a reduction in the fatigue resistance of PT blades to a lower level than their authorized in service use limit. This reduction of fatigue resistance can potentially result in blade release, which could cause an uncommanded in-flight shutdown.

Uncommanded in-flight shutdown could result in an emergency autorotation landing. We are issuing this AD to prevent release of PT blades, which could result in uncommanded in-flight shutdown and emergency autorotation landing.

DATES: This AD becomes effective April 29, 2009.

We must receive comments on this AD by May 14, 2009.

The Director of the Federal Register approved the incorporation by reference of Turbomeca Alert Mandatory Service Bulletin (MSB) No. A292 72 0827, Version A, dated March 20, 2009, and Turbomeca Alert MSB No. A292 72 0827, Version A, dated March 20, 2009, listed in the AD as of April 29, 2009.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *james.lawrence@faa.gov*; telephone (781) 238–7176, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2009–0068–E, dated March 25, 2009 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

During production of Arriel 1 and Arriel 2 power turbine (PT) wheels, geometric non-conformances on blade fir tree roots have been detected by Turbomeca. Potentially non-conforming PT blades have been traced as having been installed on Module M04 (PT) listed in Alert MSB A292 72 0827 for Arriel 1 engines and A292 72 2833 for Arriel 2 engines. The geometric non-conformities of the blades may potentially lead to a reduction in the fatigue resistance of PT blades to a lower level than their authorized in service use limit. This reduction of fatigue resistance can potentially result in blade release, which could cause an uncommanded in-flight shutdown.

Uncommanded in-flight shutdown could result in an emergency autorotation landing. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Turbomeca has issued Alert MSB No. A292 72 0827, Version A, dated March 20, 2009, for Arriel 1 series turboshaft engines, and issued Alert MSB No. A292 72 2833, Version A, dated March 20, 2009, for Arriel 2 series turboshaft engines. The power turbine modules M04 having the affected PT blades, are listed by serial number (SN) in Figure 1 of these MSBs, as applicable. We have incorporated by reference these MSBs to identify the affected parts.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are described in a separate paragraph of the AD. These requirements take precedence over the actions copied from the MCAI.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of France and is approved for operation in the United States. Pursuant to our bilateral agreement with France, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists

and is likely to exist or develop on other products of the same type design. This AD requires removing the affected PT blades from service.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because depending on the number of cycles already accumulated on some engines, the actions specified in this AD might require immediate incorporation before further flight. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0302; Directorate Identifier 2009–NE–09–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–08–08 Turbomeca: Amendment 39–15881; Docket No. FAA–2009–0302; Directorate Identifier 2009–NE–09–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 29, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to:

(1) Turbomeca Arriel 1B, 1D, and 1D1 turboshaft engines with the power turbine modules M04 installed, as listed by serial number (SN) in Figure 1 of Turbomeca Alert Mandatory Service Bulletin (MSB) No. A292 72 0827, Version A, dated March 20, 2009; and

(2) Turbomeca Arriel 2B, and 2B1 turboshaft engines with the power turbine modules M04 installed, as listed by SN in Figure 1 of Turbomeca Alert MSB No. A292 72 2833, Version A, dated March 20, 2009.

(3) These engines are installed on, but not limited to, Eurocopter AS 350 B, AS 350 BA, AS 350 B1, AS 350 B2, AS 350 B3, and EC 130 B4 helicopters.

Reason

(d) European Aviation Safety Agency (EASA) AD No. 2009–0068–E, dated March 25, 2009, states:

During production of Arriel 1 and Arriel 2 power turbine (PT) wheels, geometric non-conformances on blade fir tree roots have been detected by Turbomeca. Potentially non-conforming PT blades have been traced as having been installed on Module M04 (PT) listed in Alert MSB A292 72 0827 for Arriel 1 engines and A292 72 2833 for Arriel 2 engines. The geometric non-conformities of the blades may potentially lead to a reduction in the fatigue resistance of PT blades to a lower level than their authorized in service use limit. This reduction of fatigue resistance can potentially result in blade release, which could cause an uncommanded in-flight shutdown.

Uncommanded in-flight shutdown could result in an emergency autorotation landing. We are issuing this AD to prevent release of PT blades, which could result in uncommanded in-flight shutdown and emergency autorotation landing.

Actions and Compliance

(e) Unless already done, do the following actions.

(1) For engines with an affected Module M04 (PT module) which has accumulated 1,000 total PT cycles or more on the effective date of this AD, remove the PT blades from service before further flight.

(2) For engines with an affected Module M04 (PT module) which has accumulated fewer than 1,000 total PT cycles on the effective date of this AD, remove the PT blades from service before accumulating 1,000 total PT cycles.

(3) After the effective date of this AD, do not install any PT blades removed as specified in paragraph (e)(1) or (e)(2) of this AD, into any engine.

FAA AD Differences

(f) Although the compliance section of EASA AD No. 2009–0068–E, dated March 25, 2009, states to replace the Module M04, or PT wheel assembly, or PT blades, this AD states to remove the PT blades from service.

(g) Although EASA AD No. 2009–0068–E, dated March 25, 2009, applies to the Arriel

2B1A engine, this AD does not apply to that model because it has no U.S. type certificate.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(i) Refer to MCAI EASA Airworthiness Directive 2009–0068–E, dated March 25, 2009, for related information.

(j) Contact James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *james.lawrence@faa.gov;* telephone (781) 238–7176, fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(k) You must use the service information specified in Table 1 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Turbomeca, 40220 Tarnos, France; telephone 33 05 59 74 40 00, fax 33 05 59 74 45 15.

(3) You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; 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/cfr/ibr-locations.html.*

TABLE 1—MATERIAL INCORPORATED BY REFERENCE

Turbomeca Alert Mandatory Service Bulletin No.	Page	Version	Date
A292 72 0827 Total pages: 17	All	A	March 20, 2009.
A292 72 2833 Total Pages: 17	All	A	March 20, 2009.

Issued in Burlington, Massachusetts, on April 6, 2009.

Peter A. White,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E9–8329 Filed 4–13–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

14 CFR Part 97

[Docket No. 30661; Amdt. No. 3317]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective April 14, 2009. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 14, 2009.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. 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.*

Availability—All SIAPs are available online free of charge. Visit *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on April 3, 2009.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs,

FDC date	State	City	Airport	FDC No.	Subject
03/19/09	IA	LE MARS	LE MARS MUNI	9/0069	GPS RWY 18, ORIG
03/20/09	WA	OLYMPIA	OLYMPIA	9/0252	TAKEOFF MINIMUMS AND OBSTACLE DP, AMDT 5
03/20/09	WA	OLYMPIA	OLYMPIA	9/0253	ILS OR LOC RWY 17, AMDT 10A
03/20/09	WA	OLYMPIA	OLYMPIA	9/0254	RNAV (GPS) RWY 17, ORIG
03/20/09	WA	OLYMPIA	OLYMPIA	9/0255	RNAV (GPS) RWY 35, ORIG
03/20/09	WA	OLYMPIA	OLYMPIA	9/0256	VOR/DME RWY 35, AMDT 12
03/20/09	WA	OLYMPIA	OLYMPIA	9/0257	VOR A, AMDT 1
03/20/09	IA	OSKALOOSA	OSKALOOSA MUNI	9/0306	NDB RWY 22, AMDT 3
03/20/09	CO	COLORADO SPRINGS.	CITY OF COLORADO SPRINGS MUNI	9/0307	RNAV (GPS) RWY 17R, AMDT 1A
03/20/09	CA	MERCED	CASTLE	9/0308	RNAV (GPS) RWY 31, ORIG
03/20/09	CA	MERCED	CASTLE	9/0309	ILS OR LOC/DME RWY 31, AMDT 2
03/20/09	CA	MERCED	CASTLE	9/0310	RNAV (GPS) RWY 13, ORIG
03/20/09	WA	SEATTLE	SEATTLE-TACOMA INTL	9/0313	ILS OR LOC RWY 16R, ORIG–A, ILS RWY 16R (CAT II), ORIG–A, ILS RWY 16R (CAT III), ORIG–A
03/20/09	WA	SEATTLE	SEATTLE-TACOMA INTL	9/0316	ILS OR LOC RWY 16C, AMDT 13, ILS RWY 16C (CAT II), AMDT 13, ILS RWY 16C (CAT III), AMDT 13
03/23/09	IN	FORT WAYNE	FORT WAYNE INTL	9/0317	TAKEOFF MINIMUMS AND OBSTACLE DP, AMDT 2
03/20/09	WA	SEATTLE	SEATTLE-TACOMA INTL	9/0318	ILS OR LOC RWY 16L, AMDT 4, ILS RWY 16L (CAT II), AMDT 4, ILS RWY 16L (CAT III), AMDT 4
03/20/09	WA	SEATTLE	SEATTLE-TACOMA INTL	9/0319	ILS OR LOC RWY 34L, ORIG, ILS RWY 34L (CAT II), ORIG
03/20/09	WA	SEATTLE	SEATTLE-TACOMA INTL	9/0320	ILS OR LOC RWY 34R, AMDT 1A, ILS RWY 34R (CAT II), AMDT 1A
03/20/09	WA	SEATTLE	SEATTLE-TACOMA INTL	9/0321	ILS OR LOC RWY 34C, AMDT 2A, ILS RWY 34C (CAT II), AMDT 2A
03/20/09	NE	BROKEN BOW	BROKEN BOW MUNI	9/0340	RNAV (GPS) RWY 14, ORIG
03/20/09	NE	BROKEN BOW	BROKEN BOW MUNI	9/0341	VOR/DME RWY 32, ORIG
03/20/09	NE	BROKEN BOW	BROKEN BOW MUNI	9/0342	VOR RWY 14, AMDT 4
03/20/09	NE	BROKEN BOW	BROKEN BOW MUNI	9/0343	RNAV (GPS) RWY 32, AMDT 1
03/23/09	WI	MILWAUKEE	GENERAL MITCHELL INTL	9/0349	ILS OR LOC RWY 19R, AMDT 10A

FDC date	State	City	Airport	FDC No.	Subject
03/23/09	WI	MILWAUKEE	GENERAL MITCHELL INTL	9/0350	ILS OR LOC RWY 7R, AMDT 15A
03/20/09	FL	TITUSVILLE	SPACE COAST REGIONAL	9/0365	ILS RWY 36, AMDT 10A
03/21/09	LA	VIVIAN	VIVIAN	9/0391	RNAV (GPS) RWY 27, ORIG
03/21/09	LA	VIVIAN	VIVIAN	9/0392	RNAV (GPS) RWY 9, ORIG
03/21/09	LA	VIVIAN	VIVIAN	9/0393	VOR/DME A, AMDT 3
03/21/09	LA	VIVIAN	VIVIAN	9/0394	NDB RWY 9, AMDT 2
03/23/09	IL	CHICAGO/ROCKFORD.	CHICAGO/ROCKFORD INTL	9/0534	ILS OR LOC RWY 7, AMDT 1A; ILS RWY 7 (CAT II), AMDT 1A; ILS RWY 7 (CAT III), AMDT 1A
03/23/09	FL	ST. AUGUSTINE	ST. AUGUSTINE	9/0576	VOR RWY 13, ORIG–A
03/23/09	NY	SARATOGA SPRINGS.	SARATOGA COUNTY	9/0592	TAKEOFF MINIMUMS AND OBSTACLE DP, AMDT 3
03/25/09	GA	ROME	RICHARD B. RUSSELL	9/0827	RNAV (GPS) RWY 25, ORIG
03/25/09	GA	ROME	RICHARD B. RUSSELL	9/0828	RNAV (GPS) RWY 7, ORIG
03/25/09	WI	EAU CLAIRE	CHIPPEWA VALLEY RGNL	9/0864	ILS OR LOC RWY 22, AMDT 8
03/25/09	IA	POCAHONTAS	POCAHONTAS MUNI	9/0865	TAKE OFF MINIMUMS AND OBSTACLE DP, AMDT 2
03/25/09	NE	YORK	YORK MUNI	9/0866	NDB RWY 35, AMDT 4
03/25/09	IA	POCAHONTAS	POCAHONTAS MUNI	9/0867	VOR/DME OR GPS RWY 29, AMDT 3
03/25/09	KS	LAWRENCE	LAWRENCE MUNI	9/0869	VOR/DME A, AMDT 10
03/25/09	KS	LAWRENCE	LAWRENCE MUNI	9/0870	ILS OR LOC RWY 33, AMDT 1A
03/25/09	KS	LAWRENCE	LAWRENCE MUNI	9/0873	RNAV (GPS) RWY 15, ORIG–A
03/25/09	OH	WILLOUGHBY	WILLOUGHBY LOST NATION MUNI	9/0877	RNAV (GPS) RWY 10, ORIG
03/25/09	OH	MANSFIELD	MANSFIELD LAHM RGNL	9/0878	ILS OR LOC RWY 32, AMDT 16
03/25/09	OH	MANSFIELD	MANSFIELD LAHM RGNL	9/0882	VOR RWY 32, AMDT 7
03/25/09	OH	MANSFIELD	MANSFIELD LAHM RGNL	9/0883	RNAV (GPS) RWY 32, ORIG
03/25/09	OH	MANSFIELD	MANSFIELD LAHM RGNL	9/0884	RADAR–1, AMDT 4
03/25/09	OH	MANSFIELD	MANSFIELD LAHM RGNL	9/0885	VOR RWY 14, AMDT 14
03/25/09	OH	MANSFIELD	MANSFIELD LAHM RGNL	9/0886	RNAV (GPS) RWY 14, ORIG
03/25/09	IA	DECORAH	DECORAH MUNI	9/0909	NDB RWY 29, AMDT 1
03/25/09	IA	DECORAH	DECORAH MUNI	9/0910	VOR RWY 29, AMDT 3A
03/25/09	IA	DECORAH	DECORAH MUNI	9/0911	RNAV (GPS) RWY 29, ORIG
03/25/09	MO	ST. LOUIS	LAMBERT-ST. LOUIS INTL	9/0916	ILS OR LOC RWY 30R AMDT 9B * * * ILS RWY 30R (CAT II) AMDT 9B * * * ILS RWY 30R (CAT III) AMDT 9B
03/25/09	CA	ONTARIO	ONTARIO INTL	9/1049	ILS RWY 26R, AMDT 3
03/25/09	CA	ONTARIO	ONTARIO INTL	9/1050	RNAV (GPS) Y RWY 8L, AMDT 1A
03/25/09	CA	ONTARIO	ONTARIO INTL	9/1051	VOR/DME RWY 8R, ORIG
03/25/09	CA	ONTARIO	ONTARIO INTL	9/1052	RNAV (RNP) Z RWY 26R, ORIG
03/25/09	CA	ONTARIO	ONTARIO INTL	9/1055	RNAV (RNP) Z RWY 26L, ORIG
03/25/09	CA	ONTARIO	ONTARIO INTL	9/1056	RNAV (RNP) Z RWY 8L, ORIG
03/25/09	CA	ONTARIO	ONTARIO INTL	9/1057	RNAV (GPS) Y RWY 26R, AMDT 1
03/25/09	CA	ONTARIO	ONTARIO INTL	9/1058	RNAV (GPS) Y RWY 26L, AMDT 1
03/26/09	TX	HONDO	HONDO MUNI	9/1180	RNAV (GPS) RWY 17L, ORIG
03/26/09	TX	WHEELER	WHEELER MUNI	9/1181	VOR/DME OR GPS A, AMDT 1
03/26/09	TX	SHERMAN/DENISON.	GRAYSON COUNTY	9/1187	NDB OR GPS RWY 17L, AMDT 9B
03/26/09	TX	SHERMAN/DENISON.	GRAYSON COUNTY	9/1189	ILS RWY 17L, ORIG–A
03/26/09	TX	SHERMAN/DENISON.	GRAYSON COUNTY	9/1190	VOR/DME RNAV RWY 35R, ORIG–C
03/26/09	TX	SHERMAN/DENISON.	GRAYSON COUNTY	9/1191	VOR/DME A, ORIG–B
03/31/09	CO	ALAMOSA	SAN LUIS VALLEY REGIONAL/BERGMAN FIELD.	9/1782	VOR/DME OR GPS B, AMDT 4
03/31/09	CO	ALAMOSA	SAN LUIS VALLEY REGIONAL/BERGMAN FIELD.	9/1783	VOR OR GPS A, AMDT 6
03/31/09	CA	MERCED	MERCED MUNI/MACREADY FIELD	9/1784	TAKEOFF MINIMUMS AND OBSTACLE DP, AMDT 5
03/31/09	CA	MERCED	MERCED MUNI/MACREADY FIELD	9/1787	VOR RWY 30, ORIG
03/31/09	CA	MERCED	MERCED MUNI/MACREADY FIELD	9/1788	GPS RWY 12, ORIG–B
03/31/09	CA	MERCED	MERCED MUNI/MACREADY FIELD	9/1789	ILS RWY 30, AMDT 14B
03/31/09	CA	MERCED	MERCED MUNI/MACREADY FIELD	9/1790	LOC BC RWY 12, AMDT 10C
03/31/09	CA	MERCED	MERCED MUNI/MACREADY FIELD	9/1791	RNAV (GPS) RWY 30, ORIG

[FR Doc. E9–8370 Filed 4–13–09; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30660 Amdt. No. 3316]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective April 14, 2009. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of April 14, 2009.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169, or

4. 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.*

Availability—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *http://www.nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125), Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPS and Takeoff Minimums and ODPS, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation, as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on April 3, 2009.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 07 MAY 2009

Iliamna, AK, Iliamna, RNAV (GPS) RWY 25, Amdt 1
Iliamna, AK, Iliamna, RNAV (GPS) RWY 35, Amdt 1
Davis Woodland Winter, CA, Yolo County, GPS RWY 16, Orig, CANCELLED
Davis Woodland Winter, CA, Yolo County, GPS RWY 34, Orig, CANCELLED
Davis Woodland Winter, CA, Yolo County, RNAV (GPS) RWY 16, Orig
Davis Woodland Winter, CA, Yolo County, RNAV (GPS) RWY 34, Orig
Davis Woodland Winter, CA, Yolo County, Takeoff Minimums and Obstacle DP, Amdt 1
Davis Woodland Winter, CA, Yolo County, VOR RWY 34, Orig-A, CANCELLED
Davis, CA, University, RNAV (GPS) RWY 17, Orig
Davis, CA, University, Takeoff Minimums and Obstacle DP, Amdt 3
Davis, CA, University, VOR OR GPS RWY 16, Amdt 1, CANCELLED
Rio Vista, CA, Rio Vista Muni, GPS RWY 25, Orig, CANCELLED
Rio Vista, CA, Rio Vista Muni, RNAV (GPS) RWY 25, Orig
Rio Vista, CA, Rio Vista Muni, VOR/DME–A, Amdt 1
Woodland, CA, Watts-Woodland, RNAV (GPS) RWY 36, Orig
Woodland, CA, Watts-Woodland, Takeoff Minimums and Obstacle DP, Amdt 3
Woodland, CA, Watts-Woodland, VOR/DME–A, Amdt 5
Montrose, CO, Montrose Rgnl, ILS OR LOC/DME RWY 17, Amdt 2
Bartow, FL, Bartow Muni, RNAV (GPS) RWY 5, Orig
Bartow, FL, Bartow Muni, RNAV (GPS) RWY 9L, Amdt 1
Bartow, FL, Bartow Muni, RNAV (GPS) RWY 23, Orig
Bartow, FL, Bartow Muni, RNAV (GPS) RWY 27R, Amdt 1
Burlington, IA, Southeast Iowa Rgnl, RNAV (GPS) RWY 12, Orig
Burlington, IA, Southeast Iowa Rgnl, RNAV (GPS) RWY 30, Orig
Burlington, IA, Southeast Iowa Rgnl, RNAV (GPS) RWY 36, Amdt 1
Burlington, IA, Southeast Iowa Rgnl, VOR RWY 30, Amdt 13
Council Bluffs, IA, Council Bluffs Muni, RNAV (GPS) RWY 14, Amdt 1
Evansville, IN, Evansville Rgnl, ILS OR LOC RWY 4, Amdt 2
Evansville, IN, Evansville Rgnl, ILS OR LOC RWY 22, Amdt 21
Evansville, IN, Evansville Rgnl, NDB RWY 22, Amdt 13
Evansville, IN, Evansville Rgnl, RNAV (GPS) RWY 4, Orig
Evansville, IN, Evansville Rgnl, RNAV (GPS) RWY 22, Orig
Evansville, IN, Evansville Rgnl, RADAR–1, Amdt 6
Evansville, IN, Evansville Rgnl, VOR RWY 4, Amdt 6
Flemingsburg, KY, Fleming-Mason, Takeoff Minimums and Obstacle DP, Orig
Williamsburg, KY, Williamsburg-Whitley County, RNAV (GPS) RWY 2, Amdt 1
Williamsburg, KY, Williamsburg-Whitley County, VOR/DME RWY 20, Orig
Bedford, MA, Laurence G. Hanscom Fld, NDB RWY 29, Amdt 7
Bedford, MA, Laurence G. Hanscom Fld, RNAV (GPS) RWY 29, Orig
Falmouth, MA, Cape Cod Coast Guard Air Station, TACAN RWY 5, Amdt 1
Falmouth, MA, Cape Cod Coast Guard Air Station, TACAN RWY 14, Amdt 1
Nantucket, MA, Nantucket Memorial, GPS RWY 33, Orig-C, CANCELLED
Nantucket, MA, Nantucket Memorial, ILS OR LOC RWY 6, Amdt 1
Nantucket, MA, Nantucket Memorial, ILS OR LOC RWY 24, Amdt 15D
Nantucket, MA, Nantucket Memorial, RNAV (GPS) RWY 6, Orig
Nantucket, MA, Nantucket Memorial, RNAV (GPS) RWY 24, Orig
Nantucket, MA, Nantucket Memorial, RNAV (GPS) RWY 33, Orig
Nantucket, MA, Nantucket Memorial, VOR RWY 24, Amdt 14
Northampton, MA, Northampton, GPS RWY 14, Orig, CANCELLED
Northampton, MA, Northampton, RNAV (GPS) RWY 14, Orig
Northampton, MA, Northampton, VOR–A, Amdt 5
Rangeley, ME, Rangeley Lake SPB, NDB–B, Amdt 1
Rangeley, ME, Rangeley Lake SPB, RNAV (GPS)–C, Orig
Rangeley, ME, Steven A. Bean Muni, NDB–A, Amdt 5
Rangeley, ME, Steven A. Bean Muni, RNAV (GPS)–D, Orig
Wiscasset, ME, Wiscasset, NDB RWY 25, Amdt 5B, CANCELLED
Benton Harbor, MI, Southwest Michigan Rgnl, RNAV (GPS) RWY 9, Orig
Benton Harbor, MI, Southwest Michigan Rgnl, VOR RWY 9, Amdt 9
Detroit, MI, Coleman A. Young Muni, NDB RWY 15, Amdt 23
Gaylord, MI, Gaylord Rgnl, Takeoff Minimums and Obstacle DP, Orig
Ironwood, MI, Gogebic-Iron County, RNAV (GPS) RWY 9, Orig
Ironwood, MI, Gogebic-Iron County, RNAV (GPS) RWY 27, Orig
Ironwood, MI, Gogebic-Iron County, Takeoff Minimums and Obstacle DP, Amdt 6
Ironwood, MI, Gogebic-Iron County, VOR/DME RWY 9, Amdt 13
Ironwood, MI, Gogebic-Iron County, VOR/DME RWY 27, Amdt 9
Benson, MN, Benson Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Fairmont, MN, Fairmont Muni, RNAV (GPS) RWY 13, Orig
Fairmont, MN, Fairmont Muni, RNAV (GPS) RWY 31, Orig
Fairmont, MN, Fairmont Muni, Takeoff Minimums and Obstacle DP, Amdt 3
Fairmont, MN, Fairmont Muni, VOR RWY 13, Amdt 5
Fairmont, MN, Fairmont Muni, VOR RWY 31, Amdt 8
Grand Rapids, MN, Grand Rapids/Itasca Co-Gordon Newstrom, GPS RWY 16, Orig, CANCELLED
Grand Rapids, MN, Grand Rapids/Itasca Co-Gordon Newstrom, RNAV (GPS) RWY 16, Orig
Grand Rapids, MN, Grand Rapids/Itasca Co-Gordon Newstrom, RNAV (GPS) RWY 34, Orig
Grand Rapids, MN, Grand Rapids/Itasca Co-Gordon Newstrom, VOR RWY 34, Amdt 11
International Falls, MN, Falls Intl, ILS OR LOC RWY 31, Amdt 10
Minneapolis, MN, Anoka County-Blaine (Janes Field), RNAV (GPS) RWY 9, Orig
Minneapolis, MN, Anoka County-Blaine (Janes Field), RNAV (GPS) RWY 18, Orig
Minneapolis, MN, Anoka County-Blaine (Janes Field), VOR RWY 9, Amdt 12
Minneapolis, MN, Anoka County-Blaine (Janes Field), VOR/DME RWY 27, Amdt 5
Minneapolis, MN, Anoka County-Blaine (Janes Field), VOR/DME RNAV OR GPS RWY 18, Amdt 3A, CANCELLED
Tower, MN, Tower Muni, RNAV (GPS) RWY 8, Orig
Tower, MN, Tower Muni, RNAV (GPS) RWY 26, Orig
Tower, MN, Tower Muni, Takeoff Minimums and Obstacle DP, Orig
Columbia, MO, Columbia Rgnl, ILS OR LOC/DME RWY 2, Amdt 14
Clarksdale, MS, Fletcher Field, NDB RWY 36, Amdt 9A, CANCELLED
Greenville, MS, Mid Delta Rgnl, RNAV (GPS) RWY 36L, Orig-A
Asheville, NC, Asheville Regional, Takeoff Minimums and Obstacle DP, Amdt 8
Currituck, NC, Currituck County Regional, GPS RWY 5, Orig, CANCELLED
Currituck, NC, Currituck County Regional, RNAV (GPS) RWY 5, Orig
Currituck, NC, Currituck County Regional, Takeoff Minimums and Obstacle DP, Amdt 1
Currituck, NC, Currituck County Regional, VOR/DME–A, Amdt 1
Roxboro, NC, Person County, GPS RWY 6, Orig, CANCELLED
Roxboro, NC, Person County, RNAV (GPS) RWY 6, Orig
Roxboro, NC, Person County, RNAV (GPS) RWY 24, Orig-A
Winston-Salem, NC, Smith Reynolds, GPS RWY 15, Orig-B, CANCELLED

Winston-Salem, NC, Smith Reynolds, GPS RWY 33, Orig-B, CANCELLED
Winston-Salem, NC, Smith Reynolds, ILS OR LOC RWY 33, Amdt 29
Winston-Salem, NC, Smith Reynolds, RNAV (GPS) RWY 15, Orig
Winston-Salem, NC, Smith Reynolds, RNAV (GPS) RWY 33, Orig
Lebanon, NH, Lebanon Muni, GPS RWY 25, Orig-A, CANCELLED
Lebanon, NH, Lebanon Muni, RNAV (GPS) RWY 25, Orig
Southampton, NY, Southampton Heliport, COPTER RNAV (GPS) 190, Orig
Southampton, NY, Southampton Heliport, COPTER VOR/DME RNAV OR GPS 187, Orig, CANCELLED
Zelienople, PA, Zelienople Muni, GPS RWY 17, Amdt 1, CANCELLED
Zelienople, PA, Zelienople Muni, GPS RWY 35, Amdt 1, CANCELLED
Zelienople, PA, Zelienople Muni, RNAV (GPS) RWY 17, Orig
Zelienople, PA, Zelienople Muni, RNAV (GPS) RWY 35, Orig
Moncks Corner, SC, Berkeley County, VOR/DME–A, Orig
Jackson, TN, McKellar-Sipes Rgnl, GPS RWY 2, Orig, CANCELLED
Jackson, TN, McKellar-Sipes Rgnl, GPS RWY 20, Orig-A, CANCELLED
Jackson, TN, McKellar-Sipes Rgnl, ILS OR LOC RWY 2, Amdt 8
Jackson, TN, McKellar-Sipes Rgnl, RNAV (GPS) RWY 2, Orig
Jackson, TN, McKellar-Sipes Rgnl, RNAV (GPS) RWY 20, Orig
Jackson, TN, McKellar-Sipes Rgnl, Takeoff Minimums and Obstacle DP, Amdt 1
Nashville, TN, Nashville Intl, ILS OR LOC RWY 20R, Amdt 9
Nashville, TN, Nashville Intl, RNAV (GPS) RWY 20R, Amdt 1
Falfurrias, TX, Brooks County, GPS RWY 17, Orig-A, CANCELLED
Falfurrias, TX, Brooks County, NDB RWY 35, Amdt 2
Falfurrias, TX, Brooks County, RNAV (GPS) RWY 17, Orig
Falfurrias, TX, Brooks County, Takeoff Minimums and Obstacle DP, Amdt 1
Houston, TX, George Bush Intercontinental/Houston, ILS OR LOC RWY 8L, ILS RWY 8L (CAT II), ILS RWY 8L (CAT III), Amdt 2
Houston, TX, George Bush Intercontinental/Houston, ILS OR LOC RWY 8R, Amdt 23
Houston, TX, George Bush Intercontinental/Houston, ILS OR LOC RWY 9, Amdt 8
Houston, TX, George Bush Intercontinental/Houston, ILS OR LOC RWY 26L, ILS RWY 26L (CAT II), ILS RWY 26L (CAT III), Amdt 19
Houston, TX, George Bush Intercontinental/Houston, ILS OR LOC RWY 26R, ILS RWY 26R (CAT II), ILS RWY 26R (CAT III), Amdt 2
Houston, TX, George Bush Intercontinental/Houston, ILS OR LOC RWY 27, ILS RWY 27 (CATII), ILS RWY 27 (CAT III), Amdt 7
Houston, TX, George Bush Intercontinental/Houston, RNAV (GPS) Z RWY 8L, Amdt 3
Houston, TX, George Bush Intercontinental/Houston, RNAV (GPS) Z RWY 8R, Amdt 2
Houston, TX, George Bush Intercontinental/Houston, RNAV (GPS) Z RWY 9, Amdt 3
Houston, TX, George Bush Intercontinental/Houston, RNAV (GPS) Z RWY 26L, Amdt 2
Houston, TX, George Bush Intercontinental/Houston, RNAV (GPS) Z RWY 26R, Amdt 2
Houston, TX, George Bush Intercontinental/Houston, RNAV (GPS) Z RWY 27, Amdt 2
Oak Harbor, WA, A J Eisenberg, RNAV (GPS) RWY 7, Amdt 2B
Seattle, WA, Boeing Field/King County Intl, RNAV (RNP) Z RWY 13R, Orig-B
Spokane, WA, Spokane Intl, RNAV (GPS) RWY 25, Amdt 2A
Tacoma, WA, Tacoma Narrows, GPS RWY 35, Orig-A, CANCELLED
Tacoma, WA, Tacoma Narrows, RNAV (GPS) RWY 35, Orig

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BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2008–0995]

RIN 1625–AA09

Drawbridge Operation Regulation; Intracoastal Waterway (ICW), Beach Thorofare, Atlantic City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the drawbridge operation regulations of the Route 30 Bridge, at ICW mile 67.2, across Beach Thorofare at Atlantic City, NJ. This will allow the drawbridge to open on signal every hour during high transit periods during summer months and operate on an advance notice basis at all other times. The change will result in more efficient use of the bridge.

DATES: This rule is effective May 14, 2009.

ADDRESSES: Comments and related materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2008–0995 and are available online at *http://www.regulations.gov.* This material is also available for inspection or copying at two locations: The Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays and the Commander (dpb), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704–5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Terrance Knowles, Environmental Protection Specialist, Fifth Coast Guard District, at (757) 398–6587. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On October 6, 2008, we published a notice of proposed rulemaking (NPRM) entitled ''Drawbridge Operation Regulations; Intracoastal Waterway (ICW), Beach Thorofare, Atlantic City, NJ'' in the **Federal Register** (73 FR 58070). We received no comments on the published NPRM. No public meeting was requested, and none was held.

Background and Purpose

The New Jersey Department of Transportation (NJDOT) is responsible for the operation of the Route 30 Bridge, at ICW mile 67.2, across Beach Thorofare at Atlantic City, NJ. In the closed-to-navigation position, the Route 30 Bridge has a vertical clearance of 20 feet, above mean high water.

The existing operating regulation is set out in 33 CFR § 117.733(e) which requires the draw to open on signal except that, year-round from 11 p.m. to 7 a.m. and from November 1 through March 31, from 3 p.m. to 11 p.m., the draw need only open if at least four hours' notice is given.

The NJDOT requested changes to the existing regulations for the Route 30 Bridge in an effort to provide more scheduled openings to accommodate the ever-increasing casino workforce and tourists and by limiting the number of on signal openings to minimize vehicular traffic delays and accidents that may result from backups due to more frequent vessel openings, by requiring scheduled hourly openings of draw span during the spring and summer months and to operate on an advance notice basis in the fall and winter months.

A review of the bridge logs for the past three years supplied by NJDOT revealed the morning rush (7 a.m. to 9 a.m.) is averaging a total of 11 openings/year from June through September and the evening rush (4 p.m. to 6 p.m.) is averaging a total of 15 openings/year from June through September. The average daily traffic count from 7 a.m. and 8 p.m. for the same period revealed between 700 and 3,800 vehicles. This

excess traffic causes increased bottlenecks and safety hazards. Anticipated bridge openings on the hour will help to decrease delays to the local workforce and tourists.

For the past three years, during the fall and winter months, the draw span averaged 23 vessel openings per year from November 1 through March 31 between 7 a.m. and 3 p.m.

Discussion of Comments and Changes

The Coast Guard received no comments to the NPRM. However for clarification, we will amend 33 CFR 117.733(e) by requiring the draw of the Route 30 Bridge across Beach Thorofare, mile 67.2 at Atlantic City, shall open on signal, but only if at least four hours notice is given; except that from April 1 through October 31 from 7 a.m. to 11 p.m. the draw need only open on the hour.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. We reached this conclusion based on the fact that mariners can plan their trips in accordance with the scheduled bridge openings. Mariners may be delayed due to the scheduled openings, but overall, the scheduled bridge openings will allow mariners to minimize delays while lessening impacts on traffic. Vessels that can pass under the bridge without a bridge opening may do so at all times.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule could affect the following entities, some of which might be small entities: The owners or operators of vessels needing to transit through the bridge.

This action will not have a significant economic impact on a substantial number of small entities for the following reasons. Vessels that can safely transit under the bridge while the draw span is in a closed position may do so at any time. All other mariners can plan their trips in accordance with the scheduled bridge openings to minimize delays.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15

U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 0023.1 and Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this is one of a category of actions which, individually or cumulatively, is not likely to have a significant effect on the human environment. Therefore, this rule is categorically excluded, under section 2.B.2. Figure 2–1, paragraph 32(e), of the Instruction because it simply promulgates the operating regulations or procedures for drawbridges.

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

List of Subjects in 33 CFR Part 117

Bridges.

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

■ 2. Revise § 117.733(e) to read as follows:

§ 117.733 New Jersey Intracoastal Waterway.

* * * * *

(e) The draw of the Route 30 Bridge across Beach Thorofare, mile 67.2 at Atlantic City, shall open on signal but only if at least four hours of notice is given; except that from April 1 through October 31, from 7 a.m. to 11 p.m. the draw need only open on the hour.

* * * * *

Dated: March 11, 2009.

Fred M. Rosa, Jr.,

Rear Admiral, United States Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. E9–8493 Filed 4–13–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0044]

RIN 1625–AA00

Safety Zone; San Diego Bay, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the navigable waters of San Diego Bay in support of the Fireworks Display. This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from 8:30 p.m. through 9 p.m. on April 21, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–200–9–0044 and are available online by going to *www.regulations.gov*, selecting the Advanced docket Search option on the right side of the screen, inserting USCG–2009–0044 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. They are also available for inspection or copying at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the U.S. Coast Guard Sector San Diego, 2710 N. Harbor Drive, San Diego, CA 92101 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call Petty Officer Shane Jackson, USCG, Waterways Management, U.S. Coast Guard Sector San Diego at (619) 278–7267. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is necessary to ensure the safety of commercial and recreational vessels in the vicinity of the fireworks display on the date and times this rule will be in effect and delay would be contrary to the public interest, since immediate action is required to ensure the public's safety.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay in the effective date of this rule would expose mariners to the dangers posed by the pyrotechnics used in the fireworks display and delay would be contrary to the public interest.

Background and Purpose

Fireworks & Stage FX America is sponsoring the Tyco Electronics Fireworks Display, which will include a fireworks presentation from the flight deck of the USS Midway in San Diego Bay. The safety zone will encompass the navigable waters extending out 250 feet from all points of the USS Midway. This temporary safety zone is necessary to provide for the safety of the crew, spectators, and other users and vessels of the waterway.

Discussion of Rule

The Coast Guard is establishing a safety zone that would be enforced from 8:30 p.m. to 9 p.m. on April 21, 2009. The limits of the safety zone will encompass the navigable waters extending out 250 feet from all points of the USS Midway located at approximately 32°42.52′ N, 117°10.35′ W.

The safety zone is necessary to provide for the safety of the crews, spectators, and other users and vessels of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port or his designated representative.

Regulatory Analyses

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

Regulatory Planning and Review

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. This determination is based on the size and location of the safety zone. Commercial vessels will not be hindered by the safety zone. Recreational vessels will not be allowed to transit through the designated safety zone during the specified times.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the San Diego Bay from 8:30 p.m. to 9 p.m. on April 21, 2009.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only 30 minutes in the evening when vessel traffic is low. Vessel traffic can pass safely around the safety zone. Before the effective period, the Coast Guard will publish a local notice to mariners (LNM) and will issue broadcast notice to mariners (BNM) alerts via marine channel 16 VHF before the safety zone is enforced.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

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

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are

technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 0023.1 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a safety zone for the conduct of a fireworks display and is necessary in the interests of safety for mariners, spectators, and persons involved in the display.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T11–153 to read as follows:

§ 165.T11–153 Safety Zone; Tyco Electronics Fireworks Display; San Diego Bay, San Diego, CA.

(a) *Location*. The following area is a safety zone: the navigable waters extending out 250 feet from all points of the USS Midway located at approximately 32°42.52′ N, 117°10.35′ W.

(b) *Enforcement Period*. This section will be enforced from 8:30 p.m. to 9 p.m. on April 21, 2009. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions*. The following definition applies to this section: designated representative, means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, or local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations*. (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated on-scene representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Sector San Diego Command Center. The Command Center may be contacted on VHF–FM Channel 16.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: March 6, 2009.

T.H. Farris,

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

[FR Doc. E9–8492 Filed 4–13–09; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA–R07–OAR–2008–0793; FRL–8791–6]

Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the State Implementation Plan (SIP) and Operating Permits Program to amend the definitions provisions of the rules by adding definitions for stage I/II vapor recovery systems and outstate area, updating the lists of volatile organic compounds and hazardous air pollutants for consistency with the Environmental Protection Agency (EPA) lists, removing unnecessary definitions, and making typographical corrections and clarifications. Approval of this revision will ensure consistency between the state and the Federally-approved rules.

DATES: This direct final rule will be effective June 15, 2009, without further notice, unless EPA receives adverse comment by May 14, 2009. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2008–0793, by one of the following methods:

1. *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
2. E-mail: *bhesania.amy@epa.gov*.
3. *Mail or Hand Delivery:* Amy Bhesania, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2008–0793. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to

technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8 a.m. to 4:30 p.m. excluding Federal holidays.

The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

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

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' or ''our'' refer to EPA. This section provides additional information by addressing the following questions:

What is a SIP?
What is the Federal approval process for a SIP?
What does Federal approval of a state regulation mean to me?
What is the Part 70 Operating Permits Program?
What is the Federal approval process for an Operating Permits Program?
What is being addressed in this document?
Have the requirements for approval of a SIP revision and a Part 70 revision been met?
What action is EPA taking?

What is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What is the Federal approval process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at title 40, part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are ''incorporated by reference,'' which means that we have approved a given state regulation with a specific effective date.

What does Federal approval of a state regulation mean to me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What is the Part 70 Operating Permits Program?

The CAA amendments of 1990 require all states to develop operating permits programs that meet certain Federal criteria. In implementing this program, the states are to require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. One purpose of the part 70 operating permits program is to improve enforcement by issuing each source a single permit that consolidates all of the applicable CAA requirements into a Federally-enforceable document. By consolidating all of the applicable requirements for a facility into one document, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include ''major'' sources of air pollution and certain other sources specified in the CAA or in our implementing regulations. For example, all source regulated under the acid rain program, regardless of size, must obtain permits. Examples of major sources include those that emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen dioxide or PM_{10}; those that emit 10 tons per year of any single hazardous air pollutant (HAP) (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of HAPs.

Revisions to the state operating permits program are also subject to public notice, comment and our approval.

What is the Federal approval process for an Operating Permits Program?

In order for state regulations to be incorporated into the Federally enforceable Title V operating permits program, states must formally adopt regulations consistent with state and Federal requirements. This process generally includes a public notice, public hearing, pubic comment period, and formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the approved operating permits program. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 502 of the CAA are incorporated into the Federally-approved operating permits program. Records of such actions are maintained in the CFR at Title 40, part 70, appendix A, entitled,

''Approval Status of State and Local Operating Permits Programs.''

What is being addressed in this document?

EPA is approving revisions to the Missouri SIP and operating permits program which revise the definitions provisions of the rule by adding definitions for stage I/II vapor recovery systems and ''outstate area'' (areas outside metropolitan areas such as Kansas City and St. Louis), updating the lists of volatile organic compounds and hazardous air pollutants for consistency with the EPA lists, removing unnecessary definitions, and making typographical corrections and clarifications.

The state removed numerous definitions that are no longer used anywhere throughout the state regulations. Because they are unnecessary, the deletion does not substantively impact the regulations. Definitions revised are as follows: adverse impact on visibility (adding a reference to a table in the rule identifying class I areas in Missouri) and delivery vessel (deleting the term ''drum'' from the definition). The phrase ''potential to emit'' is revised to clarify that enforceable permit conditions which may be considered in determining potential emissions include conditions relating to application of pollution control equipment and other conditions (such as limits on operating rates and hours of operation). Any of these limits, under the state rule, must be contained in Federally-enforceable permit conditions in order to be considered in the calculation of potential emissions. (For example, limits based on use of pollution control equipment must be contained in a Federally-enforceable permit condition in order to be considered in the calculation under the state rule.) The revisions to these definitions are for clarification and do not adversely affect the stringency of the SIP or the operating permits program.

The terms and definitions added to the SIP are as follows: Outstate area—Any area throughout the state except the City of St. Louis and St. Charles, St. Louis, Jefferson, Franklin, Clay, Cass, Buchanan, Ray, Jackson, Platte and Green Counties; Stage I vapor recovery system—A system used to capture the gasoline vapors that would otherwise be emitted when gasoline is transferred from a loading installation to a delivery vessel or from a delivery vessel to a storage tank; and Stage II vapor recovery system—A system used to capture the gasoline vapors that would otherwise be emitted when gasoline is dispensed into a vehicle fuel tank by routing vapors back to the fuel storage tank. These provisions merely provide clarification of terms used in the regulations and do not substantively change the requirements.

The definitions were renumbered as appropriate due to the deletions and additions.

Revisions were made to the table of compounds not considered volatile organic compounds because of their known lack of participation in the atmospheric reactions to produce ozone. Revisions include deletions, corrections and additions which are consistent with EPA regulations and do not adversely affect the stringency of the SIP or the operating permits program. Deletions and corrections were also made to General Provisions, Table 3, Hazardous Air Pollutants.

Have the requirements for approval of a SIP revision and a Part 70 revision been met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. The substantive requirements of Title V of the 1990 CAA Amendments and 40 CFR part 70 have been met as well.

What action is EPA taking?

We are approving the request to amend the Missouri SIP and operating permits program. This revision will amend the definitions provisions of the rules by adding definitions for stage I/II vapor recovery systems and outstate area, updating the lists of volatile organic compounds and hazardous air pollutants for consistency with the EPA lists, as well as removing unused definitions and making typographical corrections and clarifications.

Approval of this revision will ensure consistency between the state and the Federally-approved rules. EPA has determined that these changes will not relax the SIP or adversely impact air emissions and will not substantively change the operating permits program.

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

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority

to disapprove a state submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA when it reviews a state submission, to use VCS in place of a state submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 15, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the final rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

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

40 CFR Part 70

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: April 3, 2009.

William Rice,

Acting Regional Administrator, Region 7.

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

PART 52—[AMENDED]

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

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

Subpart AA—Missouri

■ 2. In § 52.1320(c) the table is amended under Chapter 6 by revising the entry for ''10–6.020'' to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
*	*	*	*	*
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods and Air Pollution Control Regulations for the State of Missouri				
*	*	*	*	*
10–6.020	Definitions and Common Reference Tables.	9/30/08	4/14/09 [*insert FR page number where the document begins*].	
*	*	*	*	*

* * * * *

PART 70—[AMENDED]

■ 3. The authority citation for Part 70 continues to read as follows:

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

Appendix A—[Amended]

■ 4. Appendix A to part 70 is amended in the entry for Missouri by adding paragraph (w) to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Missouri

* * * * *

(w) The Missouri Department of Natural Resources submitted revisions to Missouri rule 10 CSR 10–6.020, ''Definitions and Common Reference Tables,'' on September 5, 2008, approval effective May 14, 2009.

* * * * *

[FR Doc. E9–8487 Filed 4–13–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 2

RIN 1090–AA61

Amendment to the Freedom of Information Act Regulations

AGENCY: Office of the Secretary, Interior.

ACTION: Direct final rule.

SUMMARY: This document amends the Department of the Interior's (DOI) regulations implementing the Freedom of Information Act (FOIA), 5 U.S.C. 552. In particular, it: clarifies the time limit that requesters have for filing FOIA appeals; clarifies that requesters must include the required documentation with their appeals or their appeals may be rejected by the FOIA Appeals Officer; clarifies that requesters must file a FOIA request with each separate bureau/office from which they are seeking records; changes the language regarding requests for expedited processing to be consistent with the language used in the FOIA including removing a paragraph in that section pertaining to ''due process rights;'' makes the use of multitrack processing mandatory for all bureaus and offices; advises requesters that they may contact the bureau/office's FOIA Requester Service Center and the FOIA Public Liaison concerning the status of their requests; and includes current contact information for DOI's FOIA and Public Affairs/Office of Communications Contacts and its reading rooms (Headquarters). Additionally, the final rule revises the definitions of the terms: ''representative of the news media'' and ''freelance journalist'' in accordance with the Openness Promotes Effectiveness in Our National (OPEN) Government Act of 2007 (December 31, 2007). The term ''news'' is defined within the term ''representative of the news media.''

DATES: With the exception of § 2.3(k) and (r), this rule is effective May 14, 2009. Section 2.3(k) and (r) have been revised consistent with the OPEN Government Act of 2007 and are effective May 29, 2009 without further action unless significant adverse comments are received by May 14, 2009. If significant adverse comments to § 2.3(k) and (r) comments are received, DOI will publish a timely withdrawal of these paragraphs in the **Federal Register**.

ADDRESSES: You may submit comments, identified by the number 1090–AA61, on the portions of this rule identified in Part II, Procedural Matters and Required Documentation, that have not previously been published for review by any of the following methods:

—*Federal rulemaking portal: http://www.regulations.gov* [Follow the instructions for submitting comments]; or

—*Mail or hand delivery:* OCIO/DOI, 1849 C Street, NW., Room 7456–MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Alexandra Mallus, Office of the Chief Information Officer, MS–7438, Main Interior Building, 1849 C Street, NW., Washington, DC 20240; Telephone (202) 208–5342. E-Mail: *Alexandra_Mallus@ios.doi.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of the Interior published a final rule in the **Federal Register** on October 21, 2002, revising its regulations implementing the FOIA, 43 CFR part 2. In this publication, the language used in § 2.21(d)(6), ''How will the bureau respond to my request?'' and the language used in § 2.29, ''How long do I have to file an appeal?'' were inconsistent with each other concerning the timeframe for filing an appeal. This rule clarifies the 2002 final rule by noting that appeals must be received by the FOIA Appeals Officer no later than 30 workdays from the date of the final response. Additionally, this rule clarifies that a requester's failure to include all correspondence between himself/herself and the bureau concerning his/her FOIA request will result in the Department's rejection of the appeal unless the FOIA Appeals Officer determines that good cause exists to accept the defective appeal.

This rule also changes § 2.22, ''What happens if a bureau receives a request for records it does not have or did not create?'' to eliminate paragraph (a)(1) of § 2.22, which has been construed by some courts to require bureaus that had received a FOIA request to refer the request to another bureau for a search of its records, regardless of whether the bureau that received the request had responsive records. The result of this change is that FOIA requesters must submit their requests in accordance with § 2.10, which requires that the FOIA requester specify which bureau's records are being sought or, at a minimum, specify when the FOIA requester is seeking the records of more than one bureau.

Consistent with EO 13392, this rule adds a new paragraph (c) to § 2.12, ''When can I expect the response?'' advising requesters that they may contact the bureau/office's FOIA Requester Service Center and the FOIA Public Liaison concerning the status of their requests. Additionally, the language in §§ 2.3 and 2.14 regarding expedited processing has been amended to reflect the FOIA's statutory language; therefore, the term ''exceptional need'' has been replaced with ''compelling need,'' and paragraph (a)(3) in § 2.14 pertaining to ''due process rights'' has been removed.

This rule also revises the language in § 2.26, ''Does the bureau provide multitrack processing of FOIA requests?'' to make the use of multitrack processing mandatory for all bureaus and offices within the Department and remind the bureaus of the statutory requirement of due diligence.

Appendix A to part 2, Department of the Interior FOIA and Public Affairs Contacts and Reading Rooms, has been updated to include current contact information for DOI's FOIA and Public Affairs/Office of Communications Contacts and its reading rooms (Headquarters) and to delete the FOIA contacts and reading rooms for the field offices. In the future, bureaus/offices will maintain information pertaining to the field offices on their FOIA Web sites to ensure that their contact information is accurate and current.

Finally, this final rule revises the definition of the terms ''representative of the news media'' and ''freelance journalist'' (§ 2.3(k) and § 2.3(r)) in accordance with the OPEN Government Act of 2007 (December 31, 2007).

II. Procedural Matters and Required Documentation

Administrative Procedure Act

On October 25, 2007, DOI published a proposed rule that revised its existing regulations under the FOIA. See 72 FR 60611, October 25, 2007. Interested persons were afforded an opportunity to participate in the rulemaking through submission of written comments on the proposed rule. The Department did not receive any comments from the public in response to its proposed rule. Accordingly, those provisions previously published are now final. Additionally, the Department is publishing, as a direct final rule three additional administrative updates: (1) The contact information in Appendix A to part 2, Department of the Interior FOIA and Public Affairs Contacts and Reading Rooms; (2) incorporation of the definitions for the terms ''representative of the news media'' and ''freelance journalist'' in accordance with the OPEN Government Act of 2007; and (3) one technical change to § 2.29(a), which

clarifies the time appellants have to file an appeal.

Executive Order 12866—Regulatory Planning and Review

This document is not a significant rule and the Office of Management and Budget has not reviewed this rule under Executive Order 12866. We have made the assessments required by Executive Order 12866 and have determined that this rule will not:

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

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

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; or

(4) Raise novel legal or policy issues.

Regulatory Flexibility Act

DOI certifies that this regulation will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 606(b)). Under the FOIA, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for requesters. Thus, fees assessed by DOI are nominal.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule will not result in an annual effect on the economy of more than $100 million per year; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based companies to compete with foreign-based enterprises. It deals strictly with implementation of the FOIA within DOI.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments, or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments, or the private sector. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630—Takings

In accordance with Executive Order 12630, this rule does not have any takings implications. It deals strictly with implementation of the FOIA within DOI. Therefore, a takings assessment is not required.

Executive Order 13132—Federalism

In accordance with Executive Order 13132, this rule does not have Federalism implications as it deals strictly with implementation of the FOIA within DOI. Therefore, a Federalism assessment is not required.

Executive Order 12988—Civil Justice Reform

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

Paperwork Reduction Act

This rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501–3520) is required.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act (42 U.S.C. 4321–4347) of 1969 is not required.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this rule is not expected to significantly affect energy supplies, distribution, or use, this action is not a significant energy action and no Statement of Energy Effects is required.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to such questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§'' and a numbered heading; for example, ''§ 2.7 What do I need to know before filing a FOIA request?'')

(5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, 1849 C Street, NW., MS–7229–MIB, Washington, DC 20240.

List of Subjects in 43 CFR Part 2

Administrative practice and procedure, Classified information, Courts, Freedom of information, Government employees, Privacy.

Dated: February 26, 2009.

Pamela K. Haze,

Acting Assistant Secretary, Policy, Management and Budget.

■ For the reasons given in the preamble, we hereby amend part 2 of title 43 of the Code of Federal Regulations, as set forth below:

PART 2—RECORDS AND TESTIMONY: FREEDOM OF INFORMATION ACT

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 301, 552 and 552a; 31 U.S.C. 9701; and 43 U.S.C. 1460

Subpart A—General Information

■ 2. In § 2.3, revise paragraphs (i), (k), and (r) to read as follows:

§ 2.3 What terms do I need to know?

* * * * *

(i) *Expedited processing* means giving a FOIA request priority, and processing it ahead of other requests pending in the bureau because a requester has shown a compelling need for the records (see § 2.14).

* * * * *

(k) *Free-lance journalist* means an individual who is regarded as working for a news-media entity because he/she can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by that entity. A publication contract would present a

solid basis for such an expectation; the Government may also consider the past publication record of the requester in making such a determination.

* * * * *

(r) *Representative of the news media* means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term '*news*' means information that is about current events or that would be of current interest to the public. Examples of news-media entities are newspapers, television or radio stations broadcasting to the public at large, and publishers of periodicals (but only if such entities qualify as disseminators of '*news*') who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not all inclusive. As methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunication services), such alternative media will be considered to be news-media entities.

Subpart C—Requests for Records under the FOIA

■ 3. In § 2.12, add a new paragraph (c) to read as follows:

§ 2.12 When can I get the response?

* * * * *

(c) *Determining the status of your request.* To determine the status of your request, you should call, fax, or email the point of contact provided in the bureau/office's acknowledgment letter to you, referencing the FOIA control number assigned to your request. You may also contact the appropriate FOIA Requester Service Center. If you are dissatisfied with the FOIA Requester Service Center's response, you may contact the bureau/office's FOIA Public Liaison to resolve the issue. (The relevant names and telephone numbers are listed at *http://www.doi.gov/foia/liaison.html*).

■ 4. In § 2.14, revise paragraph (a) to read as follows:

§ 2.14 When can I get expedited processing?

(a) A bureau will provide expedited processing when you request it if you demonstrate to the satisfaction of the bureau that there is a compelling need for the records. The following circumstances demonstrate a compelling need:

(1) Where failure to expedite the request could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) An urgency to inform the public about an actual or alleged Federal Government activity if the request is made by a person primarily engaged in disseminating information. In most situations, a person primarily engaged in disseminating information will be a representative of the news media. The requested information must be the type of information which has particular value that will be lost if not disseminated quickly, and ordinarily refers to a breaking news story of general public interest. Therefore, information of historical interest only, or information sought for litigation or commercial activities, would not qualify, nor would a news media deadline unrelated to breaking news.

* * * * *

■ 5. In § 2.21, revise paragraph (d)(6) to read as follows:

§ 2.21 How will the bureau respond to my request?

* * * * *

(d) * * *

(6) A statement that the denial may be appealed to the FOIA Appeals Officer (see Appendix A to this Part), in accordance with the requirements in § 2.29.

* * * * *

■ 6. In § 2.22, revise paragraph (a) to read as follows:

§ 2.22 What happens if a bureau receives a request for records it does not have or did not create?

(a) *Consultations/referrals within DOI.* If a bureau (other than the Office of Inspector General) receives a request for records in its possession that another bureau created or is substantially concerned with, it will consult with the other bureau before deciding whether to release or withhold the records. Alternatively, the bureau may refer the request, along with the records, to that bureau for direct response. The bureau that received the request will notify you of the referral in writing, along with the name of a contact in the other bureau(s) to which the referral was made. A referral does not restart the statutory time limit for responding to your request.

* * * * *

■ 7. Revise § 2.26 to read as follows:

§ 2.26 Does the bureau provide multitrack processing of FOIA requests?

(a) All bureaus will use three processing tracks to distinguish between simple, normal, and complex requests based on the amount of time needed to process the request. FOIA requests will be placed in one of the following tracks:

(1) Simple: 1–5 workdays;

(2) Normal: 20 workdays; or

(3) Complex: Over 20 workdays.

(b) Bureaus will exercise due diligence in processing requests in accordance with the requirements of the FOIA. Requesters should assume, unless notified by the bureau, that their request is in the ''Normal'' track.

(c) A bureau should, if possible, give requesters in its ''Complex'' track the opportunity to limit the scope of their request in order to qualify for faster processing. A bureau doing so will contact the requester by telephone (which should be promptly followed up by a written communication) or in writing, whichever is more efficient in each case.

(d) See the Department's FOIA home page at *http://www.doi.gov/foia/policy.html* for details.

Subpart D—FOIA Appeals

■ 8. Revise § 2.29 to read as follows:

§ 2.29 How long do I have to file an appeal?

(a) Appeals covered by § 2.28(a)(1), (2), (4), and (5). Your FOIA appeal must be received by the FOIA Appeals Officer no later than 30 workdays from the date of the final response.

(b) Appeals covered by § 2.28(a)(3). You may file an appeal any time after the time limit for responding to your request has passed.

(c) Appeals covered by § 2.28(a)(6). Your FOIA appeal must be received by the FOIA Appeals Officer no later than 30 workdays from the date of the letter denying the fee waiver.

(d) Appeals covered by § 2.28(a)(7). You should file an appeal as soon as possible.

(e) Appeals arriving or delivered after 5 p.m. E.T., Monday through Friday, will be deemed received on the next workday.

■ 9. In § 2.30, revise paragraph (b) to read as follows:

§ 2.30 How do I file an appeal?

* * * * *

(b) You must include with your appeal copies of all correspondence between you and the bureau concerning your FOIA request, including your request and the bureau's response (if there is one). Failure to include with your appeal all correspondence between you and the bureau will result in the Department's rejection of your appeal, unless the FOIA Appeals Officer determines, in the FOIA Appeal Officer's sole discretion, that good cause

exists to accept the defective appeal. The time limits for responding to your appeal will not begin to run until the documents are received.

* * * * *

■ 10. Appendix A to part 2 is revised to read as follows:

Appendix A to Part 2—Department of the Interior FOIA and Public Affairs Contacts, and Reading Rooms

Departmental		
Departmental FOIA Officer Senior FOIA Program Officer "Policy Only-No Requests" MS–7438–MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208–5342 (202) 208–5412 Fax No. (202) 208–6867, (202) 501–2622	Departmental FOIA/Privacy Act Appeals Officer MS–6556–MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208–5339 Fax No. (202) 208–6677	Departmental Privacy Officer MS–7438–MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208–3909 Fax No. (202) 208–6867
Public Affairs Office Office of Communications MS–6013, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208–6416 Fax No. (202) 208–5133	Reading Room—DOI's Library MIB (C Street Entrance) 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208–5815 Fax No. (202) 208–6773	
Office of the Secretary		
FOIA Officer MS–116, SIB 1951 Constitution Ave., NW. Washington, DC 20240 Telephone No. (202) 565–1076 Fax No. (202) 219–2374	Public Affairs Office Office of Communications MS–6013, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208–6416 Fax No. (202) 208–5133	Reading Room—DOI's Library MIB (C Street Entrance) 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208–5815 Fax No. (202) 208–6773
Office of Inspector General		
FOIA Officer MS–4428, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (703) 487–5436 Fax No. (703) 487–5406	Public Affairs Office MS–4428, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 513–0326 Fax No. (202) 219–3856	Reading Room Room 4428, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (703) 487–5443 Fax No. (703) 487–5400
Office of the Solicitor (SOL) Headquarters		
FOIA Officer MS–6556, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208–6221 Fax No. (202) 208–5206	Public Affairs Office Office of Communications MS–6013, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208–6416 Fax No. (202) 208–3231	Reading Room Room 2328, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208–6505 Fax No. (202) 208–5206
Fish & Wildlife Service (FWS) Headquarters		
FOIA Officer Arlington Square, Room 380 4401 North Fairfax Dr. Arlington, VA 22203 Telephone No. (703) 358–2504 Fax No. (703) 358–2251	Public Affairs Office Arlington Square, MS–330 4401 North Fairfax Dr. Arlington, VA 22203 Telephone No. (703) 358–2220 Fax No. (703) 358–1930	Reading Room Arlington Square, MS–380 4401 North Fairfax Dr. Arlington, VA 22203 Telephone No. (703) 358–2504 Fax No. (703) 358–2251
National Park Service (NPS) Headquarters		
FOIA Officer Office of the CIO Org Code 2550 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 354–1925 Fax No. (202) 371–5584	Public Affairs Office P.O. Box 37127 Washington, DC 20013–7127 Telephone No. (202) 208–6843 Fax No. (202) 219–0910	Reading Room Contact: NPS FOIA Officer 1201 Eye St., NW. 8th Floor Washington, DC 20005 Telephone No. (202) 354–1925 Fax No. (202) 371–5584

Bureau of Land Management (BLM) Headquarters		
FOIA Officer MS–WO–560 1620 L St., NW., Room 750 Washington, DC 20240 Telephone No. (202) 452–5013 Fax No. (202) 452–5002	Public Affairs Office MS–WO–610 1620 L St., NW., Room 406 Washington, DC 20240 Telephone No. (202) 452–5125 Fax No. (202) 452–5124	Reading Room 1620 L St., NW.—Room 750 Washington, DC 20240 Telephone No. (202) 452–5193 Fax No. (202) 452–0395
Minerals Management Service (MMS) Headquarters		
FOIA Officer 381 Elden St. MS–2200 Herndon, VA 20170–4817 Telephone No. (703) 787–1689 Fax No. (703) 787–1207	Public Affairs Office Office of Communications 1849 C St., NW., MS–4230 Washington, DC 20240 Telephone No. (202) 208–3985 Fax No. (202) 208–3968	Reading Room Public Information Office 1201 Elmwood Park Blvd. New Orleans, LA 70123–2394 Telephone No. (800) 200–GULF Fax No. (504) 736–2620
Office of Surface Mining (OSM) Headquarters		
FOIA Officer MS–130, SIB 1951 Constitution Ave., NW. Washington, DC 20240 Telephone No. (202) 208–2961 Fax No. (202) 219–3092	Office of Communications MS–262, SIB 1951 Constitution Ave., NW. Washington, DC 20240 Telephone No. (202) 208–2565 Fax No. (202) 501–0549	Reading Room Contact: OSM FOIA Officer Room 263, SIB 1951 Constitution Ave., NW. Washington, DC 20240 Telephone No. (202) 208–2961 Fax No. (202) 501–4734
U.S. Geological Survey (USGS) Headquarters		
FOIA Officer 12201 Sunrise Valley Dr., MS–807 Reston, VA 20192 Telephone No. (703) 648–7158 Fax No. (703) 648–6853	Office of Communications 12201 Sunrise Valley Dr., MS–119 Reston, VA 20192 Telephone No. (703) 648–4460 Fax No. (703) 648–4466	Reading Room USGS Library 12201 Sunrise Valley Dr. Reston, VA 20192 Telephone No. (703) 648–4302 Fax No. (703) 648–6373
Bureau of Reclamation (BOR) Headquarters		
FOIA Officer P.O. Box 25007, 84–21300 Denver, CO 80225–0007 Telephone No. (303) 445–2048 Fax No. (303) 445–6575	Public Affairs Office P.O. Box 25007, 82–40000 Denver, CO 80225–0007 Telephone No. (303) 236–7000 Fax No. (303) 236–9235	Reading Room Reclamation Library P.O. Box 25007, 84–27960 Denver, CO 80225–0007 Telephone No. (303) 445–2072 Fax No. (303) 445–6303
Bureau of Indian Affairs (BIA) Headquarters		
FOIA Officer MS–3071, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208–4542 Fax No. (202) 208–6597	Public Affairs Office MS–3658, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208–3710 Fax No. (202) 501–1516	Reading Room Room 3071, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 513–0883 Fax No. (202) 208–6597

Note: For more information on FOIA, including the most current listing of FOIA Contacts and reading rooms, visit DOI's FOIA Web site at *http://www.doi.gov/foia/*. Henceforth, contact information will be maintained and updated on DOI's FOIA Web site. If you do not have access to the Web, please contact the appropriate bureau FOIA Officer or the Departmental FOIA Office.

Dated: April 6, 2009.

[FR Doc. E9–8206 Filed 4–13–09; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2008–0020; Internal Agency Docket No. FEMA–8069]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

DATES: *Effective Dates:* The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year, on FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/ cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Region III				
Virginia:				
Bath County, Unincorporated Areas	510196	September 10, 1984, Emerg; September 16, 1975, Reg; April 14, 2009, Susp.	April 2, 2009	April 14, 2009.
Craig County, Unincorporated Areas	510313	August 12, 1975, Emerg; February 2, 1990, Reg; April 14, 2009, Susp.	*.....do	Do.
Dendron, Town of, Surry County	510300	May 22, 1975, Emerg; July 16, 1982, Reg; April 14, 2009, Susp.	.....do	Do.
New Castle, Town of, Craig County	510340	N/A, Emerg; February 22, 1990, Reg; April 14, 2009, Susp.	.....do	Do.
Richmond, City of, Independent County	510129	August 29, 1973, Emerg; June 15, 1979, Reg; April 14, 2009, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/ cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Surry County, Unincorporated Areas	510157	March 25, 1974, Emerg; November 2, 1990, Reg; April 14, 2009, Susp.	.....do	Do.
Region V				
Illinois:				
Eldred, Village of, Greene County	170251	June 15, 1981, Emerg; June 15, 1981, Reg; April 14, 2009, Susp.	.....do	Do.
Elsah, Village of, Jersey County	170313	March 1, 1974, Emerg; February 18, 1981, Reg; April 14, 2009, Susp.	.....do	Do.
Greene County, Unincorporated Areas	170901	April 17, 1979, Emerg; August 5, 1985, Reg; April 14, 2009, Susp.	.....do	Do.
Greenfield, City of, Greene County	170252	July 5, 1979, Emerg; June 17, 1986, Reg; April 14, 2009, Susp.	.....do	Do.
Jersey County, Unincorporated Areas	170312	April 1, 1974, Emerg; February 1, 1984, Reg; April 14, 2009, Susp.	.....do	Do.
Jerseyville, City of, Jersey County	170315	June 17, 1981, Emerg; July 18, 1985, Reg; April 14, 2009, Susp.	.....do	Do.
Wisconsin:				
Cascade, Village of, Sheboygan County	550425	January 20, 1976, Emerg; October 15, 1981, Reg; April 14, 2009, Susp.	.....do	Do.
Howards Grove, Village of, Sheboygan County.	550608	November 14, 1983, Emerg;—, Reg; April 14, 2009, Susp.	.....do	Do.
Kohler, Village of, Sheboygan County	550426	May 13, 1975, Emerg; April 2, 1991, Reg; April 14, 2009, Susp.	.....do	Do.
Oostburg, Village of, Sheboygan County.	550427	N/A, Emerg; August 31, 1998, Reg; April 14, 2009, Susp.	.....do	Do.
Plymouth, City of, Sheboygan County	550428	February 14, 1975, Emerg; July 5, 1983, Reg; April 14, 2009, Susp.	.....do	Do.
Random Lake, Village of, Sheboygan County.	550429	July 30, 1975, Emerg; April 1, 1981, Reg; April 14, 2009, Susp.	.....do	Do.
Sheboygan, City of, Sheboygan County	550430	April 23, 1971, Emerg; March 15, 1977, Reg; April 14, 2009, Susp.	.....do	Do.
Sheboygan County, Unincorporated Areas.	550424	April 4, 1973, Emerg; July 17, 1978, Reg; April 14, 2009, Susp.	.....do	Do.
Sheboygan Falls, City of, Sheboygan County.	550431	June 10, 1975, Emerg; April 2, 1991, Reg; April 14, 2009, Susp.	.....do	Do.
Region VI				
Louisiana:				
Lincoln Parrish, Unincorporated Areas	230366	August 9, 1990, Emerg; March 1, 1991, Reg; April 14, 2009, Susp.	.....do	Do.
Ruston, City of, Lincoln Parrish	220347	February 19, 1975, Emerg; June 15, 1981, Reg; April 14, 2009, Susp.	.....do	Do.
Region VIII				
Utah:				
Enterprise, City of, Washington County	490169	June 27, 1986, Emerg; April 1, 1987, Reg; April 14, 2009, Susp.	.....do	Do.
Hurricane, City of, Washington County	490172	August 5, 1975, Emerg; February 2, 1984, Reg; April 14, 2009, Susp.	.....do	Do.
Ivins, City of, Washington County	490173	October 21, 1974, Emerg; August 23, 1982, Reg; April 14, 2009, Susp.	.....do	Do.
LaVerkin, City of, Washington County	490174	September 3, 1975, Emerg; February 2, 1984, Reg; April 14, 2009, Susp.	.....do	Do.
Leeds, Town of, Washington County	490175	August 11, 1978, Emerg; February 2, 1984, Reg; ,April 14, 2009 Susp.	.....do	Do.
Moab, City of, Grand County	490072	September 17, 1974, Emerg; June 4, 1980, Reg; April 14, 2009, Susp.	.....do	Do.
Santa Clara, City of, Washington County.	490178	August 7, 1975, Emerg; August 5, 1986, Reg; April 14, 2009, Susp.	.....do	Do.
St. George, City of, Washington County	490177	August 28, 1974, Emerg; August 19, 1987, Reg; April 14, 2009, Susp.	.....do	Do.
Toquerville, Town of, Washington County.	490180	July 20, 1984, Emerg; February 9, 1986, Reg; April 14, 2009, Susp.	.....do	Do.
Virgin, Town of, Washington County	490181	June 25, 1975, Emerg; August 5, 1986, Reg; April 14, 2009, Susp.	.....do	Do.
Washington, City of, Washington County.	490182	July 7, 1975, Emerg; July 1, 1987, Reg; April 14, 2009, Susp.	.....do	Do.
Washington County, Unincorporated Areas.	490224	October 15, 1975, Emerg; March 18, 1986, Reg; April 14, 2009, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/ cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Region IX				
California:				
Carmel By The Sea, City of, Monterey County.	060196	N/A, Emerg; December 18, 1997, Reg; April 14, 2009, Susp.	.....do	Do.
Del Rey Oaks, City of, Monterey County.	060197	June 23, 1978, Emerg; November 4, 1981, Reg; April 14, 2009, Susp.	.....do	Do.
Gonzales, City of, Monterey County	060198	July 25, 1975, Emerg; November 18, 1981, Reg; April 14, 2009, Susp.	.....do	Do.
Greenfield, City of, Monterey County	060446	January 27, 1977, Emerg; August 23, 1982, Reg; April 14, 2009, Susp.	.....do	Do.
Monterey County, Unincorporated Areas.	060195	March 9, 1977, Emerg; January 30, 1984, Reg; April 14, 2009, Susp.	.....do	Do.
Pacific Grove, City of, Monterey County	060201	N/A, Emerg; January 12, 1998, Reg; April 14, 2009, Susp.	.....do	Do.

*do =Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp—Suspension.

Dated: March 26, 2009.

Michael K. Buckley,

Acting Assistant Administrator, Mitigation Directorate, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E9–8379 Filed 4–10–09; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 390

[Docket No. MARAD 2008 0075]

RIN 2133–AB71

Capital Construction Fund; Corrections

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Correcting amendments.

SUMMARY: The Maritime Administration published a document in the Federal Register on September 30, 2008, revising the Capital Construction Fund regulation. The document inadvertently failed to update all of the legal citations within the regulation and this rule makes these changes.

DATES: *Effective Date:* This final rule is effective April 14, 2009.

FOR FURTHER INFORMATION CONTACT: Murray Bloom, Chief, Division of Maritime Programs, Maritime Administration at 202–366–5320, via e-mail at *Murray.Bloom@dot.gov*, or by writing to Murray Bloom, Office of the Chief Counsel, Maritime Administration, MAR–222, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: In FR Doc. 2008–0075 appearing on page 56738 in the **Federal Register** of Tuesday, September 30, 2008, corrections are made in this erratum.

List of Subjects in 46 CFR Part 390

Income taxes, Investments, Maritime carriers, Vessels.

■ Accordingly, 46 CFR Part 390 is corrected by making the following correcting amendments:

PART 390—CAPITAL CONSTRUCTION FUND

■ 1. The authority citation for part 390 is amended to read as follows:

Authority: Secs. 53501, *et seq.*, of Title 46, United States Code, formerly, sec. 607, Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1177); 49 CFR 1.66.

§ 390.5 [Amended]

■ 2. In § 390.5, paragraph (c)(7)(iii) is amended by removing the phrase, ''paragraphs (c)(7)(i) and (ii) of this section'' and adding in its place the phrase ''(c)(8)(i) and (ii) of this section.''

Appendix I to Part 390 [Amended]

■ 3. In Appendix I to Part 390, remove the phrase ''as amended (46 U.S.C. 802)''.

■ 4. In the table below, for each section indicated in the left column, remove the phrase indicated in the middle column and add the phrase indicated in the right column:

Section	Remove	Add
Appendix I to Part 390	section 607 of the Act	46 U.S.C. 53501 *et seq.*
Appendix I to Part 390	subsection 607(f) of the Act	46 U.S.C. 53509.
Appendix II to Part 390	section 607 of the Act	46 U.S.C. 53501 *et seq.*
Appendix II to Part 390	section 607(k) of the Act	46 U.S.C. 53501.
Appendix II to Part 390	section 167 of the Internal Revenue Code of 1954.	section 167 of the Internal Revenue Code of 1986.
Appendix IV to Part 390	section 607 of the Merchant Marine Act, 1936, as amended (''Act'').	46 U.S.C. 53501 *et seq.*
Appendix IV to Part 390	Internal Revenue Code of 1954	Internal Revenue Code of 1986.
Appendix V to Part 390	section 607 of the Merchant Marine Act, 1936, as amended.	46 U.S.C. 53501 *et seq.*

By Order of the Maritime Administrator.

Dated: April 6, 2009.

Leonard Sutter,

Secretary, Maritime Administration.

[FR Doc. E9–8226 Filed 4–13–09; 8:45 am]

BILLING CODE 4910–81–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 528 and 552

[GSAR Amendment 2009–02; GSAR Case 2006–G517 (Change 28); Docket 2008-0007; Sequence 3]

RIN 3090–AI64

General Services Administration Acquisition Regulation; GSAR Case 2006–G517, Rewrite of GSAR Part 528, Bonds and Insurance

AGENCIES: General Services Administration (GSA), Office of the Chief Acquisition Officer.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending the GSA Acquisition Regulation (GSAR) to update the text addressing bonds and insurance. This rule is a result of the GSA Acquisition Manual (GSAM) rewrite initiative undertaken by GSA to revise the GSAM to maintain consistency with the Federal Acquisition Regulation (FAR), and to implement streamlined and innovative acquisition procedures that contractors, offerors, and GSA contracting personnel can utilize when entering into and administering contractual relationships. The GSAM incorporates the GSAR as well as internal agency acquisition policy.

DATES: *Effective Date*: May 14, 2009.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Michael O. Jackson at (202) 208–4949. For information pertaining to the status or publication schedules, contact the Regulatory Secretariat (VPR), Room 4041, GS Building, Washington, DC 20405, (202) 501–4755. Please cite GSAR Case 2006–G517 (Change 28).

SUPPLEMENTARY INFORMATION:

A. Background

The General Services Administration published an Advance Notice of Proposed Rulemaking (ANPR) in the **Federal Register** at 71 FR 7910 on February 15, 2006, with request for comments on all parts of the GSAM. No comments were received on Part 528. However, internal review comments have been incorporated as appropriate. A proposed rule for the regulatory portion of the GSAM was published in the **Federal Register** at 73 FR 45378 on August 5, 2008. The public comment period for GSAR Part 528 closed on October 6, 2008, and no comments were received.

The Rewrite of Part 528

This final rule contains the revisions made to Part 528, Bonds and Insurance, as a result of internal review comments. The rule revises Part 528 to address the text at GSAR 528.202, Acceptability of corporate sureties, and GSAR 528.310, Contract clause for work on a Government installation. The rule adds GSAR 528.311, Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts, and GSAR 552.228–5, Government as Additional Insured, and deletes GSAR 552.228–70, Workers' Compensation Laws. The specific changes are as follows:

• The language in GSAR 528.202, Acceptability of corporate sureties is revised to change ''you'' to the ''contracting officer.''

• The change in GSAR 528.310, Contract clause for work on a Government installation deletes GSAR 528.310 paragraph (b) and GSAR 552.228–70, Workers' Compensation Laws. The clause GSAR 552.228–70 is deleted because its only purpose is to recite the fact that 40 U.S.C. 3172 effects a limited cession of jurisdiction to states with respect to enforcement of worker's compensation laws and has no contractual effect. Paragraph (b) in GSAR 528.310 is being deleted because it relates to the deletion of GSAR 552.228–70 where it states ''in the case of an owner-controlled insurance program, or wrap-up insurance, the clause will be a part of the policy holder's requirements'' the phrase ''the clause'' refers to GSAR 552.528–70.

• GSA is adding GSAR 528.311, Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts. The new language at section 528.311–l clarifies the usage for the FAR clause 52.228–7, Insurance—Liability to Third Persons, in solicitations and contracts. The language states that other than contracts and solicitations for construction and architect-engineer services, when a cost-reimbursement contract is contemplated, unless the head of the contracting activity waives the requirement for use of the clause, FAR clause 52.228–7 is required.

• GSA is adding clause 552.228–5 to the GSAR. The language in this clause was previously in the GSAR and based upon GSA's experience with contracts that do not have such a clause, it is being reinstated to protect the Federal Government's interest. In essence, the new GSAR 552.228–5 replaced the newly deleted GSAR 552.228–70. GSAR 552.228–70 (formerly GSAR 552.228–75) did not serve any purpose other than to recite the fact that 40 U.S.C. 3172 (formerly 40 U.S.C. 290) effects a limited cession of jurisdiction to states with respect to enforcement of worker's compensation laws. GSAR clause 552.228–70 had no contractual effect and was superfluous.

Discussion of Comments

There were no public comments received in response to the Advanced Notice of Proposed Rulemaking published in the **Federal Register** at 71 FR 7910 on February 15, 2006. A proposed rule was published in the **Federal Register** at 73 FR 45378 on August 5, 2008. The comment period closed October 6, 2008, and no comments were received.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The General Services Administration certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the revisions are not considered substantive. The revisions only update and reorganize existing coverage.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the GSAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 3090–0027.

List of Subjects in 48 CFR Parts 528 and 552

Government procurement.

Dated: March 6, 2009

Rodney P. Lantier,

Acting, Senior Procurement Executive, Office of the Chief Acquisition Officer, General Services Administration.

■ Therefore, GSA amends 48 CFR parts 528 and 552 as set forth below:

PART 528—BONDS AND INSURANCE

■ 1. The authority citation for 48 CFR part 528 is revised to read as follows:

Authority: 40 U.S.C. 121(c).

■ 2. Revise section 528.202 to read as follows:

528.202 Acceptability of corporate sureties.

Corporate surety bonds must be manually signed by the Attorney-in-Fact or officer of the surety company and the corporate seal affixed. The contracting officer may waive failure of the surety to affix the corporate seal as a minor informality. (See B–184120, July 2, 1975, 75–2 CPD 9.)

■ 3. Revise section 528.310 to read as follows:

528.310 Contract clause for work on a Government installation.

Insert the clause at 552.228–5, Government as Additional Insured, in each solicitation and contract that meets all the following conditions:

(a) The contract amount is expected to exceed the simplified acquisition threshold; and

(b) The contract will require work to be performed on Government property.

■ 4. Add sections 528.311 and 528.311–1 to read as follows:

528.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.

528.311—1 Contract clause.

Use the clause at FAR 52.228–7, Insurance—Liability to Third Persons, in solicitations and contracts, other than those for construction and those for architect-engineer services, when a cost-reimbursement contract is contemplated, unless the head of the contracting activity waives the requirement for use of the clause.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. The authority citation for 48 CFR part 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

■ 6. Add section 552.228–5 to read as follows:

552.228–5 Government as Additional Insured.

As prescribed in 528.310, insert the following clause:

GOVERNMENT AS ADDITIONAL INSURED (MAY 2009)

(a) This clause supplements the requirements set forth in FAR clause 52.528–5, Insurance—Work on a Government Installation.

(b) Each insurance policy required under this contract, other than workers' compensation insurance, shall contain an endorsement naming the United States as an additional insured with respect to operations performed under this contract. The insurance carrier is required to waive all subrogation rights against any of the named insured.

(End of clause)

552.228–70 [Removed]

■ 7. Remove section 552.228–70.

[FR Doc. E9–8402 Filed 4–13–09; 8:45 am]

BILLING CODE 6820–61–S

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 192 and 195

[Docket No. PHMSA–2008–0334.]

RIN 2137–AE42

Pipeline Safety: Incorporation by Reference Update: American Petroleum Institute (API) Standards 5L and 1104

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

ACTION: Direct final rule.

SUMMARY: This direct final rule incorporates by reference the most recent editions of API Specification 5L ''Specification for Line Pipe'' and API 1104 ''Welding of Pipelines and Related Facilities.'' The purpose of this update is to enable pipeline operators to utilize current technology, materials, and practices to help maintain a high level of safety relative to their pipeline operations. PHMSA is not eliminating the use of the current referenced standards but simply allowing the additional use of these new standards. PHMSA may in the future propose to eliminate the incorporation of the existing referenced standards.

DATES: *Effective Date:* This rule is effective April 14, 2009 without further action, unless adverse comment is received by June 15, 2009. If adverse comment is received, PHMSA will publish a timely withdrawal of the rule in the **Federal Register**.

Incorporation by Reference Date: The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of April 14, 2009.

ADDRESSES: Comments should reference DOT Docket ID Number PHMSA–2008–0334 and may be submitted by any of the following methods:

- *E-Gov Web: http://www.regulations.gov.* This web site allows the public to enter comments on any **Federal Register** notice issued by any agency. Follow the online instructions for submitting comments.
- *Mail:* Docket Management System: 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:* DOT Docket Management System, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: Identify the docket ID, PHMSA 2008–0334, at the beginning of your comments. If you submit your comments by mail, submit two copies. If you wish to receive confirmation that PHMSA received your comments, include a self-addressed stamped postcard. Internet users may submit comments at *http://www.regulations.gov.*

Note: All comments received will be posted without edits to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketInfo.dot.gov.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: For information about the technical standards contact Mike Israni, (202) 366–4571, or by e-mail at *mike.israni@dot.gov.* For all other information contact John Gale by phone at (202) 366–4046 or by e-mail at *john.gale@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

This direct final rule adopts the most recent editions of two consensus technical standards, the American Petroleum Institute (API) 5L (44th edition) and API 1104 (20th edition). Through use of these consensus standards, pipeline operators will be able to use current technology, materials, and practices. The incorporation of the most recent

editions of these standards improves clarity, consistency, and accuracy, reduces unnecessary burdens on the regulated community and will provide, at minimum, an equivalent level of safety. PHMSA is not eliminating the use of the current referenced standards but simply allowing the additional use of these new standards. PHMSA may in the future propose to eliminate the incorporation of the existing referenced standards.

Standards Incorporated by Reference

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) directs Federal agencies to use voluntary consensus standards in lieu of government-written standards whenever possible. Voluntary consensus standards are standards developed or adopted by voluntary bodies that develop, establish, or coordinate technical standards using agreed upon procedures.

PHMSA's Office of Pipeline Safety participates in more than 25 national voluntary consensus standards committees. PHMSA's policy is to adopt voluntary consensus standards when they are applicable to pipeline design, construction, maintenance, inspection, and repair. PHMSA has the ultimate responsibility to ensure the best interests of public safety are being served. PHMSA reviews and approves for incorporation by reference updated versions based on this directive. When PHMSA believes some aspect of the standard does not meet this directive, it will not incorporate the new edition, or that part of the standard that it believes is contradictory with the directive. In recent years, PHMSA has adopted dozens of new and revised voluntary consensus standards into its gas pipeline (49 CFR Part 192) regulations, its liquefied natural gas (LNG) (49 CFR Part 193) regulations, and its hazardous liquid pipeline (49 CFR Part 195) regulations.

Parts 192, 193, and 195 incorporate by reference all or parts of more than 60 standards and specifications developed and published by technical organizations, including the American Petroleum Institute, American Gas Association, American Society of Civil Engineers, American Society of Mechanical Engineers, American Society for Testing and Materials, Manufacturers Standardization Society of the Valve and Fittings Industry, National Fire Protection Association, Plastics Pipe Institute, and Pipeline Research Council International. These organizations update and revise their published standards every 3 to 5 years to reflect modern technology and best technical practices. PHMSA has reviewed the revised voluntary consensus standards being incorporated in this final rule.

New Editions of Standards

The following new editions of currently referenced standards are being incorporated by reference (IBR) in part 192 and 195. These new editions refine and clarify existing material in the standard and generally do not introduce new topics.

American Petroleum Institute (API):

• ANSI/API Spec 5L/ISO 3183 ''Specification for Line Pipe'' (44th edition, 2007) Referenced by 49 CFR 192.55(e); 192.112; 192.113; Item I, Appendix B to part 192; 195.106(b)(1)(i); 195.106(e)

Amendments to API 5L in the 44th edition include:

1. High default toughness criteria for PSL 2 pipe previously not specified, ensuring a higher toughness baseline for most critical product in the field.

2. Restrictive dimensional limits (including wall thickness, diameter, out-of-round, pipe end geometric irregularities) ensuring better field fit up and welding.

3. More comprehensive description of ultrasonic and radiographic methods and documentation testing providing a more consistent weld and body inspection and pipe traceability is improved through key inspection step.

4. New sour service and offshore requirements including restrictive documentation, processing, chemical composition, inspection and mechanical property controls ensuring well suited product applied to these critical applications.

• API 1104 ''Welding of Pipelines and Related Facilities'' (20th edition, errata, 2008) Referenced in 49 CFR 192.227(a); 192.229(c)(1); and 192.241(c); Item II, Appendix B; 195.222; 195.228(b) and 195.214(a)

The 20th edition of API 1104 includes a new Appendix A. Appendix A describes the method to determine the maximum height and length of a weld imperfection that can remain in a girth weld and not be a threat to the integrity of a pipeline. Appendix A in the 19th edition is an old standard that was developed in the 1970s and at that time X 60 material was the strongest pipe available. Now X 80 is common place.

By letters dated September 26, 2008 and December 4, 2008, EVRAZ, Inc. and California Steel Industries, Inc., petitioned PHMSA to allow the immediate use of the 44th edition of API 5L. The petitioners explained that the failure to allow the use of the newer standard would adversely impact the metallurgy and tolerances of the pipe manufactured in their plants and that the impact was industry-wide. Due to the lead time of ordering steel pipe for major infrastructure projects, the petitioners urgently requested that PHMSA allow the use of the newer standard in order to avoid adverse impacts on their customers' projects involving thousands of tons of pipe and hundreds of workers.

This direct final rule is issued under the procedures set forth in 49 CFR 190.339. That provision allows for incorporation by reference of industry standards by direct final rule. If an adverse comment or notice of intent to file an adverse comment is received, a timely document will be published in the **Federal Register** withdrawing this direct final rule in whole or in part. Interested parties should refer to 49 CFR 190.339(c) for discussion of what constitutes an adverse comment.

II. Regulatory Analyses and Notices

Statutory/Legal Authority for Rulemaking

This final rule is published under the authority of 49 U.S.C. 60101 *et seq.* Section 60102(a) of 49 U.S.C. authorizes the Secretary of Transportation to prescribe regulations related to pipeline safety.

Executive Order 12866 and DOT Policies and Procedures

This direct final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 (58 FR 51735) and, therefore, was not subject to review by the Office of Management and Budget. This direct final rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

In this final rule we are updating references to standards that are incorporated in the pipeline safety regulations. These updates will enhance safety while reducing the compliance burden on the regulated industry. We invite public comment on any impacts of these amendments.

Executive Order 13132

PHMSA has analyzed the direct final rule according to Executive Order 13132 (64 FR 43255, August 10, 1999). The direct final rule does not have a substantial direct effect on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. The direct final rule does not impose substantial direct compliance costs on State and local

governments. This direct final rule does not preempt state law for intrastate pipelines. Therefore, the consultation and funding requirements of Executive Order 13132 does not apply.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), PHMSA must consider whether rulemaking actions would have a significant economic impact on a substantial number of small entities. This direct final rule ensures that operators are able to use the most current editions of technical standards incorporated by reference. PHMSA concludes this rule does not have a significant negative economic impact on any small entity. Based on the facts available about the expected impact of this rulemaking, I certify, under Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605) that this rulemaking will not have a significant economic impact on a substantial number of small entities.

Executive Order 13175

PHMSA has analyzed this direct final rule according to Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Because the direct final rule does not significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

Paperwork Reduction Act

This direct final rule does not impose any new information collection requirements.

Unfunded Mandates Reform Act of 1995

This direct final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is least burdensome alternative that achieves the objective of the rulemaking.

National Environmental Policy Act

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347), requires Federal agencies to consider the consequences of major federal actions and prepare a detailed statement on any action significantly affecting the quality of the human environment. Since these new standards provide, at minimum, an equivalent level of protection to the currently referenced standards, it is unlikely that the adoption of these standards will have any significant impacts on the environment. We welcome comment on this conclusion.

Executive Order 13211

Transporting gas impacts the nation's available energy supply. However, this direct final rule is not a ''significant energy action'' under Executive Order 13211. It also is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, the Administrator of the Office of Information and Regulatory Affairs is not likely to identify this direct final rule as a significant energy action.

Privacy Act Statement

Anyone may search the electronic form of all comments received for any of our dockets. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://dms.dot.gov*.

Regulation Identifier Number (RIN)

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

List of Subjects

49 CFR Part 192

Pipeline safety, reporting, and recordkeeping requirements.

49 CFR Part 195

Ammonia, Carbon dioxide, Incorporation by reference, Petroleum, Pipeline safety, and Reporting and recordkeeping requirements.

■ In consideration of the foregoing, PHMSA amends 49 CFR parts 192 and 195 as follows:

PART 192—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

■ 1. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. and 5103, 60102, 60104, 60108, 60109, 60110, 60113, 60116, and 60118; and 49 CFR 1.53.

■ 2. In § 192.7 paragraph (c)(2) the documents incorporated by reference under B. American Petroleum Institute (API) entries (1) and (5) are revised to read as follows:

§ 192.7 What documents are incorporated by reference partly or wholly in this part?

* * * * *

(c) * * *

(2) Documents incorporated by reference.

* * * * * * *

B. American Petroleum Institute (API):	
(1) ANSI/API Specification 5L/ISO 3183 ''Specification for Line Pipe'' (43rd edition and errata, 2004, and 44th edition, 2007).	§§ 192.55(e); 192.112; 192.113; Item I of Appendix B.

* * * * * * *

(5) API 1104 ''Welding of Pipelines and Related Facilities'' (19th edition 1999, including errata October 31, 2001; and 20th edition 2007, including errata 2008).	§§ 192.227(a); 192.229(c)(1); 192.241(c); Item II, and Appendix B.

* * * * * * *

PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

■ 3. The authority citation for part 195 continues to read as follows:

Authority: 49 U.S.C. and 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

■ 4. In § 195.3 paragraph (c) the documents incorporated by reference under B. American Petroleum Institute (API) entries (1) and (10) are revised to read as follows:

§ 195.3 Incorporation by reference.

* * * * *

(c) * * *

* * * * * * *	
B. American Petroleum Institute (API): (1) ANSI/API Specification 5L/ ISO 3183 "Specification for Line Pipe" (43rd edition and errata, 2004; and 44th edition, 2007).	§§ 195.106(b)(1)(i); 195.106(e).
* * * * * * *	
(10) API 1104 "Welding of Pipelines and Related Facilities" (19th edition 1999, including errata October 31, 2001; and 20th edition 2007, including errata 2008).	§§ 195.222; 195.228(b); 195.214(a).
* * * * * * *	

Issued in Washington, DC, on April 6, 2009 under the authority delegated in part 1.

Cynthia Douglass,

Acting Deputy Administrator.

[FR Doc. E9–8376 Filed 4–13–09; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 060525140–6221–02]

RIN 0648–XO46

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Resources of the South Atlantic; Trip Limit Reduction

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

ACTION: Temporary rule; trip limit reduction.

SUMMARY: NMFS reduces the commercial trip limit for golden tilefish in the South Atlantic to 300 lb (136 kg) per trip in or from the exclusive economic zone (EEZ). This trip limit reduction is necessary to protect the South Atlantic golden tilefish resource.

DATES: This rule is effective 12:01 a.m., local time, April 21, 2009, through December 31, 2009, unless changed by further notification in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Catherine Bruger, telephone 727–824–5305, fax 727–824–5308, e-mail *Catherine.Bruger@noaa.gov*.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Under 50 CFR 622.44(c)(2)(ii), NMFS is required to reduce the trip limit in the commercial fishery for golden tilefish from 4,000 lb (1,814 kg) to 300 lb (136 kg) per trip when 75 percent of the fishing year quota is met, by filing a notification to that effect in the **Federal Register**. Based on current statistics, NMFS has determined that 75 percent of the available commercial quota of 295,000 lb (133,810 kg), gutted weight, for golden tilefish will be reached on or before April 10, 2009. To provide the commercial fishery participants adequate advance notice of the trip limit reduction, NMFS is reducing the commercial golden tilefish trip limit to 300 lb (136 kg) in the South Atlantic EEZ from 12:01 a.m., local time, April 21, 2009, until the quota is reached and the fishery closes or through December 31, 2009, whichever occurs first.

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 prior notice and opportunity for public comment is unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself has already been subject to notice and comment, and all that remains is to notify the public of the trip limit reduction. Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to implement this action in a timely manner to protect the fishery because the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to provide less than the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3). However, to provide reasonable notice of the trip limit reduction to the commercial fishery participants and allow them to adjust fishing practices accordingly, NMFS is providing a 7-day delay in the effectiveness of this trip limit reduction.

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: April 8, 2009.

Alan D. Risenhoover,

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

[FR Doc. E9–8530 Filed 4–13–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.090122047–9252–02]

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: Final rule.

SUMMARY: This final rule implements the Georges Bank (GB) Cod Hook Sector

(Hook Sector) Fishing Year (FY) 2009 Operations Plan and Agreement, approved by the Administrator, Northeast (NE) Region, NMFS (Regional Administrator), and allocates a hard total allowable catch (TAC) of GB cod to the Hook Sector. 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, the Hook Sector submitted an Operations Plan and Sector Contract entitled, ''Georges Bank Cod Hook Sector Fishing Year 2009–2010 Operations Plan and Agreement'' (together referred to as the Sector Agreement) and an Environmental Assessment (EA), and requested an allocation of GB cod, consistent with the FMP. This action results in authorization of the Sector Operations Plan for FY 2009 and allocation of 350.1 mt of GB cod to the Hook Sector.

DATES: Effective May 1, 2009, through April 30, 2010.

ADDRESSES: Copies of the Sector Agreement, EA, and the Final Regulatory Flexibility Analysis (FRFA) are available from the Northeast Regional Office: Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. These documents are also accessible via the Federal eRulemaking Portal: *http://www.regulations.gov*.

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: A proposed rule soliciting public comment on the Sector Agreement and EA for the Hook Sector was published in the **Federal Register** on February 10, 2009 (74 FR 6564), with public comment accepted through February 25, 2009. The Regional Administrator approved the FY 2009 Sector Operations Plan, after considering public comments, and based on a determination that the Sector Agreement is consistent with the goals of the FMP and applicable law and is in compliance with the regulations governing the development and operation of a sector as specified under § 648.87. Details pertaining to the principal regulations applying to the Hook Sector, the process of review and approval of sectors, and facts regarding the Hook Sector's submission of the FY 2009 Sector Agreement are contained in the proposed rule. An EA entitled ''Georges Bank Cod Hook Sector: An Environmental Assessment,'' which analyzes the impacts of the proposed Hook Sector operations, was also prepared.

On January 16, 2009, NMFS proposed a temporary Secretarial interim action (74 FR 2959) that would implement measures intended to reduce overfishing on several groundfish stocks. The proposed rule soliciting public comment on the Sector Agreement for the Hook Sector referenced three proposed interim measures that would impact operations of the Hook Sector: A 3,506–mt overall U.S. GB cod TAC; an expanded Gulf of Maine (GOM) differential Day-at-Sea (DAS) counting area that overlaps the GB Cod Hook Sector Area (Hook Sector Area); and elimination of the current prohibition on leasing DAS between sector vessels and non-sector vessels. On April 13, 2009, NMFS published a temporary final rule that differs from the proposed interim rule. This final rule approving the Hook Sector's FY 2009 Sector Operations Plan incorporates the changes implemented by the temporary final rule.

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.

The 2009 Sector Agreement contains the same elements and exemptions as the 2008 Sector Agreement. The Hook Sector Agreement will be overseen by a Board of Directors and a Sector Manager. The Hook Sector's GB cod TAC is based upon the Hook Sector members' qualifying historical landings of GB cod. The GB cod TAC is a ''hard'' TAC, meaning that, once the TAC is caught, Hook Sector vessels may not fish under a NE multispecies 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 in the following year will be reduced by an amount equivalent to the overharvest.

The FY 2009 Sector Agreement contains exemptions from the following restrictions of the FMP: The GB cod trip limit; the GOM, GB, and Southern New England (SNE) limits on the number of hooks fished; the GB Seasonal Closure Area; the DAS Leasing Program vessel size restrictions; differential DAS counting within the Hook Sector Area; and the Western U.S./Canada Area 72–hr observer program notification. Justification for the proposed exemptions and analysis of the potential impacts of the Operations Plan, with the exception of the exemption from differential DAS discussed below, are contained in the EA.

A total of 24 Hook Sector members signed the FY 2009 Hook Sector Contract. The GB cod TAC calculation is based upon the historical cod landings of the participating Hook Sector vessels. The allocation percentage is calculated by dividing the sum of total landings of GB cod landed by Hook Sector members in FY 1996 through 2001, by the sum of the total accumulated landings of GB cod landed by all NE multispecies vessels for the same time period. Based upon the qualifying landings histories of the Hook Sector members, the Hook Sector's share of the overall U.S. portion of the GB cod TAC is 8.09 percent, or 771,838 lb (350.1 mt) (8.09 percent times the 2009 fishery-wide GB cod target TAC of 9,541,607 lb (4,328 mt)). This is a larger TAC than the 284–mt TAC contained in the proposed rule for this action because the temporary final rule implements a 4,328–mt U.S. share of the GB cod target TAC rather than the 3,506–mt target TAC previously proposed.

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 are required to land fish only in designated landing ports and are 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 are 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 must 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 is required to provide NMFS with aggregate reports on a weekly basis. A total of 1/12 of the Hook Sector's GB cod TAC, minus a reserve, is allocated to each month of the fishing year. GB cod quota that is not landed during a given month will be rolled over into the following month. The harvest rules do 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 will not be allowed to fish with or have on board gear other than jigs, non-automated

demersal longline gear, or handgear. Participating Hook Sector vessels may use an unlimited number of hooks in the Hook Sector Area and are exempt from the GB Seasonal Closure Area.

Participating vessels are required to call the Sector Manager prior to leaving port on a fishing trip. All legal-sized cod caught must be retained, landed and counted against the Hook Sector's GB cod TAC. For each fishing trip, participating vessels are 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 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 because the Hook Sector's operations plans for those years were determined to be conservation equivalent to differential DAS counting for meeting the mortality reduction and stock rebuilding goals of both the 2006 Secretarial Action and Framework Adjustment 42.

An expanded GOM differential DAS counting area (i.e., the Interim Differential DAS Area) was proposed in the Secretarial interim action and NMFS specifically solicited public comment on exempting the Hook Sector. The temporary final rule does not implement the proposed Interim Differential DAS Area and instead maintains the existing differential DAS counting area in the GOM, as established in the FMP. However, the existing SNE Differential DAS Area is replaced by the Interim SNE Differential DAS Area which overlaps the Hook Sector Area. NE multispecies vessels declared into and fishing in the Interim SNE Differential DAS Area using hook gear are exempt from the differential DAS counting rate. NMFS is granting the Hook Sector an exemption from differential DAS counting in the Hook Sector Area consistent with the universal exemption from the differential DAS counting rate for all vessels using hook gear in the Interim SNE Differential DAS Area and a determination that the Hook Sector's operations plan is conservation equivalent to the GOM differential DAS counting. The determination of conservation equivalency is based upon landings data from recent years which demonstrate that the Hook Sector has very low impact on the stocks of concern addressed by the GOM Differential DAS Area and restrictive trip limits for yellowtail flounder, GB winter flounder, and white hake included in the Hook Sector's Sector Agreement.

Comments and Responses

Eight comments were received that addressed this action. Five comments were from commercial fishing industry groups, one from an environmental organization, one from the New England Fishery Management Council (Council), and one from an individual. Six of the commenters specifically supported approval of the operations plan. Two of the commenters commented only on specific exemption requests.

Comment 1: One industry group, Associated Fisheries of Maine, opposed granting the Hook Sector an exemption from differential DAS counting based upon the lack of measures in the Hook Sector's Operation Plan directly addressing conservation equivalency of the Operations Plan with the proposed Interim Differential DAS Area. However, three industry groups and one individual specifically supported exempting the Hook Sector from differential DAS counting. The Cape Cod Commercial Hook Fishermen's Association (CCCHFA) submitted a comment including a justification for exempting the Hook Sector from the proposed differential DAS counting area based on the very limited interaction of hook gear with yellowtail, witch, winter, and windowpane flounders, and the minimal catch of halibut and pollock by the Hook Sector.

Response: The temporary final rule does not implement the proposed Interim Differential DAS Area and instead maintains the existing differential DAS counting area in the GOM. NMFS is granting the Hook Sector an exemption from differential DAS counting in the Hook Sector Area consistent with the universal exemption from the differential DAS counting rate for all vessels using hook gear in the Interim SNE Differential DAS Area and a determination that the Hook Sector's operations plan is conservation equivalent to the GOM differential DAS counting, as discussed above.

Comment 2: The Council opposed granting the Hook Sector an exemption from the DAS Leasing Program size restrictions if it was interpreted to apply to the leasing of DAS from small sector boats to large non-sector boats because this would be inconsistent with the intent of the DAS Leasing Program as adopted in Amendment 13. Two industry groups and one individual supported granting the Hook Sector an exemption from the DAS Leasing Program size restrictions. Comments submitted by the CCCHFA and the Hook Sector expressed their support, with the understanding that leases between sector and non-sector vessels would not be exempt from the DAS Leasing Program size restrictions. One individual also supported granting the exemption from the DAS Leasing Program size restrictions.

Response: The exemption from the size restrictions of the DAS Leasing Program for leases between Hook Sector vessels is granted because vessel size is not the limiting factor in determining the number of hooks that can be fished by a vessel, and therefore, the exemption will not result in an increase in effort within the sector. The Secretarial interim action did not grant an exemption from the DAS Leasing Program size restrictions for DAS leases between sector and non-sector vessels and such an exemption is not granted by this action.

Comment 3: The GB cod TAC proposed for allocation to the Hook Sector was based on the 3,506–mt U.S. fishery-wide GB cod target TAC published in the proposed interim rule. The Council asserted that the GB cod TAC being allocated to the Hook Sector was incorrectly based on the estimated TAC for the entire GB cod stock, including the portion of that TAC that is caught by Canadian vessels in Canadian waters (1,173 mt for 2009). The Council stated that the Hook Sector's GB cod TAC should be based on 2,333 mt (3,506 mt — 1,173 mt).

Response: The 3,506–mt figure was correct and was based on the 4,679–mt estimated TAC for the entire GB cod stock (4,679 mt - 1,173 mt) that is proposed for FY 2009. Accordingly, the Hook Sector TAC was correct as proposed. However, this action allocates a larger GB cod TAC (350.1 mt) to the Hook Sector than was proposed (284 mt) because the temporary final rule implements a 4,328–mt U.S. share of the GB cod target TAC rather than the 3,506–mt target TAC previously proposed.

A Letter of Authorization will be issued to each member of the Hook Sector exempting them, conditional upon their compliance with the Sector Agreement, from the limits on the number of hooks that may be fished in the GOM, GB, and SNE regulated mesh areas; the GB Seasonal Closure Area; differential DAS counting; the DAS Leasing Program vessel size restrictions; the Western U.S./Canada Area 72–hr observer notification requirement; and GB cod possession restrictions, as specified in §§ 648.80; 648.81; 648.82; 648.85; and 648.86, respectively.

Classification

NMFS has determined that this final rule is consistent with the FMP, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable laws.

Pursuant to 5 U.S.C. 553(d)(1), the Assistant Administrator for Fisheries, NOAA, (Assistant Administrator) has determined that this rule is not subject to the 30-day delayed effectiveness provision of the Administrative Procedure Act because it provides the basis for NMFS to grant, effective with the start of the fishing year on May 1, 2009, Hook Sector members exemptions from the following regulations implementing the FMP:

1. GB cod trip limits;
2. GB Seasonal Closure Area;
3. GOM, GB, and SNE limit on number of hooks fished;
4. DAS Leasing Program size restrictions; and
5. 72-hour advance notification of the observer program for trips to the Western U.S./Canada Management Area.

Because the Hook Sector will be fishing under a hard TAC for GB cod, effort controls (i.e., exemptions 1–4 above) are not necessary to constrain the impact of the Fixed Gear Sector on the GB cod stock. Also, the Hook Sector is restricted to using hook gear, which has extremely limited interaction with yellowtail flounder, making it unnecessary for the Hook Sector to have observers monitor Hook Sector catch of yellowtail flounder in the Western U.S./Canada Management Area (exemption 5 above). Should the Hook Sector's allocated GB cod TAC be harvested, participating vessels would no longer be allowed to fish under a NE multispecies DAS, possess or land GB cod or other regulated species managed under the FMP, or use gear capable of catching groundfish (unless fishing under recreational or charter/party regulations). Hook Sector members will be required to fish under their current NE multispecies DAS allocation to account for any other regulated NE multispecies that they may catch while fishing for GB cod.

In order for GB cod to be allocated to the Hook Sector, and the Hook Sector authorized to fish in FY 2009, the Hook Sector must submit an Operations Plan and Sector Contract to the Regional Administrator for approval. The Hook Sector submitted its FY 2009 Operations Plan on September 30, 2008, followed by a signed Sector Contract on October 1, 2008, and an EA on November 14, 2008. On January 16, 2009, NMFS published a proposed interim action that proposed measures intended to reduce overfishing on certain groundfish stocks, based on a new benchmark stock assessment completed in August 2008. Three of the proposed interim measures would have impacted operations of the Hook Sector: A 3,506–mt overall U.S. GB cod TAC; an expanded Gulf of Maine Differential DAS counting area that overlaps the Hook Sector Area; and elimination of the current prohibition on leasing DAS between sector vessels and non-sector vessels. NMFS also published a proposed rule soliciting comment on the proposed Operations Plan of the Hook Sector on February 10, 2009, and specifically solicited comment on the interaction of the proposed interim action and the proposed sector operations. The comment period on the proposed sector operations plan ended on February 25, 2009. On April 13, 2009, NMFS published a temporary final rule that differs from the proposed interim rule. The Regional Administrator approved the FY 2009 Sector Operations Plan, after review of the public comments and a determination that the Operations Plan and Agreement are consistent with the goals of the FMP and applicable law, and are in compliance with the regulations governing the development and operation of a sector as specified under § 648.87.

Implementation of the Sector Operations Plan is meant to mitigate adverse economic impacts that resulted from Amendment 13 and FW 42 to the FMP by granting exemptions to the Hook Sector. Establishing an effective date 30 days after the publication of this final rule would prevent the Hook Sector from commencing sector operations with the start of the fishing year on May 1, 2009. Delaying the implementation beyond May 1, 2009, would result in an unnecessary economic loss to the members of the Hook Sector because vessels would be prevented from fishing in a month when 15 percent of the annual GB cod landings historically occur, and when the price for GB cod is highest. During the month of May, landings of cod by hook gear are at their highest, and the Hook Sector is exempt from both hook limits and a seasonal closure of a large portion of its historic fishing area. Further, vessels participating in the Hook Sector in FY 2008 are currently operating under the exemptions above. Delaying implementation beyond May 1, 2009, would create a gap in the annual exemptions for this sector, forcing these vessels to remove gear currently in the water at a high expense.

This final rule is exempt from the procedures of Executive Order (E.O.) 12866 because this action contains no implementing regulations.

This final rule does not contain policies with federalism or ''takings'' implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively. There are no Federal rules that duplicate, overlap, or conflict with this final rule.

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS responses to those comments, and a summary of the analyses completed to support the action.

A description of why this action was considered, along with the objectives of, and the legal basis for this rule is contained in the preamble to this rule as well as in sections 1.0, 2.0, and 3.0 of the EA prepared for this action, which is not repeated here.

Summary of the Issues Raised by Public Comments in Response to the IRFA. A Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made From the Proposed Rule as a Result of Such Comments

No public comments pertaining to the IRFA or the economic effects of this action were received.

Description of and Estimate of the Number of Small Entities to Which the Proposed Rule Would Apply

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 participants in the Hook Sector is 24,

substantially less than the total number of active vessels in the groundfish fishery. Only these 24 vessels will be subject to the regulatory exemptions and operational restrictions proposed for the Hook Sector for FY 2009.

Description of the Projected Reporting, Record-keeping, and Other Requirements of the Rule

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

Description of Steps the Agency Has Taken to Minimize the Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes

This action allocates a GB cod TAC of 350.1 mt to the Hook Sector, unless changed through the Secretarial interim final rule, as discussed in this preamble. 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). Vessel owners 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 rule and in the EA.

This action will positively impact the 24 vessels that have voluntarily joined the Hook Sector. The approval of the Hook Sector and allocation of GB cod TAC will indirectly benefit the communities of Chatham, MA, and Harwichport, MA, and to a lesser extent other Cape Cod communities involved in the groundfish fishery. The Hook Sector fishermen and the communities of Chatham, MA, and Harwichport, MA, 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 and communities. 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.

In contrast, under the No Action alternative, all Hook Sector members would have remained in the common pool of vessels and fished under all the rules implemented by Amendment 13 and subsequent actions. Under the regulatory scenario of the No Action alternative, relative to the alternative implemented by this rule, Hook Sector members would likely have faced increased economic uncertainty, loss of efficiency, and loss of revenue, as noted above. Because cod usually represents a high proportion of total fishing income for hook gear vessels, revenues for Hook Sector members are sensitive to regulations that impact how and when they can fish for cod, such as possession limits and restrictions on the number of hooks that can be fished. A copy of this analysis is available from NMFS (see **ADDRESSES**).

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to Hook Sector members that also serves as small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Regional Administrator. The guide and this final rule will be available upon request.

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

Dated: April 8, 2009.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. E9–8521 Filed 4–13–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 061228342–7068–02]

RIN 0648–XO47

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Total Allowable Catch Harvested for Management Area 2

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

ACTION: Temporary rule; Closure.

SUMMARY: NMFS announces that, effective 0001 hours, April 15, 2009, federally permitted vessels may not fish for, catch, possess, transfer, or land more than 2,000 lb (907.2 kg) of Atlantic herring in or from Management Area 2 (Area 2) per trip or calendar day until January 1, 2010, when the 2010 total allowable catch (TAC) becomes

available, except for transiting purposes as described in this notice. This action is based on the determination that 95 percent of the Atlantic herring TAC allocated to Area 2 for 2009 is projected to be harvested by April 14, 2009. Regulations governing the Atlantic herring fishery require publication of this notification to advise vessel and dealer permit holders that no TAC is available for the directed fishery for Atlantic herring harvested from Area 2.

DATES: Effective 0001 hrs local time, April 15, 2009, through January 1, 2010.

FOR FURTHER INFORMATION CONTACT: Aja Peters-Mason, Fishery Management Specialist, (978) 281–9195.

SUPPLEMENTARY INFORMATION: Regulations governing the Atlantic herring fishery are found at 50 CFR part 648. The regulations require annual specification of optimum yield, domestic and foreign fishing, domestic and joint venture processing, and management area TACs. The 2009 TAC allocated to Area 2 (72 FR 17807, April 10, 2007) is 30,000 mt. The initial TAC included a Research Set Aside of 900 mt that was restored to the fishery when it was not allocated for research (73 FR 74631, December 9, 2008).

The regulations at § 648.201 require the Administrator, Northeast Region, NMFS (Regional Administrator), to monitor the Atlantic herring fishery in each of the four management areas designated in the Fishery Management Plan (FMP) for the Atlantic herring fishery and, based upon dealer reports, state data, and other available information, to determine when the harvest of Atlantic herring is projected to reach 95 percent of the TAC allocated. When such a determination is made, NMFS is required to publish notification in the **Federal Register** of this determination. Effective upon a specific date, NMFS must notify vessel and dealer permit holders that vessels are prohibited from fishing for, catching, possessing, transferring, or landing more than 2,000 lb (907.2 kg) of herring per trip or calendar day in or from the specified management area for the remainder of the closure period. Transiting of Area 2 with more than 2,000 lb (907.2 kg) of herring on board is allowed under the conditions specified below.

The Regional Administrator has determined, based upon dealer reports and other available information, that 95 percent of the total Atlantic herring TAC allocated to Area 2 for the 2009 fishing year is projected to be harvested. Therefore, effective 0001 hrs local time, April 15, 2009, federally permitted vessels may not fish for, catch, possess, transfer, or land more than 2,000 lb (907.2 kg) of Atlantic herring in or from Area 2 per trip or calendar day through January 1, 2010. Vessels transiting Area 2 with more than 2,000 lb (907.2 kg) of herring on board may land this amount provided such herring was not caught in Area 2 and provided all fishing gear is stowed and not available for immediate use as required by § 648.23(b). Effective April 15, 2009, federally permitted dealers are also advised that they may not purchase Atlantic herring from federally permitted Atlantic herring vessels that harvest more than 2,000 lb (907.2 kg) of Atlantic herring from Area 2 through 2400 hrs local time, January 1, 2010.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest. This action closes the Atlantic herring fishery for Management Area 2 until January 1, 2010, under current regulations. The regulations at § 648.201(a) require such action to ensure that Atlantic herring vessels do not exceed the 2009 TAC. The Atlantic herring fishery opened for the 2009 fishing year at 0001 hours on January 1, 2009. Data indicating the Atlantic herring fleet will have landed at least 95 percent of the 2009 TAC have only recently become available.

If implementation of this closure is delayed to solicit prior public comment, the quota for this fishing year will be exceeded, thereby undermining the conservation objectives of the FMP. The AA further finds, pursuant to 5 U.S.C 553(d)(3), good cause to waive the thirty (30) day delayed effectiveness period for the reasons stated above.

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

Dated: April 8, 2009.

Alan D. Risenhoover,

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

[FR Doc. E9–8496 Filed 4–9–09; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 090123054–9591–02]

RIN 0648–XM12

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; 2009 Georges Bank Cod Fixed Gear 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: Final rule.

SUMMARY: This final rule implements the Georges Bank (GB) Cod Fixed Gear Sector (Fixed Gear Sector) Fishing Year (FY) 2009 Operations Plan and Agreement, approved by the Administrator, Northeast (NE) Region, NMFS (Regional Administrator), and allocates a hard total allowable catch (TAC) of GB cod to the Fixed Gear Sector. Framework Adjustment 42 (FW 42) to the NE Multispecies Fishery Management Plan (FMP) authorized allocation of up to 20 percent of the annual GB cod TAC to the Fixed Gear Sector. Pursuant to that authorization, the Fixed Gear Sector submitted an Operations Plan and Sector Contract, entitled ''Georges Bank Cod Fixed Gear Sector Fishing Year 2009–2010 Operations Plan and Agreement'' (together referred to as the Sector Agreement), and an Environmental Assessment (EA), and requested an allocation of GB cod, consistent with the FMP. This action results in authorization of the Sector Operations Plan for FY 2009 and allocation of 503.8 mt of GB cod to the Fixed Gear Sector.

DATES: Effective May 1, 2009, through April 30, 2010.

ADDRESSES: Copies of the Sector Agreement, EA, and the Final Regulatory Flexibility Analysis (FRFA) are available from the Northeast Regional Office: Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. These documents are also accessible via the Federal eRulemaking Portal: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Melissa Vasquez, Fishery Management Specialist, phone (978) 281–9166, fax

(978) 281–9135, e-mail *Melissa.Vasquez@NOAA.gov.*

SUPPLEMENTARY INFORMATION: A proposed rule soliciting public comment on the Sector Agreement for the Fixed Gear Sector was published in the **Federal Register** on February 12, 2009, (74 FR 7029) with public comment accepted through February 27, 2009. The Regional Administrator approved the FY 2009 Sector Operations Plan, after review of the public comments, and based on a determination that the Operations Plan and Agreement are consistent with the goals of the FMP and applicable law and are in compliance with the regulations governing the development and operation of a sector as specified under § 648.87. Details pertaining to the principal regulations applying to the Fixed Gear Sector, the process of review and approval of sectors, and facts regarding the Fixed Gear Sector's submission of the FY 2009 Sector Agreement are contained in the proposed rule. An EA entitled ''Georges Bank Cod Fixed Gear Sector: An Environmental Assessment,'' which analyzes the impacts of the proposed Fixed Gear Sector operations, was also prepared and is available to the public (see **ADDRESSES**).

On January 16, 2009, NMFS published a proposed interim action (74 FR 2959) that proposed measures intended to reduce overfishing on certain groundfish stocks. The proposed rule soliciting public comment on the Sector Agreement for the Fixed Gear Sector referenced three proposed interim measures that would impact operations of the Fixed Gear Sector: A 3,506–mt overall U.S. GB cod TAC; an expanded Gulf of Maine (GOM) differential Day-at-Sea (DAS) counting area that overlaps the GB Cod Hook Sector Area (Hook Sector Area); and elimination of the current prohibition on leasing DAS between sector vessels and non-sector vessels. On April 13, 2009, NMFS published a temporary final rule that differs from the proposed interim rule. This final rule approving the Fixed Gear Sector's FY 2009 Sector Operations Plan incorporates the changes implemented by the temporary final rule.

The Fixed Gear Sector was authorized to fish in FYs 2006, 2007, and 2008, and, based upon the GB cod landings history of its members, was allocated <1.0, 10.7, and 14.0 percent, respectively, of the annual GB cod TACs.

The 2009 Fixed Gear Sector Agreement contains the same elements and exemptions as the 2008 Fixed Gear Sector Agreement and Operations Plan. The Fixed Gear Sector Agreement will be overseen by a Board of Directors and a Sector Manager. The Fixed Gear Sector's GB cod TAC is based upon the number of Fixed Gear Sector members and their qualifying historical landings of GB cod. The GB cod TAC is a ''hard'' TAC, meaning that, once the TAC is caught, Fixed Gear Sector vessels may not fish under a NE multispecies 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 Sector's allocation in the following year will be reduced by an amount equivalent to the overharvest.

The FY 2009 Sector Agreement contains exemptions from the following restrictions of the FMP: The GB cod trip limit; the GOM, GB, and Southern New England (SNE) limits on the number of hooks fished; and the GB Seasonal Closure Area when using hook gear. Justification for the proposed exemptions and analysis of the potential impacts of the Operations Plan are contained in the EA.

A total of 23 Fixed Gear Sector members signed the FY 2009 Fixed Gear Sector Contract. The GB cod TAC calculation is based upon the historical cod landings of the participating Fixed Gear Sector vessels, regardless of gear used. The allocation percentage is calculated by dividing the sum of total landings of GB cod landed by Fixed Gear Sector members in FY 1996 through 2001 by the sum of the total accumulated landings of GB cod landed by all NE multispecies vessels for the same time period. Based upon the qualifying landings histories of the Fixed Gear Sector members, the Fixed Gear Sector's share of the overall U.S. portion of the GB cod TAC is 11.64 percent, or 1,110,689 lb (503.8 mt) (11.64 percent times the fishery-wide U.S. portion of the GB cod target TAC of 9,541,607 lb (4,328 mt)). This is a larger TAC than the 408–mt TAC contained in the proposed rule for this action because the temporary final rule implements a 4,328–mt U.S. share of the GB cod target TAC rather than the 3,506–mt target TAC previously proposed.

The Sector Contract contains procedures for the enforcement of the Operations Plan, a schedule of penalties, and provides the authority to the Fixed Gear Sector Manager to issue stop fishing orders to members of the Fixed Gear Sector. Participating vessels are required to land fish only in designated landing ports and are required to provide the Fixed Gear Sector Manager with a copy of the Vessel Trip Report (VTR) within 48 hr of offloading. Dealers purchasing fish from participating vessels are required to provide the Fixed Gear Sector Manager with a copy of the dealer report on a weekly basis. On a monthly basis, the Fixed Gear Sector Manager must transmit to NMFS aggregate catch data from dealer slips and aggregate discard data from the VTRs. After 90 percent of the Fixed Gear Sector's allocation has been harvested, the Fixed Gear Sector Manager is required to provide NMFS with aggregate reports on a weekly basis. A total of 1/12 of the Fixed Gear Sector's GB cod TAC, minus a reserve, is allocated to each month of the fishing year. GB cod quota that is not landed during a given month will be rolled over into the following month. The harvest rules do 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.

For each fishing trip, participating vessels are 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 are required to call the Sector Manager prior to leaving port. All legal-sized cod caught must be retained, landed and counted against the Fixed Gear Sector's aggregate allocation. Participating vessels may not fish with or have on board gear other than jigs, non-automated demersal longline, handgear, or sink gillnets. Participating Fixed Gear Sector vessels fishing with hook gear may use an unlimited number of hooks in the Sector Area, as defined under § 648.87, and are exempt from the GB Seasonal Closure Area during May.

Comments and Responses

Seven comments were received that addressed this action. Four comments were from commercial fishing industry groups, one from an environmental organization, one from the New England Fishery Management Council (Council), and one from an individual. Six of the commenters supported approval of the operations plan and no commenters opposed it.

Comment 1: The Fixed Gear Sector, GB Cod Hook Sector (Hook Sector), and Cape Cod Commercial Hook Fishermen's Association (CCCHFA) each commented that the FY 2009 GB cod TAC reduction proposed in the Secretarial interim action will likely

result in an early end to the fishing year for the Fixed Gear Sector. All three recommended allowing the existing sectors to transfer or lease cod quota in FY 2009 to mitigate the impact of the proposed TAC reduction, and suggested that the proposed interim reduction in DAS and the proposed SNE Closure Area would minimize additional mortality on associated stocks of concern.

Response: This action allocates a larger GB cod TAC to the Fixed Gear Sector than was proposed because the temporary final rule implements a 4,328–mt U.S. share of the GB cod target TAC rather than the 3,506–mt target TAC previously proposed. However, this is still a reduction from FY 2008. The proposed FY 2009 Operations Plan and Agreement did not contain provisions for quota transfers or leases between existing sectors and, thus, the Council and public have not had an opportunity to comment on such measures. Further, the EA contains no analysis of quota transfers or leases. Because the public has not had opportunity to consider allowing quota transfers and leases among the existing sectors, nor review an analysis of this measure, quota transfers and leases are not authorized under this action.

Comment 2: The GB cod TAC proposed for allocation to the Fixed Gear Sector was based on the 3,506–mt U.S. fishery-wide GB cod target TAC published in the proposed interim action. In a comment on the proposed rule, the Council asserted that the GB cod TAC proposed to be allocated to the Fixed Gear Sector was incorrectly based on the estimated TAC for the entire GB cod stock, including the portion of that TAC that is caught by Canadian vessels in Canadian waters (1,173 mt for 2009). The Council stated that the Fixed Gear Sector's GB cod TAC should be based on 2,333 mt (3,506 mt — 1,173 mt).

Response: The 3,506–mt figure was correct, and was based on the 4,679–mt estimated TAC for the entire GB cod stock (4,679 mt - 1,173 mt) that was proposed for FY 2009. Accordingly, the Fixed Gear Sector TAC was correct as proposed. However, this action allocates a larger GB cod TAC (503.8 mt) to the Fixed Gear Sector than was proposed (408 mt) because the temporary final rule implements a 4,328–mt U.S. share of the GB cod target TAC rather than the 3,506–mt target TAC previously proposed.

Comment 3: The Hook Sector, Fixed Gear Sector, CCCHFA, Environmental Defense Fund, Midcoast Fishermen's Association and Island Institute; and one individual supported the approval of the Fixed Gear Sector's FY 2009 Operations Plan and Agreement. These comments each stated that the operations of the Fixed Gear Sector have reduced discards of GB cod, increased accountability, and improved profitability for members.

Response: NMFS agrees and has approved the FY 2009 Operations Plan and Agreement. A Letter of Authorization will be issued to each member of the Fixed Gear Sector exempting them, conditional upon their compliance with the Sector Contract, from the 3,600–hook limit in the GB Regional Management Area (RMA), the 2,000–hook limit in the GOM and SNE RMAs, the GB Seasonal Closure Area when using hook gear, and the GB cod possession restrictions as specified in §§ 648.80, 648.81, and 648.86, respectively.

Classification

NMFS has determined that this final rule is consistent with the FMP, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable laws.

Pursuant to 5 U.S.C. 553(d)(1), the Assistant Administrator for Fisheries, NOAA, (Assistant Administrator) has determined that this rule is not subject to the 30-day delayed effectiveness provision of the Administrative Procedure Act because it provides the basis for NMFS to grant, effective with the start of the fishing year on May 1, 2009, Fixed Gear Sector members exemptions from the following regulations implementing the FMP:

1. GB cod trip limits;
2. GB Seasonal Closure Area when using hook gear; and
3. GOM, GB, and SNE limit on number of hooks fished.

Because the Fixed Gear Sector will be fishing under a hard TAC for GB cod, effort controls (i.e., exemptions 1–3 above) are not necessary to constrain the impact of the Fixed Gear Sector on the GB cod stock. Should the Fixed Gear Sector's allocated GB cod TAC be harvested, participating vessels would no longer be allowed to fish under a NE multispecies DAS, possess or land GB cod or other regulated species managed under the FMP, or use gear capable of catching groundfish (unless fishing under recreational or charter/party regulations). Fixed Gear Sector members will be required to fish under their current NE multispecies DAS allocation to account for any other regulated NE multispecies that they may catch while fishing for GB cod and are restricted to using hook gear or sink gillnets only.

In order for GB cod to be allocated to the Fixed Gear Sector and the Fixed Gear Sector authorized to fish in FY 2009, the Fixed Gear Sector must submit an Operations Plan and Sector Contract to the Regional Administrator for approval. The Fixed Gear Sector submitted its FY 2009 Operations Plan on September 30, 2008, followed by signed Sector Contracts on October 1, 2008, and an EA on November 14, 2008. On January 16, 2009, NMFS published a proposed interim action that proposed measures intended to reduce overfishing on certain groundfish stocks, based on a new benchmark stock assessment completed in August 2008. Three of the proposed interim measures would have impacted operations of the Fixed Gear Sector: A 3,506–mt overall U.S. GB cod TAC; an expanded Gulf of Maine Differential DAS counting area that overlaps the Hook Sector Area; and elimination of the current prohibition on leasing DAS between sector vessels and non-sector vessels. NMFS also published a proposed rule soliciting comment on the proposed Operations Plan of the Fixed Gear Sector on February 12, 2009, and specifically solicited comment on the interaction of the proposed interim action and the proposed sector operations. The comment period on the proposed sector operations plan ended on February 27, 2009. On April 13, 2009, NMFS published a temporary final rule that differs from the proposed interim rule. The Regional Administrator approved the FY 2009 Sector Operations Plan, after review of the public comments and a determination that the Operations Plan and Agreement are consistent with the goals of the FMP and applicable law, and are in compliance with the regulations governing the development and operation of a sector as specified under § 648.87.

Implementation of the Sector Operations Plan is meant to mitigate adverse economic impacts that resulted from Amendment 13 and FW 42 to the FMP by granting exemptions to the Fixed Gear Sector. Establishing an effective date 30 days after the publication of this final rule would prevent the Fixed Gear Sector from commencing sector operations with the start of the fishing year on May 1, 2009. Delaying the implementation beyond May 1, 2009, would result in an unnecessary economic loss to the members of the Fixed Gear Sector because vessels would be prevented from fishing in a month when 15 percent of the annual GB cod landings historically occur, and when the price for GB cod is highest. During the month of May, landings of cod by hook gear are at their highest, and the Fixed Gear Sector is exempt from both hook limits

and a seasonal closure of a large portion of its historic fishing area while using hook gear. Further, vessels participating in the Fixed Gear Sector in FY 2008 are currently operating under the exemptions above. Delaying implementation beyond May 1, 2009, would create a gap in the annual exemptions for this sector, forcing these vessels to remove gear currently in the water at a high expense.

This final rule is exempt from the procedures of Executive Order (E.O.) 12866 because this action contains no implementing regulations. This final rule does not contain policies with federalism or ''takings'' implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively. There are no Federal rules that duplicate, overlap, or conflict with this final rule.

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), prepared this FRFA in support of the 2009 GB Cod Fixed Gear Sector Operations Plan and allocation of GB cod TAC. The FRFA incorporates the economic impacts identified in the Initial Regulatory Flexibility Analysis (IRFA), which was summarized in the preamble of the proposed rule and the corresponding analysis in the EA prepared for this action. A description of why this action was considered, along with the objectives of, and the legal basis for, this rule are contained in the preamble to this rule, as well as in sections 1.0, 2.0, and 3.0 of the EA prepared for this action, which are not repeated here.

Summary of the Issues Raised by Public Comments in Response to the IRFA. A Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made From the Proposed Rule as a Result of Such Comments

No public comments pertaining to the IRFA or the economic effects of this action were received.

Description of and Estimate of the Number of Small Entities to Which the Proposed Rule Would Apply

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 Fixed Gear 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 Fixed Gear 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 Fixed Gear Sector is 23, substantially less than the total number of active vessels in the groundfish fishery. Only these 23 vessels would be subject to the regulatory exemptions and operational restrictions proposed for the Fixed Gear Sector for FY 2009.

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

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

Description of Steps the Agency Has Taken to Minimize the Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes

This action allocates a GB cod TAC of 503.8 mt to the Fixed Gear Sector. Once the GB cod TAC is harvested, participating vessels will 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). Vessel owners intending to fish in the Fixed Gear Sector during FY 2009 may only fish with hook gear or sink gillnets. Under the proposed Operations Plan, members will be exempt from several restrictions of the FMP described in the preamble to this rule and in the EA.

The Fixed Gear 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 and communities. 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.

Cod, skate wings, and monkfish comprised the largest proportion of Fixed Gear Sector landings (40.70 percent, 23.62 percent, and 9.78 percent, respectively, in FY 2007). During FY 2007, members of the Fixed Gear Sector made 632 trips; landed 721,315 lb (327,183 kg) of cod, 418,679 lb (189,910 kg) of skate wings, 173,270 lb (78,594 kg) of whole monkfish, and 20,209 lb (9,167 kg) of monkfish tails; and generated approximately $ 1,348,859, $ 230,273, $ 344,807, and $ 62,648 in revenue from those species, respectively (assuming dockside prices of $ 1.87, $ 0.55, $ 1.99, and $ 3.10 per lb ($ 4.11, $ 1.21, $ 4.38 and $ 6.82 per kg), respectively). Fixed Gear Sector members also landed various other species, which increased their revenue. In general, the operation of the Fixed Gear 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). The Fixed Gear 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, Fixed Gear 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. Two hundred seventy-three of the Fixed Gear Sector's 632 trips (43 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 349,705 lb (158,624 kg) (46 percent of the Fixed Gear Sector's FY 2007 cod landings) being landed, rather than discarded. For some vessel owners in the Fixed Gear Sector, participation in the Fixed Gear Sector enables their businesses to remain economically viable.

In contrast, under the No Action Alternative, the Fixed Gear Sector members would have remained in the common pool and fished under the regulations implemented in Amendment 13 and subsequent actions. Because cod usually represents a high proportion of total fishing income for Cape Cod-based fixed 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 Fixed Gear Sector vessels would experience revenue losses in comparison to the proposed action. It is more likely under the No Action alternative that disruption to the Chatham and Harwichport communities would occur. A copy of this analysis is available from NMFS (see **ADDRESSES**).

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to Fixed Gear Sector members that also serves as a small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Regional Administrator. The guide and this final rule will be available upon request.

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

Dated: April 8, 2009.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. E9–8508 Filed 4–13–09; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0810141351–9087–02]

RIN 0648–XO63

Fisheries of the Exclusive Economic Zone Off Alaska; Directed Fishing With Trawl Gear by American Fisheries Act Catcher Processors in Bycatch Limitation Zone 1 of 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 with trawl gear, other than pelagic trawl gear for walleye pollock, by American Fisheries Act (AFA) trawl catcher processors in Bycatch Limitation Zone 1 of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the sideboard limit of the 2009 bycatch allowance of red king crab in Zone 1 specified for AFA trawl catcher processors in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 7, 2009, though 2400 hrs, A.l.t., December 31, 2009.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

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 sideboard limit of the 2009 bycatch allowance of red king crab in Zone 1 specified for the AFA trawl catcher processors in the BSAI is 1,231 crab as established by the final 2009 and 2010 harvest specifications for groundfish in the BSAI (74 FR 7359, February 17, 2009).

In accordance with § 679.64(a)(2) and (3), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the sideboard limit of red king crab in Zone 1 specified for the AFA catcher processors in the BSAI will be caught. Therefore, NMFS is prohibiting directed fishing with trawl gear in Zone 1, other than pelagic trawl gear for walleye pollock, by AFA trawl catcher processors in the BSAI.

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 directed fishing with trawl gear, other than pelagic trawl gear for walleye pollock, by AFA trawl 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 April 6, 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 § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: April 8, 2009.

Alan D. Risenhoover,

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

[FR Doc. E9–8510 Filed 4–13–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910091344–9056–02]

RIN 0648–XO32

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in the West Yakutat District 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 the West Yakutat District of the Gulf of Alaska (GOA). This action is necessary to fully use the 2009 total allowable catch (TAC) of pollock specified for the West Yakutat District of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 8, 2009, through 2400 hrs, A.l.t., December 31, 2009. Comments must be received at the following address no later than 4:30 p.m., A.l.t., April 28, 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 RIN 0648–XO32, 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 the West Yakutat District of the GOA under § 679.20(d)(1)(iii) on March 21, 2009, was announced in the **Federal Register** on April 14, 2009.

NMFS has determined that approximately 286 mt of pollock remain in the directed fishing allowance in the West Yakutat District 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 2009 TAC of pollock in the West Yakutat District, NMFS is terminating the previous closure and is reopening directed fishing for pollock in the West Yakutat District of the GOA.

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 the West Yakutat District 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 April 6, 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 the West Yakutat District 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 April 28, 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: April 8, 2009.

Alan D. Risenhoover,

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

[FR Doc. E9–8511 Filed 4–13–09; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910091344–9056–02]

RIN 0648–XO30

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in the West Yakutat District 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 pollock in the West Yakutat District of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2009 total allowable catch (TAC) of pollock in the West Yakutat District of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 21, 2009, through 2400 hrs, A.l.t., December 31, 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 2009 TAC of pollock in the West Yakutat District of the GOA is 1,215 metric tons (mt) as established by the final 2009 and 2010 harvest specifications for groundfish of the GOA (74 FR 7333, February 17, 2009).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the 2009 TAC of pollock in the West Yakutat District of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,200 mt, and is setting aside the remaining 15 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in the West Yakutat District 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 pollock in the West Yakutat District 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 March 19, 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: April 8, 2009.

Alan D. Risenhoover,

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

[FR Doc. E9–8513 Filed 4–13–09; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 080721859–9592–03]

RIN 0648–AX01

Fisheries of the Exclusive Economic Zone Off Alaska, Groundfish of the Gulf of Alaska; Correction

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

ACTION: Final rule; correction.

SUMMARY: NMFS is correcting the preamble to a final rule published in the **Federal Register** on January 21, 2009 (74 FR 3446). The final rule implemented a regulatory amendment to exempt fishermen using dinglebar fishing gear in federal waters of the Gulf of Alaska from the requirement to carry a vessel monitoring system (VMS). This correction is necessary to summarize and respond to public comments received on the proposed rule. No changes to the requirements of the final rule result from this correction.

DATES: Effective April 14, 2009.

FOR FURTHER INFORMATION CONTACT: Ben Muse, 907–586–7228.

SUPPLEMENTARY INFORMATION: Groundfish fisheries in the Gulf of Alaska (GOA) are managed under the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson–Stevens Fishery Conservation and Management Act (Magnuson–Stevens Act). Regulations implementing the FMP appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

On January 21, 2009, NMFS published a final rule that exempts vessels in the Gulf of Alaska with dinglebar gear onboard from vessel monitoring system (VMS) requirements (74 FR 3446). Previously, dinglebar fishermen participating in the State of Alaska–managed fishery for in the Gulf of Alaska were required to carry VMS to facilitate enforcement of regulations that prohibit fishing in habitat areas of particular concern (HAPC), specifically Coral Habitat Protection Areas in the Fairweather Grounds and near Cape Ommaney in the Gulf of Alaska. VMS data from the eight vessels that participated in the fishery in 2007 show that fishery participants did not fish in the Gulf of Alaska Coral Habitat Protection Areas; fishing occurred at shallower depths than where the sensitive corals occur; and the bottom types preferred by sensitive coral species are avoided by dinglebar fishermen. NMFS has determined that the risk of damage posed by dinglebar vessels to sensitive corals protected within habitat areas of particular concern is minor, and insufficient to justify the costs of VMS.

The preamble to the final rule incorrectly stated that no comments were received on the proposed rule for this action, which was published on October 3, 2008 (73 FR 57585). In fact, 5 letters of comment were received by NMFS during the comment period that ended November 3, 2008. Three of the letters endorsed the exemption, two opposed it, and one (of those that opposed) addressed an opinion of the federal government that was not relevant to the proposed action and is not responded to below. After consideration of these comments, NMFS has made no change to the final rule published January 21, 2009 (74 FR 3446). Information on the purpose and justification for the VMS exemption is presented in the proposed and final rules.

Correction

In the final rule for this action (74 FR 3446), published on January 21, 2009, make the following correction. On page 3448, in the first column, correct the third paragraph to read:

"Response to comments

A proposed rule for this action was published October 3, 2008 (73 FR 57585), and the comment period ended November 3, 2008. Five letters of comment were received by NMFS during the comment period. Three of the letters endorsed the exemption, two opposed it, and one (of the ones that opposed) addressed an opinion of the federal government that was not relevant to the proposed action and is not responded to below. After consideration of these comments, NMFS has made no changes to the final rule. The following is a summary of the comments received and NMFS's response.

Comment 1: The risk of damage posed to protected corals in the Gulf of Alaska by the dinglebar fishery is minor and insufficient to justify the costs of VMS. We don't believe that granting this exemption will harm or provide less protection for the HAPC areas. The analysis also revealed that the dinglebar fishery for targets a different substrate type (folded sandstone) than the substrates that typically support Primnoa species corals (bedrock and boulders). It is appropriate to exempt dinglebar fishermen targeting from VMS requirements, as VMS represents an unnecessary burden to a small fleet.

Response: NMFS agrees that the risk of damage to Primnoa corals does not justify the cost imposed on the small scale operations in this fishery. NMFS' reasoning is discussed in the response to Comment 2, below. The analysis supporting the final rule did not make specific statements about the types of substrate supporting Primnoa corals, but did point out that the fishing grounds dinglebar fishermen chose to fish have a different type of substrate than that found in the protected areas.

Comment 2: The potential for damage to the Primnoa corals is too great to justify relaxing the VMS requirement for vessels using dinglebar gear. Dinglebar gear is by definition bottom contact gear and is very capable of damaging the corals in the GOA Coral Habitat protection Areas. While 2007 VMS data shows fishermen operating close to and not within the GOA Coral Habitat Protection Areas, the obvious reason for this is that VMS is doing its job of keeping bottom contact fishermen out of the areas. However, are common in the areas. A marine biologist providing testimony to the Council indicated this. This creates an incentive for dinglebar operations to enter these areas. Minor damage is too much damage.

Response: NMFS does not believe this action creates a significant risk of damage to Primnoa corals in the protected areas. The decision was not only based on the observation that vessels didn't enter these areas in 2007; the analysis supporting the final rule acknowledged that the VMS could be creating a deterrent. Agency approval of

the VMS exemption was based on a cumulative consideration of several factors. The analysis indicated that there appeared to be limited overlap between the depths at which dinglebar fishing took place, and the depths present in the protected areas; the analysis indicated that, on the basis of VMS data in 2007, dinglebar fishermen tended to target different bottom habitats than those present in the protected areas; and the analysis indicated that there had historically been very little dinglebar activity in the Alaska Department of Fish and Game statistical area containing the Cape Ommaney protected area.

Comment 3: The analysis supporting this action fails to address the question of the presence of in the designated areas. are common in those areas, as a marine biologist has attested. Do not approve this exemption until the analysis has first been revised to include this critical data and the Council has been given the opportunity to reconsider its decision based on the revised analysis.

Response: For the reasons discussed in the response to Comment 2, NMFS does not believe that the presence of lingcod would present a significant risk of damage to the corals in this area.

Comment 4: Any program that expands VMS requirements must include reimbursement to the individual fisherman for the cost of the VMS unit including installation and operating costs.

Response: This final rule does not expand VMS requirements.

Comment 5: The commenter was unable to use the website to submit comments, and had to submit a comment by email instead. A website that does not work is no use.

Response: NMFS does not know the reason why the commenter was unable to use the website. The web site, ''Regulations.gov'' is a Federal government web site serving many agencies. Currently the website is operating successfully, and NMFS has received thousands of letters of comment through it. A person experiencing problems with Regulations.gov should contact Regulations.gov directly. NMFS notes that the commenter was able to submit a comment via email.''

Dated: April 8, 2009.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. E9–8517 Filed 4–13–09; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 70
Tuesday, April 14, 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 AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. APHIS–2008–0147]

Change in Disease Status of the Republic of Korea With Regard to Foot-and-Mouth Disease and Rinderpest; Availability of an Environmental Assessment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability of an environmental assessment.

SUMMARY: We are advising the public that an environmental assessment has been prepared by the Animal and Plant Health Inspection Service relative to a proposed rule that would add the Republic of Korea to the list of regions considered free of rinderpest and foot-and-mouth disease. The environmental assessment documents our review and analysis of environmental impacts associated with adding the Republic of Korea to the list of regions considered free of rinderpest and foot-and-mouth disease. We are making this environmental assessment available to the public for review and comment.

DATES: We will consider all comments that we receive on or before May 29, 2009.

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

- Federal eRulemaking Portal: Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0147* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2008–0147, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2008–0147.

Reading Room: You may read any comments that we receive on the environmental assessment in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Julia Punderson, Senior Staff Veterinarian, Regionalization Evaluation Services, National Center for Import and Export, VS, APHIS, 4700 River Road, Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

In a proposed rule [1] titled ''Change in Disease Status of the Republic of Korea With Regard to Foot-and-Mouth Disease and Rinderpest'' and published in the **Federal Register** on March 30, 2009 (74 FR 14093–14097, Docket No. APHIS–2008–0147), we proposed to amend the regulations in 9 CFR part 94 by adding the Republic of Korea to the list of regions that are considered free of rinderpest and foot-and-mouth disease.

APHIS' review and analysis of the potential environmental impacts associated with adding the Republic of Korea to the list of regions considered free of rinderpest and foot-and-mouth disease are documented in detail in an environmental assessment entitled ''Proposed Rule for the Status of the Republic of Korea Regarding Foot-and-Mouth Disease and Rinderpest: Environmental Assessment'' (February 2009). We are making this environmental assessment available to the public for review and comment. We will consider all comments that we receive on or before the date listed under the heading **DATES** at the beginning of this notice.

[1] To view the proposed rule and environmental assessment, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0147.*

The environmental assessment may be viewed on the Regulations.gov Web site or in our reading room (*see* **ADDRESSES** above for a link to Regulations.gov and information on the location and hours of the reading room). You may request paper copies of the environmental assessment by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the environmental assessment when requesting copies.

The environmental assessment was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 8th day of April 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–8494 Filed 4–13–09; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

RIN 3150 AI25

[NRC–2008–0619]

Requirements for Fingerprinting for Criminal History Record Checks of Individuals Granted Unescorted Access to Research and Test Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is issuing this Advance Notice of Proposed Rulemaking (ANPR) to begin the process of establishing generic requirements for NRC research and test reactor (RTR) licensees to obtain fingerprint-based criminal history record checks on individuals having unescorted access to their facilities. This action is taken to inform all interested parties of the

options that the NRC is considering for implementing the requirements of the Energy Policy Act of 2005 (EPAct) as they pertain to RTRs.

DATES: Submit comments by June 15, 2009. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only of comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. 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. All commenters should ensure that sensitive or Safeguards Information is not contained in their responses or comments to this ANPR.

Federal e-Rulemaking Portal: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2008–0619. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov*.

E-mail Comments To: Rulemaking.Comments@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1677.

Mail Comments To: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

Hand Deliver Comments To: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. during Federal workdays. (Telephone (301) 415–1677).

Fax Comments To: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

You can access publicly available documents related to this document using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee.

NRC's Agencywide Document Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1 800–397–4209, or (301) 415–4737, or by e-mail to *PDR.Resource@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Harry Tovmassian, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–3092, e-mail *harry.tovmassian@nrc.gov*; or Linh Tran, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–4103, e-mail *linh.tran@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Background

Before the terrorist actions of September 11, 2001, NRC regulations in 10 CFR 73.60 and 10 CFR 73.67 imposed physical protection requirements on RTRs that included measures for storing and using special nuclear material in controlled access areas, monitoring the controlled access areas for unauthorized activities, and ensuring a response to all unauthorized activities to protect special nuclear material from theft or diversion. Additionally, 10 CFR 73.60(f) implemented the Commission's authority to impose alternative or additional security measures for the protection against radiological sabotage for RTRs licensed to operate at power levels at or above two megawatts thermal (MWt). Under this provision, several RTRs have implemented such additional measures. Subsequent to September 11, 2001, the NRC evaluated the adequacy of security at RTRs and considered whether additional actions should be taken to help ensure the trustworthiness and reliability of individuals with unescorted access to RTRs. RTRs were advised to consider taking immediate additional precautions, including observation of activities within their facility. The NRC evaluated these additional measures at each facility during the remainder of 2001.

From 2002 through 2004, RTRs voluntarily implemented compensatory measures (CM) that included site-specific background investigations for individuals granted unescorted access. Depending on local restrictions, such as university rules, some of these background investigations included provisions for Federal Bureau of Investigation (FBI) fingerprint-based criminal history record checks, while checks at other RTRs included provisions for local or State law enforcement fingerprint-based criminal history record checks. Investigations at some RTRs did not include any fingerprinting. The NRC has also conducted security assessments at certain RTRs which helped to identify risk-significant areas and materials.

On August 8, 2005, the President signed the EPAct into law. Among other features, Section 652 of the EPAct amended Section 149 of the Atomic Energy Act of 1954 (AEA) and provided the NRC with additional authority to require fingerprint-based criminal history record checks for unescorted access to a broader class of its licensees, including RTRs. Before the passage of the EPAct, Section 149 limited the NRC's authority to require fingerprinting of individuals being considered for unescorted access to nuclear power plants.

In October 2005, the NRC staff informed the Commission of the staff's plan for implementing the NRC's responsibilities under the EPAct and requested Commission approval of the staff's funding recommendation for fiscal year 2006. The Commission approved the staff's recommendations and directed the staff to recommend appropriate interim regulatory actions that the NRC should implement while it developed the generic requirements for granting unescorted access, including the provisions in Section 652 of the EPAct pertaining to fingerprinting.

In January 2007, the NRC staff provided information and recommendations to the Commission on its EPAct interim implementation plan. In March 2007, the Commission directed the NRC staff to issue orders to RTRs to require fingerprint-based criminal history record checks for individuals with unescorted access to these facilities. The orders were to require fingerprinting only for individuals with unescorted access to risk-significant areas or materials within the facilities. The Commission also directed the NRC staff to proceed with a rulemaking to determine if fingerprint-based criminal history record checks should be required for additional RTR personnel.

On April 30, 2007, the NRC issued NRC Order EA–07–074, ''Order Imposing Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to Research and Test Reactors,'' (ADAMS Accession No. ML070750140) (72 FR 25337; May 4, 2007). On August 1, 2007, the NRC issued Order EA–07–098, ''Order Imposing Fingerprinting and Criminal History Records Check Requirements for

Unescorted Access to the General Atomics' Research and Test Reactor,'' (ADAMS Accession No. ML072050494) (72 FR 44590; August 8, 2007). These orders required RTR licensees to conduct FBI fingerprint-based criminal history record checks for individuals granted unescorted access to special nuclear materials at their facilities.

The Commission directed the NRC staff to implement the EPAct on an interim basis through orders while developing a rule because it was necessary to implement the requirements immediately for common defense and security. Unlike the requirements of a rule, the orders apply only to the licensees named in the orders and would not apply prospectively to applicants for new licenses. Therefore, the NRC would have to periodically issue orders as needed to cover new and amended licenses, and perhaps reissue them periodically to existing licensees if requirements or administrative practices change. Finally, to improve regulatory efficiency and stability, it is appropriate to place generally applicable requirements in the regulations, rather than to rely on orders indefinitely to impose these requirements.

This ANPR is being published to obtain stakeholder views on the issues associated with the proposal to require fingerprint-based criminal record checks for individuals granted unescorted access to RTRs. The rulemaking would generically require RTR licensees to ensure that individuals granted unescorted access to risk-significant areas and risk-significant materials at RTRs are subject to an FBI fingerprint-based criminal history record check or an acceptable alternative. The rulemaking process, which will include a proposed and final rule as well as this ANPR, will provide RTR licensees and other interested stakeholders several opportunities to comment on the proposed requirements to ensure transparency in the development of requirements designed to provide adequate protection of the public health and safety and the common defense and security.

Existing Requirements Pertaining to Research and Test Reactors

The security of RTRs is regulated through requirements located in part 73 of the Commission's regulations. The specific security measures that are required vary depending on several factors, which include the quantity and type of special nuclear material possessed by the licensee, as well as the power level at which the licensee is authorized to operate. For RTRs that possess special nuclear material of moderate or low strategic significance (defined by 10 CFR 73.2), 10 CFR 73.67(b)(c)(d) and 73.67(f), as applicable, specify the basic fixed site physical security requirements (*e.g.*, storage and access controls). Sections 73.60(a) through (e) specify additional requirements for physical protection at RTRs with a formula quantity of strategic special nuclear material that is not readily separable from other radioactive material and that has a total dose rate of less than 100 rem per hour at 3 feet without shielding. For licensees subject to these requirements, the provisions of 10 CFR 73.60 are intended to be implemented in addition to the applicable requirements of 10 CFR 73.67.

In addition, 10 CFR 73.60(f) specifies that ''* * * the Commission may require, depending on the individual facility and site conditions, any alternate or additional measures deemed necessary to protect against radiological sabotage at non-power reactors licensed to operate at or above a power level of 2 megawatts thermal.'' As noted previously, these additional measures have been imposed on several NRC licensees who are licensed to operate at these levels.

Sections 73.60 and 73.67 require RTRs, at a minimum, to store and to use special nuclear material in controlled access areas, monitor the controlled access areas for unauthorized activities, and ensure a response to all unauthorized activities. These regulations also require that unescorted access to the controlled access areas be limited to authorized individuals. The RTRs implement these requirements on a site-specific basis through their security plans and procedures. As previously mentioned, RTRs also implemented site-specific background investigations or checks in their voluntarily adopted CMs, and obtained an FBI fingerprint-based criminal history record check for individuals granted unescorted access to special nuclear material under NRC orders.

Rulemaking Considerations

As a result of the EPAct, the NRC is directed by Section 149 of the AEA to require the licensee to obtain a fingerprint-based criminal history record check for any individual who is permitted unescorted access to (i) a utilization facility; or (ii) radioactive material or other property subject to regulation by the Commission that the Commission determines to be of such significance to the public health and safety or the common defense and security as to warrant fingerprinting and background checks. Section 149 requires that the fingerprints that are collected by licensees be submitted to the FBI through the NRC. The statute is clear that all persons who are granted unescorted access to these facilities, areas, or materials as designated by the NRC must be fingerprinted, unless relieved by rule. Section 149 permits the NRC to relieve certain individuals by rule from the fingerprinting requirement. Currently, the NRC has not issued a regulation that would relieve any person granted unescorted access to an RTR from the fingerprinting requirement.

As noted previously, the NRC issued site-specific orders to satisfy the mandate of the EPAct. Each RTR licensee was required by those orders to obtain an FBI fingerprint-based criminal history record check for individuals before granting unescorted access to special nuclear materials. Those orders remain in effect. The orders require each licensee to obtain the fingerprints of each individual who is seeking or permitted unescorted access. Specifically, the orders state that, ''an individual who is granted 'unescorted access' could exercise physical control over the special nuclear material possessed by the licensee, which would be of significance to the common defense and security or would adversely affect the health and safety of the public, such that the special nuclear material could be used or removed in an unauthorized manner without detection, assessment, or response by systems or persons designated to detect, assess or respond to such unauthorized use or removal.'' In implementing the requirement of the EPAct on an interim basis, the orders were issued requiring fingerprinting only for individuals with unescorted access to risk-significant materials (*i.e.*, fuel), within the research and test reactor facilities.

Although the interim order requirements were limited to risk-significant materials of the licensee's facility, the Commission solicits comment on whether the scope of the unescorted access fingerprinting requirement in the order should be broadened in the proposed rule to include unescorted access to appropriate areas of the facility. This would ensure that all of the risk-significant materials and equipment in the facility are protected, rather than just the special nuclear material. Under the existing requirements, licensees must conduct the FBI fingerprint-based criminal history record checks for individuals who could exercise physical control over the special nuclear material; existing requirements do not,

however, specifically address unescorted access to the physical areas surrounding the special nuclear material or the reactor itself.

All RTRs are licensed as utilization facilities as that term is defined by Section 11 of the AEA and 10 CFR 50.2. However, because RTRs are all uniquely configured and not susceptible to a generic classification of what portion or portions of a larger facility constitute the part of the ''utilization facility'' for which unescorted access is an issue, the NRC is seeking comment on whether defining this term too broadly might frustrate the agency's regulatory objectives, interfere with other statutory mandates of the AEA, or inefficiently implement the intent of the EPAct. For example, imposing an FBI fingerprint-based criminal history record check for all individuals with unescorted access to all areas of a generically-defined utilization facility could potentially hinder research and education activities, create undue administrative burdens, and be a costly, but unnecessary requirement for licensees. It may be better to design the requirement in such a way that FBI fingerprint-based criminal history record checks at an RTR facility are limited to individuals with unescorted access to the ''areas of significance'' within the facility. The ''areas of significance'' would likely encompass the nuclear reactor as well as fuel storage areas and the components designed specifically for reactor safety and protection of the public health and safety. To ensure consistency among the RTRs in implementing the EPAct, the NRC is considering defining ''areas of significance'' as the protective boundary requiring FBI fingerprint-based criminal record checks for granting of unescorted access. Individuals who have unescorted access to the ''areas of significance,'' without verification of trustworthiness and reliability, could directly perform malevolent acts or may facilitate others in commission of these acts, involving special nuclear material or equipment that would directly or indirectly endanger the public health and safety by exposure to radiation.

Specific Considerations

The NRC proposes to specify the requirement to have a fingerprint-based criminal history record check for individuals with unescorted access to RTRs through a revision of 10 CFR 73.60. The NRC proposes to add a new paragraph (g) ''Requirements for criminal history record checks of individuals granted unescorted access,'' to the existing regulation at 10 CFR 73.60. The NRC is proposing to require that each RTR licensee have: (1) A program for obtaining fingerprint-based criminal record checks for individuals granted unescorted access to ''areas of significance;'' (2) a procedure to assure that certain prohibited information is not used as the basis for the denial of unescorted access; (3) specific procedures for the conduct of fingerprinting; (4) a procedure for correction or completion of criminal record information; (5) a procedure for protection of information; and (6) a procedure for official review.

Before determining the exact nature of a proposed rule implementing the requirements of the EPAct, the NRC is seeking comments on this matter from stakeholders. Specific areas on which the Commission is requesting comments are discussed in the following sections. Comments accompanied by supporting rationale are particularly requested on the following questions or subjects.

Areas of Significance

Under the EPAct's mandate to require fingerprinting for unescorted access to utilization facilities, the NRC is proposing to require fingerprint-based criminal history record checks only for individuals granted unescorted access to the ''areas of significance'' within the RTR facility. As noted earlier, the unique nature of each RTR makes it difficult to develop a generically-applicable definition of ''utilization facility'' that would result in an effective and implementable regulation. This objective would be better achieved by limiting this requirement to an area within the RTRs identified as the ''area of significance.'' Generally speaking, the NRC considers ''areas of significance'' of a particular RTR as physically bounded location(s) within the facility where special nuclear material and/or equipment are contained, such that access to, or disruption within the area could cause an event endangering the general public heath and safety by exposure to radiation. In attempting to determine what specific areas of an RTR might generically constitute ''areas of significance,'' the NRC identified three potential options: (1) Controlled access areas (CAAs) as defined in 10 CFR 73.2; (2) areas of the facility as determined in each licensee's security assessment; or (3) prescriptive locations, such as the reactor (regardless of type), spent fuel storage areas, fresh fuel storage areas, fresh fuel processing areas, control room, areas containing engineered safety feature equipment, if applicable, areas of containment/confinement, if applicable, and areas containing coolant piping, if applicable.

Regarding option 1, the NRC believes that areas at the facility that are designated as CAAs are already defined in each licensee's security plans or security procedures and access to these CAAs is already being controlled. Regarding Option 2, licensee's security assessments could be used to identify ''areas of significance'' as areas designated to be protected against malevolent activities such as theft or sabotage.

Areas of Significance Issues

Keeping these options in mind, the NRC is seeking specific comment on the following questions and issues:

1. Which of these definitions of ''areas of significance'' should be adopted by the NRC? Are there other preferable ways to define ''areas of significance''? If so, what should they be and what are their advantages and disadvantages?

2. What would be the approximate number of additional personnel that must be fingerprinted for unescorted access based on the ''areas of significance'' as described in Question 1? Are there any specific categories of persons whom the NRC should consider exempting from fingerprinting?

3. What is the estimated cost or impact of performing security plan or procedure revisions, and of providing the necessary administrative controls and training to implement fingerprint requirements for individuals permitted unescorted access to ''areas of significance'' such as those described in Question 1?

Unescorted Access

The NRC is also considering a definition of unescorted access that would be specific to the RTR facilities. The current concept of ''unescorted access'' for power reactors is not readily applicable to RTRs because of an RTR's site-specific configuration. For the purpose of the orders, an individual who is required to be authorized by the licensee for ''unescorted access'' is someone who could exercise physical control over the special nuclear material possessed by the licensee. These individuals include those with the capability and knowledge to use the special nuclear material in the utilization facility or to remove the special nuclear material from the utilization facility without detection, assessment, or response by the physical protection system. Because the focus of this rulemaking effort is related to the trustworthiness and reliability of individuals being granted unescorted access to the facility, and not just access to the special nuclear material, the NRC plans to define an individual with

unescorted access to the utilization facility as any individual who has the ability to access licensee-designated ''areas of significance'' without continuous direct supervision or monitoring by an authorized individual.

The NRC Seeks Stakeholders' Views on the Following Questions

4. Is the proposed definition of individuals with unescorted access reasonable and sufficient? If not, why? For example, should persons granted unescorted access to ''areas of significance'' be permitted access to the facility at times when no supervision or oversight is present (*e.g.*, evenings or weekends)? Should the NRC require access controls such as maintaining records of the time and duration of persons accessing an ''area of significance'' without escorts?

Implementation of the Orders

To develop the proposed requirements for fingerprint-based criminal history record checks, the NRC would like feedback from stakeholders on their experiences in implementing the orders that were issued in April 2007, such as:

5. What has worked well, what has not, and why?

6. What requirements were found to be the most burdensome? Are there less burdensome alternatives that would accomplish the same level of protection?

7. Are there requirements in the orders that appear to contribute little to the security of the facility? Could the same resources be used more effectively in other ways?

8. Are there other enhancements that could be made?

9. Has the implementation of the orders identified any new issues that should be addressed through rulemaking?

Others Items of Interest to the NRC

Because RTRs all have unique site-specific configurations, the NRC is seeking stakeholders' views on the most effective way to formulate regulations that continue to provide adequate safety to the public without imposing an unnecessary burden on any individual licensee. During the development and implementation of the orders, the NRC identified several issues for which it planned to provide clarification in the rulemaking process. One issue was obtaining the fingerprints of a person for whom an FBI fingerprint-based criminal history record check is unlikely to yield reliable results. The FBI criminal history record check does not provide information on individuals who are under eighteen years of age, and will only obtain information on an individual's criminal history record within the United States. Thus, for foreign nationals who have never lived in the United States, students who are 18 years old or younger, or even U.S. citizens who have lived abroad for much or all of their adult lives, the criminal history record check is unlikely to provide any useful information regarding a person's trustworthiness and reliability. However, as noted earlier, Section 149 of the AEA requires the obtaining of fingerprints for all persons granted unescorted access, except if these persons are relieved by rule.

In Light of This, the NRC Seeks Stakeholders' Views on the Following Questions

10. Regarding alternatives to fingerprinting foreign nationals and/or minors regarding a trustworthiness and reliability determination: (a) Do foreign nationals and/or minors require unescorted access to ''areas of significance''? (b) are there alternative methods to obtain information upon which a licensee could base a trustworthiness and reliability determination for these individuals?

11. Is there any additional information that the NRC should consider in preparing the proposed rule?

Proposed rule language was not included in this ANPR. During the public comment period for this ANPR, the NRC plans to conduct a public workshop to discuss this rulemaking with stakeholders. Thus, RTR licensees and other interested stakeholders will have several opportunities to provide their comments for the NRC's consideration.

Dated at Rockville, Maryland, this 8th day of April 2009.

For the Nuclear Regulatory Commission.

J. Samuel Walker,

Acting Secretary of the Commission.

[FR Doc. E9–8461 Filed 4–13–09; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–144689–04]

RIN 1545–BD71

Determination of Distributive Share When a Partner's Interest Changes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations regarding the determination of partners' distributive shares of partnership items of income, gain, loss, deduction and credit when a partner's interests varies during a partnership taxable year. Also, the proposed regulations modify the existing regulations regarding the required taxable year of a partnership. These proposed regulations affect partnerships and their partners.

DATES: Written or electronic comments and requests for a public hearing must be received by July 13, 2009.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–144689–04), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–144689–04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC; or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–144689–04).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Laura Fields or Jonathan Cornwell at (202) 622–3050, concerning submissions of comments and the hearing, Richard Hurst at (202) 622–7180 (not toll-free numbers) or *Richard.A.Hurst@irscounsel.treas.gov*.

SUPPLEMENTARY INFORMATION:

Background

These proposed regulations contain amendments to the Income Tax Regulations (26 CFR part 1) under section 706 of the Internal Revenue Code (Code). These amendments are proposed to conform the Income Tax Regulations for certain of the provisions of section 1246 of the Taxpayer Relief Act of 1997, Public Law 105–34 (111 Stat. 788 (1997)) (the 1997 Act) and section 72 of the Deficit Reduction Act

of 1984, Public Law 98–369 (98 Stat. 494 (1984)) (the 1984 Act).

Also, under section 706(d)(1), the Treasury Secretary may provide in regulations various methods for determining a partner's distributive share of partnership items of income, gain, loss, deduction and credit that takes into account the varying interests of the partners for any taxable year of the partnership in which there is a change in the interest of a partner. Pursuant to that grant of regulatory authority, the proposed regulations provide methods for determining a partner's distributive share of partnership items to take into account the varying interests of the partners in any year in which there is a change in a partner's interest in the partnership. Also, the proposed regulations provide that a deemed disposition of a partner's entire interest under other sections of the regulations is a deemed disposition of a partner's entire interest for the purpose of section 706(d).

Finally, the proposed regulations amend the rules applicable to the determination of the taxable year of a partnership in those instances in which partnership interests are held by ''disregarded foreign partners'' (as that term is defined in § 1.706–1(b)(6)(i)).

1. Varying Interest Rule

a. In General

Section 702(a) of the Code provides that the partner in determining the partner's income tax shall take into account separately the partner's distributive share of partnership items of income, gain, loss, deduction, or credit.

Section 706(a) provides that, in computing the taxable income of a partner for a taxable year, the inclusions required by sections 702 and 707(c) with respect to a partnership shall be based on the income, gain, loss, deduction, or credit of the partnership for any taxable year of the partnership ending within or with the taxable year of the partner.

Section 706(c)(1) provides that, except in the case of a termination of a partnership and except as provided in section 706(c)(2), the taxable year of a partnership shall not close as the result of the death of a partner, the entry of a new partner, the liquidation of a partner's interest in the partnership, or the sale or exchange of a partner's interest in the partnership. Under section 706(c)(2)(A), the taxable year of a partnership shall close with respect to a partner whose entire interest terminates (whether by reason of death, liquidation, or otherwise). Under section 706(c)(2)(B), the taxable year of a partnership shall not close (other than at the end of a partnership's taxable year as determined under section 706(b)(1)) with respect to a partner who sells or exchanges less than his entire interest in the partnership or with respect to a partner whose interest is reduced (whether by entry of a new partner, partial liquidation of a partner's interest, gift, or otherwise).

Section 706(d)(1) provides that, except as required by sections 706(d)(2) and (d)(3), if there is a change in a partner's interest in the partnership during the partnership's taxable year, each partner's distributive share of any partnership item of income, gain, loss, deduction or credit for such taxable year is determined by the use of any method prescribed by the Secretary by regulations which takes into account the varying interests of the partners in the partnership during such taxable year (the varying interests rule). Section 706(d)(1) was added by the 1984 Act, in part, to clarify that the varying interests rule applies to the disposition of a partner's entire interest in the partnership as well as the disposition of less than a partner's entire interest, and to authorize the Secretary to prescribe methods for determining a partner's distributive share of partnership items when there is a change in the partners' interests during the taxable year of the partnership.

The existing regulations under section 706 have not been revised to reflect the changes made to that section by the 1984 Act. Section 1.706–1(c)(2)(ii) provides that in the case of a disposition of a partner's entire interest in a partnership the partner's distributive share of partnership items for the taxable year of the partnership in which the disposition occurs may be determined by a closing of the partnership's books as of the date of disposition (interim closing method). Alternatively, the partners by agreement may determine the departing partner's distributive share by taking his pro rata part of the amount of partnership items that such partner would have included in his taxable income had he remained a partner until the end of the partnership taxable year (proration method). Section 1.706–1(c)(2)(ii). The proration may be based on the portion of the taxable year that has elapsed prior to the disposition or may be determined under any other method that is reasonable. Moreover, the transferee of such departing partner's interest shall include in his taxable income as his distributive share of partnership items with respect to the acquired interest the pro rata part (determined by the method used by the transferor partner) of the amount of such items that would have been included had he been a partner from the beginning of the partnership's taxable year. The existing regulations, however, do not specifically provide for the use of these methods when there has been a disposition of less a partner's entire interest in the partnership.

In Rev. Rul. 77–310 (1977–2 CB 217) (see § 601.601(d)(2)(ii)(*b*)), the IRS provided an example of an acceptable method for allocating a partnership loss for the partnership's taxable year among the partners where their profit and loss sharing percentages were changed substantially one month before the end of the taxable year as a result of capital contributions of several existing partners. The ruling provided that an acceptable method, under the facts of the ruling, was to allocate the partnership's loss among the partners based on their differing profit and loss sharing percentages and the periods during the year each partner's differing percentage interests existed. See also Rev. Rul. 77–311 (1977–2 CB 218), (applying the same method to a partnership's distributive share of a loss from a lower-tier partnership). See § 601.601(d)(2)(ii)(*b*).

Finally, the existing regulations under section 706 have not been revised to reflect the change to that section by the 1997 Act requiring that the taxable year of the partnership shall close with respect to a partner whose entire interest in the partnership terminates by reason of death. In that regard, § 1.706–1(c)(3) provides that, when a partner dies, the partnership taxable year shall not close with respect to such partner prior to the end of the partnership's taxable year.

b. Change in Partnership Allocations Among Contemporaneous Partners

Section 761(c) provides that a partnership agreement includes any modifications of the partnership agreement made prior to, or at, the time prescribed by law for the filing of the partnership return for the taxable year (not including extensions). In *Lipke* v. *Commissioner,* 81 T.C. 689 (1983), the Tax Court held that section 706(c)(2)(B) (as in effect prior to the 1984 Act) prohibited retroactive allocations of partnership losses where the allocations resulted from additional capital contributions made by both new and existing partners. However, the Tax Court held that the prohibition on retroactive allocations under section 706(c)(2)(B) did not apply to changes in the allocations among partners who were members of the partnership for the entire year (contemporaneous partners)

if the changes in the allocations did not result from capital contributions. *Lipke v. Commissioner,* supra, at 696 (1983).

As previously discussed, the 1984 Act amended section 706, in part, to clarify that the varying interests rule applies to any change in a partner's interest, whether in connection with a complete disposition of the partner's interest or otherwise. To that end, Congress in the 1984 Act replaced the varying interests rule in section 706(c)(2)(B) with the rule that now appears in Section 706(d)(1). The legislative history pertaining to this amendment reflects Congress's intention that the new rule of section 706(d)(1) be comparable to the pre-1984 law without overruling the longstanding rule of section 761(c).

The committee wishes to make clear that the varying interests rule is not intended to override the longstanding rule of section 761(c) with respect to interest shifts among partners who are members of the partnership for the entire taxable year, provided such shifts are not, in substance, attributable to the influx of new capital from such partners. *See Lipke v. Commissioner*, 81 T.C. 689 (1983).

S. Prt. 98–169, Vol. I, 98th Cong., 2d Sess. 218–19 (1984); see also H. Rep. No. 432, Pt. 2, 98th Cong., 2d Sess. 1212–13 (1984) (containing similar language).

c. Conventions

Section 1.706–1(c)(2)(ii) provides that, in determining the distributive share of partnership items under section 702(a) with respect to a partner whose entire interest in the partnership terminates, a partnership may use the interim closing method or alternatively, the partners may by agreement choose to use the proration method. Under the proration method, the partnership's income and losses may be prorated based on the portion of the taxable year that has elapsed prior to the date upon which the partners' interests varied, or ''under any other method that is reasonable.'' These other reasonable methods have become known as conventions.

Staff of J. Comm. On Taxation, 98th Cong., General Explanation of the Revenue Provisions of the Deficit Reduction Act of 1984, 222 (Comm. Print 1984), provides,

[I]n any case in which there is a disposition of less than an entire interest in the partnership by a partner (including the entry of a new partner), the partners may elect to determine the varying interests of the partners by using one or more conventions that treat any change in any partner's interest in the partnership during a particular month as occurring on one or more specified days in the month. The actual method for applying a convention is to be provided by Treasury regulations. The regulations may deny the use of any convention when the occurrence of significant, discrete events (e.g., a large, unusual gain or loss) would mean that use of the convention could result in significant tax avoidance.

* * * Congress intended that the regulations providing for these conventions will be effective on a prospective basis only. Until these regulations are proposed, and for a reasonable transition period thereafter, it is expected that Treasury will permit any reasonable convention to be used. This may include a method under which any partner entering during a month is treated as entering on the first day of the month, a method under which partners entering during the first 15 days of a month are treated as entering on the first day of the month and partners entering after the 15th of the month are treated as entering on the 16th day of the month, or any other method that is not abusive under the relevant facts and circumstances. As a general rule, use of a convention is not permitted when the occurrence of significant, discrete events (e.g., a large, unusual gain or loss) would result in significant tax avoidance if the convention is used.

On December 13, 1984, the IRS issued a news release (IR–84–129) (*http://www.irs.gov/puv/irs-drop/ir-84–129.pdf*) announcing that partnerships using the interim closing method were permitted to use a semi-monthly convention. Under a semi-monthly convention, partners entering during the first 15 days of the month are treated as entering on the first day of the month, and partners entering after the 15th day of the month (but before the end of the month) are treated as entering on the 16th day of the month (except to the extent that section 706(c)(2)(A) applied). The news release provided that, until regulations were issued, partnerships that use the proration method were required to use a daily convention.

d. Deemed Dispositions

Section 1.1502–76(b)(2)(i) provides that the federal income tax returns for the years that end and begin with a corporation becoming (or ceasing to be) a member (as defined in § 1.1502–1(b)) of a consolidated group (as defined in § 1.1502–1(h)) are separate tax years for all Federal income tax purposes. The periods ending and beginning with the corporation's change in status are different tax years, and the corporation's items of income, gain, loss, deduction and credit must be allocated between such separate tax years. Under § 1.1502–76(b)(2)(vi), if the corporation is a partner in a partnership, the corporation is treated for purposes of determining the year to which the partnership's items are allocated as selling the corporation's entire interest in the partnership immediately before the corporation's change in status.

Section 1.1362–3(a) provides that, if an S election (as defined in section 1362(a)) terminates under section 1362(d) on a date other than the first day of the taxable year of the S corporation (as defined in section 1361(a)), the portion of the year ending as of the close of the day prior to the termination is treated as a short taxable year for which the corporation is an S corporation (S short year) and the portion of the S termination year beginning on the day of the termination is effective is treated as a short taxable year for which the corporation is a C corporation (as defined in section 1362(a)(2)) (C short year). Under § 1.1362–3(a), the corporation's items of income, gain, loss, deduction and credit must be allocated between the S short year and C short year using the pro rata allocation approach stated in section 1362(e)(2) unless an election is made to allocate the items using its normal accounting method or in certain other instances described in sections 1362(e)(3), 1362(e)(6)(C) or 1362(e)(6)(D). Under § 1.1362–3(c)(1), for purposes of section 706(c) only, the termination of the S election of a corporation that is a partner in a partnership is treated as a sale or exchange of the corporation's entire interest in the partnership on the last day of the S short year if (i) the pro rata allocation rules do not apply and (ii) the taxable year of the partnership ends with or within the C short year.

Under section 1377(a)(2), if a shareholder terminates the shareholder's entire interest in an S corporation and all affected shareholders (as defined in section 1377(a)(2)(B)) and the corporation agree, the S corporation may elect under section 1377(a)(2) (terminating election) to apply the pro rata allocation method (as defined in section 1377(a)(1)) as if the S corporation's taxable year consisted of two separate taxable years, the first of which ends at the close of the day on which the shareholder's entire interest in the S corporation is terminated. (See § 1.1377–1(b)(1) for certain exceptions to the preceding rule.) Under § 1.1377(b)(3)(iv), a terminating election by an S corporation that is a partner in a partnership is treated as a sale or exchange of the corporation's entire interest in the partnership for purposes of section 706(c) if the taxable year of the partnership ends after the shareholder's interest is terminated and within the taxable year of the S corporation.

2. Taxable Years of Partnerships

A partnership must determine its taxable year under section 706(b)(1)(B)

unless the partnership establishes to the satisfaction of the Secretary a business purpose for a different year. In general, the required taxable year of a partnership is determined by reference to the taxable year of its partners. If partners owning a majority interest in a partnership have the same taxable year, the partnership is required to have the same taxable year as the majority interest owners (majority interest taxable year). If a taxable year for the partnership cannot be determined under the majority interest taxable year rule, the taxable year of the partnership shall be the taxable year of all of its principal partners (principal partner taxable year). Finally, if there is not taxable year described under the majority interest taxable year rule or principal partner taxable year rule, then the partnership is required under the regulations to have the taxable year that results in the least aggregate deferral of income. Section 1.706–1(b)(2)(C).

Under § 1.706–1(b)(6)(i), the interest held by a disregarded foreign partner is not taken into account in determining the taxable year of the partnership under the foregoing rules. A foreign partner is a disregarded foreign partner unless such partner is allocated gross income that was effectively connected with the conduct of a trade or business of the partnership within the U.S. and taxation of such income is not otherwise precluded under any U.S. income tax treaty. The interest of a disregarded foreign partner is taken into account in determining the taxable year of the partnership, however, if the partners that are not disregarded foreign partners (regarded partners) hold a minority interest in the partnership (minority interest rule). Section 1.706–1(b)(6)(iii). Regarded partners hold a minority interest for this purpose if each regarded partner holds less than a 10-percent interest in capital or profits of the partnership, and the regarded partners in the aggregate hold less than a 20-percent interest in the capital or profits of the partnership.

Explanation of Provisions

1. Varying Interests Rule

a. In General

The proposed regulations amend § 1.706–1(c) to reflect the change made to section 706(c)(2)(A) in the 1997 Act which requires that the taxable year of the partnership close with respect to a partner who dies. The proposed regulations do not change the provisions in § 1.706–1(c)(3)(iv) that the sale or exchange of a partnership interest does not include any transfer of a partnership interest which occurs at death as a result of inheritance or any testamentary disposition or in § 1.706–1(c)(5) that the transfer of a partnership interest by gift does not close the partnership taxable year with respect to the donor.

Also, the proposed regulations add § 1.706–4 to provide for the application of the varying interests rule in all cases in which a partner's interest changes during the taxable year, whether by reason of a disposition of the partner's entire interest in the partnership or a disposition of less than the partner's entire interest in the partnership.

b. Methods and Conventions

Proposed § 1.706–4(a) provides that, if a partner's interest changes during the partnership's taxable year, the partnership shall determine the partner's distributive share using the interim closing method. However, the partnership by agreement of the partners may use the proration method. For each partnership taxable year in which a partner's interest varies, the proposed regulations provide that the partnership must use the same method to take into account all changes occurring within that year.

Proposed § 1.706–4(c) generally provides that a partnership shall take into account any variation in the partners' interests in the partnership during the taxable year by determining the distributive share of partnership items under section 702(a) for each segment of that taxable year using an interim closing of the books method and by allocating those items among the partners in accordance with their respective partnership interests during that segment. Proposed § 1.706–4(c)(1) and (2) incorporate the principles of the former § 1.706–1(c)(2)(ii) (as finalized in TD 6175).

Proposed § 1.706–4(d) provides that by agreement among the partners a partnership may use a proration method, rather than the interim closing method, to take into account any variation in a partner's interest in the partnership during the taxable year. Under this method, except for extraordinary items (as defined in § 1.706–4(d)(3)), the partnership allocates the distributive share of partnership items under section 702(a) among the partners in accordance with their pro rata shares of these same items for the entire taxable year. In determining a partner's pro rata share of partnership items, the partnership shall take into account that partner's interest in such items during each segment of the taxable year. Proposed § 1.706–4(d)(1) and (2) incorporate the principles of the former § 1.706–2(c)(2)(ii) (as finalized in TD 6175).

For purposes of accounting for the partners' varying interests in the partnership, proposed § 1.706–4 requires that for each partner whose interest changes in the taxable year the partnership shall maintain segments to account for such changes. A segment is specific portion of a partnership's taxable year. The first segment of a taxable year for a partner that incurs a change will begin on the partnership's first day of its taxable year and end as of the close of business immediately preceding the date of the change as determined under the applicable convention (discussed in this preamble) used by the partnership and its partners. The next segment will begin on the day prescribed by the applicable convention and end on the earlier of the close of the day immediately preceding the date of the subsequent change as determined by the applicable convention, or the end of the partnership's taxable year. Proposed § 1.706–4(a)(2) provides that the partnership shall determine the items for each segment of the taxable year created by the variation event for a partner in accordance with the partnership's method of accounting used for its entire taxable year. Each segment is treated as a separate period.

For purposes of the interim closing method in § 1.706–4(c) and the proration method in § 1.706–4(d), the proposed regulations provide a special accounting rule that must be used to account for certain items. For example, for an interim closing method, the partnership may compute a net capital loss for a segment even though the partnership has net capital gain for the complete taxable year. Also, any limitation applicable to the partnership year as a whole (for example, the limitation under section 179) must be apportioned among the segments using any reasonable method provided that the method may not exceed any limitation applicable to the partnership as a whole. See proposed §§ 1.706–4(a)(2)(i) and (ii).

In addition, proposed § 1.706–4(d)(3) requires a partnership using the proration method to allocate extraordinary items among the partners in proportion to their interests at the beginning of the day on which they are taken into account. For this purpose, an extraordinary item is (i) any item from the disposition or abandonment (other than in the ordinary course of business) of a capital asset as defined in section 1221 (determined without the application of any other rules of law); (ii) any item from the disposition or abandonment of property used in a trade or business (other than in the ordinary course of business) as defined

in section 1231(b) (determined without the application of any holding period requirement); (iii) any item from the disposition or abandonment of an asset described in sections 1221(1), (3), (4), or (5), if substantially all the assets in the same category from the same trade or business are disposed of or abandoned in one transaction (or series of related transactions); (iv) any item from assets disposed of in an applicable asset acquisition under section 1060(c); (v) any section 481(a) adjustment; (vi) any item from the discharge or retirement of indebtedness (for example, if a debtor partnership transfers a capital or profits interest in such partnership to a creditor in satisfaction of its recourse or nonrecourse indebtedness, any discharge of indebtedness income recognized under section 108(e)(8) must be allocated among the persons who were partners in the partnership immediately before the discharge); (vii) any item from the settlement of a tort or similar third-party liability; (viii) any credit, to the extent it arises from activities or items that are not ratably allocated (for example, the rehabilitation credit under section 47, which is based on placement in service); and (ix) any item which, in the opinion of the Commissioner, would, if ratably allocated, result in a substantial distortion of income in any consolidated return or separate return in which the item is included. The IRS and the Treasury Department request comments concerning whether any items should be added to or removed from the definition of extraordinary items.

Under proposed § 1.706–4(e), a partnership using the interim closing method may use either a calendar day convention or a semi-monthly convention. A partnership using the proration method may use only the calendar day convention. The calendar day convention requires that, with respect to a partner whose interest terminates, the partnership's taxable year closes as of the close of the day on which the change occurs. Section 1.706–4(e)(1). The semi-monthly convention requires that any variation in a partner's interest occurring during the first through 15th day of the calendar month is deemed to occur at the beginning of the first day of the month, and any variation in a partner's interest occurring during the 16th through the last day of the month is deemed to occur at the beginning of the 16th day of that month. Section 1.706–4(e)(2).

A partnership must use the same method and convention for all variations in the partners' interests during the taxable year of the partnership. For example, a partnership could not use the proration method and interim closing method in the same taxable year. Additionally, a partnership using the interim closing method could not use the calendar day convention to account for a variation in one partner's interest during the partnership's taxable year while using a monthly convention to account for that partner's, or a different partner's, variation in an interest during the partnership's taxable year. Comments are requested with regard to the possible expansion of this rule to include other conventions or other methods.

The IRS and the Treasury Department are aware that some publicly traded partnerships (as defined in section 7704) are using conventions other than a monthly or semi-monthly convention and are using these conventions with the proration method. Thus, the IRS and the Treasury Department are requesting comments concerning the use of conventions other than monthly or semi-monthly convention. The proposed regulations regarding the use of conventions will not apply to existing publicly traded partnerships.

c. Change in Partnership Allocations Among Contemporaneous Partners

Proposed § 1.706–4(b)(1) provides that the varying interests rule will not preclude changes in the allocations among contemporaneous partners resulting from amendments to the partnership agreement made no later than the due date of the partnership return for the taxable year (excluding extensions). This exception applies only to allocations that are valid under section 704(b) and the regulations promulgated in association with that section. Moreover, consistent with the Tax Court's decision in *Lipke*, this exception to the varying interests rule will not apply to any changes in interests of the partners attributable to contributions of money or other property to the partnership. The proposed regulations further provide that this exception will not apply to changes in the interests of the partners as a result of distributions of capital from the partnership to a partner.

d. Safe Harbors for Service Partnerships and Publicly Traded Partnerships

Proposed § 1.706–4(b)(2) provides that service partnerships (as defined in that section) may allocate items relating to the provision of services among the partners whose interests vary during the year using any reasonable method to account for such changes even though such method is not described in paragraph (a) of the proposed regulations and the partnership does not use the methods or conventions described in paragraphs (c) and (d), and paragraph (e) of the proposed regulations, respectively. However, the allocations must be valid under section 704(b).

Proposed § 1.706–4(b)(3) provides that publicly traded partnerships (as defined in section 7704(b)) may treat all transfers of its publicly traded units (as described in § 1.7704–1(b)(1)) during a calendar month as occurring on the first day of the following month under a consistent method adopted by the partnership or may use the semi-monthly convention described in § 1.706–4(e)(2). Block transfers of publicly traded partnership (PTP) units (as described in § 1.7704–1(e)(2)) will not qualify for this safe harbor.

e. Deemed Dispositions

The proposed regulations amend § 1.706–1(c) to provide that a deemed disposition of a partner's entire interest in the partnership pursuant to §§ 1.1502–76(b)(2)(vi), 1.1362–3(c)(1), and 1.1377–1(b)(3)(iv) shall be treated as a disposition of the partner's entire interest for purposes of section 706. The IRS and Treasury Department request comments concerning the relationship of § 1.1502–76(b)(2)(vi)(B) and the proposed regulations regarding the deemed disposition of partnership interests.

2. Taxable Years of Partnerships

The proposed regulations amend the minority interest rule in § 1.706–1(b)(6)(iii) to provide that regarded partners have a minority interest only if each regarded partner has less than a 10-percent interest in capital and profits, and the regarded partners collectively have less than a 20-percent interest in partnership capital and profits. This modification means that the interests of foreign partners will be taken into account in determining the taxable year of the partnership only if the regarded partners have interests below the stated thresholds in partnership capital and profits, rather than the current rule which requires only an interest below the threshold in either capital or profits. For example, under the current regulations, the taxable year of disregarded foreign partners would not be ignored in determining the taxable year of the partnership if the regarded partners had aggregate capital interests of less than 20-percent but profits interests of more than 20-percent. By contrast, under the proposed regulations, in that example, the taxable year of the disregarded foreign partners

would not be applicable in determining the taxable year of the partnership.

Additional Requests for Comments

The IRS and the Treasury Department are also requesting comments relating to any other outstanding issues arising under section 706(d). Specifically, the IRS and the Treasury Department are seeking comments with regard to issues that arise concerning allocable cash basis items and/or tiered partnerships.

Section 706(d)(2)(A) provides a special rule for determining a partner's distributive share of an allocable cash basis item. Section 706(d)(2) effectively requires a cash method partnership to use an economic accrual method solely for the purpose of allocating certain items. Under the statute, a partner's distributive share of any allocable cash basis item is determined by assigning a pro rata share of any allocable cash basis item to each day within a specified period to which it is attributable and then allocating each day's portion in an amount equivalent to each partner's interest in the partnership on that day. A list of allocable cash basis items is found in section 706(d)(2)(B). The IRS and the Treasury Department are seeking comments as to whether that list should be expanded (to include, for example, items such as property insurance), as well as on any other issue with regard to allocating cash basis items.

Section 706(d)(3) provides that if during any taxable year of the partnership there is a change in any partner's interest in the partnership (upper-tier partnership), and such partnership is a partner in another partnership (lower-tier partnership), then (except to the extent provided by regulations) each partner's distributive share of any item of the upper-tier partnership attributable to the lower-tier partnership shall be determined by first assigning the appropriate portion of each such item to the appropriate days during which the upper-tier partnership is a partner in the lower-tier partnership, and then allocating the portion assigned to any such day among the partners in proportion to their interests in the upper-tier partnership at the close of such day. Thus, the daily allocation method, used for cash basis items, is applicable to all items of the lower-tier partnership if there is a change in the partnership interests in the upper-tier partnership. The IRS and the Treasury Department are seeking comments on this and any other issue related to tiered partnerships and determining a partner's varying interests.

Proposed Effective Date

In accord with the legislative history to section 706(d), the proposed regulations provide a reasonable transition period for taxpayers in the effective date provisions of this proposed regulation. Thus, the proposed amendments to §§ 1.706–1 (with the exception of the change to § 1.706–1(b)(6)(iii)), 1.706–4, and 1.706–5 are proposed to apply to partnership taxable years that begin after the date the final regulations are published in the **Federal Register**, but not before taxable years beginning after December 31, 2009.

The proposed amendment to § 1.706–1(b)(6)(iii) generally is applicable to the first taxable year of a partnership that begins on or after the date final regulations are published in the **Federal Register**, subject to two special rules. First, under the current regulations, partnerships formed prior to September 23, 2002 (''existing partnerships'') generally are exempt from the rules of § 1.706–1(b)(6) unless they have voluntarily elected to apply them or unless they have undergone a technical termination under section 708(b)(1)(B). The proposed regulation retains this special rule, such that an existing partnership will not be subject to the modified minority interest rule in proposed § 1.706–1(b)(6)(iii) unless there has been such an election or technical termination. Second, because the proposed regulation would modify § 1.706–1(b)(6)(iii) but otherwise leave the rules of § 1.706–1(b)(6) unchanged, it is appropriate to exempt other partnerships from the modified minority interest rule if they are already subject to § 1.706–1(b)(6) and the minority interest rule of the current regulations (''interim period partnerships''). Thus, interim period partnerships will be exempt from the modified minority interest rule of proposed § 1.706–1(b)(6)(iii) unless they voluntarily elect to be subject to this rule or undergo a technical termination. Accordingly, the proposed amendment to § 1.706–1(b)(6)(iii) would apply to the first taxable year of a partnership that begins on or after the date final regulations are published in the **Federal Register**, subject to these special rules for existing partnerships and interim period partnerships.

The proposed amendments in §§ 1.706–4(c)(2) and (d)(2) are proposed to apply for the taxable year of a partnership other than an existing publicly traded partnership that begin after the date the final regulations are published in the **Federal Register**, but not before taxable years beginning after December 31, 2009.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Request for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department specifically request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the pubic hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these proposed regulations are Laura Fields and Jonathan Cornwell, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding a new entry in numerical order to read as follows:

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

Section 1.706–2 also issued under 26 U.S.C. 706(d). * * *

Par. 2. Section 1.706–0 is added to read as follows:

§ 1.706–0 Table of contents.

This section lists the captions contained in the regulations under section 706.

§ 1.706–1 Taxable years of partner and partnership.

(a) Year in which partnership income is includible.
(b) Taxable year.
(1) Partnership treated as taxpayer.
(2) Partnership's taxable year.
(i) Required taxable year.
(ii) Exceptions.
(3) Least aggregate deferral.
(i) Taxable year that results in the least aggregate deferral of income.
(ii) Determination of the taxable year of a partner or partnership that uses a 52–53 week taxable year.
(iii) Special de minimis rule.
(iv) Examples.
(4) Measurement of partner's profits and capital interest.
(i) In general.
(ii) Profits interest.
(A) In general.
(B) Percentage share of partnership net income.
(C) Distributive share.
(iii) Capital interest.
(5) Taxable year of a partnership with tax-exempt partners.
(i) Certain tax-exempt partners disregarded.
(ii) Example.
(iii) Effective date.
(6) Certain foreign partners disregarded.
(i) Interests of disregarded foreign partners not taken into account.
(ii) Definition of foreign partner.
(iii) Minority interest rule.
(iv) Example.
(v) Effective date.
(A) Generally.
(B) Voluntary change in taxable year.
(C) Subsequent sale or exchange of interests.
(D) Transition rule.
(7) Adoption of taxable year.
(8) Change in taxable year.
(i) Partnerships.
(A) Approval required.
(B) Short period tax return.
(C) Change in required taxable year.
(ii) Partners.
(9) Retention of taxable year.
(10) Procedures for obtaining approval or making a section 444 election.
(11) Effect on partner elections under section 444.
(i) Election taken into account.
(ii) Effective date.
(c) Closing of partnership year.
(1) General rule.
(2) Disposition of entire interest
(i) In general.
(ii) Example.
(iii) Deemed dispositions.
(3) Disposition of less than entire interest.
(4) Determination of distributive shares.
(5) Transfer of interest by gift.
(d) Effective/applicability date.

§ 1.706–2 Certain cash basis items prorated over period to which attributable. [Reserved]

§ 1.706–3 Items attributable to interest in lower-tier partnership prorated over entire taxable year. [Reserved]

§ 1.706–4 Determination of distributive share when a partner's interest varies.

(a) General rule.
(1) Methods.
(2) Segments.
(i) General rule.
(ii) Other provisions.
(b) Exceptions.
(1) Permissible changes among contemporaneous partners.
(2) Safe harbor for certain service partnerships.
(3) Safe harbor for publicly traded units of publicly traded partnerships.
(c) Interim closing method.
(1) In general.
(2) Conventions.
(3) Example.
(d) Proration method.
(1) In general.
(2) Conventions.
(3) Extraordinary items.
(4) Example.
(e) Conventions.
(1) Calendar day convention.
(2) Semi-monthly convention.
(f) Effective/applicability date.

§ 1.706–5 Taxable year determination.

(a) General rule.
(b) Effective/applicability date.

Par. 3. Section 1.706–1 is amended as follows:

1. The language ''capital or profits'' in the first sentence in paragraph (b)(6)(iii) is removed and the language ''capital and profits'' is added in its place.
2. Paragraph (b)(6)(v)(A) is revised.
3. The last sentence of paragraph (b)(6)(v)(B) is removed and four new sentences are added in its place.
4. Paragraph (b)(6)(v)(C) is revised.
5. Add a new sentence at the end of paragraph (b)(6)(v)(D).
6. Paragraph (c)(2) is revised.
7. Paragraph (c)(3) is removed.
8. Paragraph (c)(4) is redesignated as (c)(3) and the last sentence of newly designated paragraph (c)(3) is removed.
9. New paragraph (c)(4) is added.
10. Paragraph (d) is revised.

The additions and revisions read as follows:

§ 1.706–1 Taxable years of partner and partnership.

* * * * *

(b) * * *
(6) * * *
(v) * * * (A) *Generally.* The provisions of this paragraph (b)(6) (other than paragraph (b)(6)(iii) of this section) are applicable for the first taxable year of a partnership other than an existing partnership that begins on or after July 23, 2002. The provisions of paragraph (b)(6)(iii) of this section are applicable for the first taxable year of a partnership other than an existing partnership or an interim period partnership that begins on or after the date these regulations become effective. For this purpose, an existing partnership is a partnership that was formed prior to September 23, 2002, and an interim period partnership is a partnership that was formed on or after September 23, 2002, and prior to the date these regulations become effective.

(B) * * * An existing partnership that makes such a change prior to the date these regulations become effective will cease to be exempted from the requirements of paragraph (b)(6) (other than paragraph (b)(6)(iii)) of this section. An existing partnership that makes such a change on or after the date these regulations become effective will cease to be exempted from the requirements of paragraph (b)(6) of this section. An interim period partnership may change its taxable year to a year determined in accordance with paragraph (b)(6)(iii) of this section. An interim period partnership that makes such a change will cease to be exempted from the requirements of paragraph (b)(6)(iii) of this section.

(C) *Subsequent sale or exchange of interests.* If an existing partnership or an interim period partnership terminates under section 708(b)(1)(B), the resulting partnership is not an existing partnership or an interim period partnership for purposes of paragraph (b)(6)(v)(A) of this section.

(D) * * * If, in the first taxable year beginning on or after the date these regulations become effective, an interim period partnership voluntarily changes its taxable year to a year determined in accordance with paragraph (b)(6)(iii) of this section, then the partners of that partnership may apply the provisions of § 1.702–3T to take into account all items of income, gain, loss, deduction, and credit attributable to the partnership year of change ratably over a four-year period.

* * * * *

(c) * * *

(2) *Disposition of entire interest*—(i) *In general.* A partnership taxable year shall close with respect to a partner who sells or exchanges his entire interest in the partnership, with respect to a partner whose entire interest in the partnership is liquidated and with respect to a partner who dies. In the case of a death or liquidation, or sale or

exchange of a partner's entire interest in the partnership, the partner shall include in his taxable income for his taxable year within or with which the partner's membership in the partnership ends, the partner's distributive share of items described in section 702(a), and any guaranteed payments under section 707(c), for the partner's partnership taxable year ending with the date of such termination. If the decedent partner's estate or other successor sells or exchanges its entire interest in the partnership, or if its entire interest is liquidated, the partnership taxable year with respect to the estate or other successor in interest shall close on the date of such sale or exchange, or the date of the completion of the liquidation. The sale or exchange of a partnership interest does not, for the purpose of this rule, include any transfer of a partnership interest which occurs at death as a result of inheritance or any testamentary disposition.

(ii) Example. H is a member of a partnership having a taxable year ending December 31. Both H and his wife W are on a calendar year and file joint returns. H dies on March 31, 2010. Administration of the estate is completed and the estate, including the partnership interest, is distributed to W as legatee on November 30, 2010. Such distribution by the estate is not a sale or exchange of H's partnership interest. The taxable year of the partnership will close with respect to H on March 31, 2010, and H will include in his final return for his final taxable year (January 1 through March 31, 2010) his distributive share of partnership items for that period under the rules of § 1.706–4. W will include in her return for the taxable year ending December 31, 2010, her distributive share of partnership items for the period of April 1 through December 31, 2010, under the rules of § 1.706–4.

(iii) *Deemed dispositions.* A deemed disposition of the partner's interest pursuant to §§ 1.1502–76(b)(2)(vi) (relating to corporate partners that become or cease to be members of a consolidated group within the meaning of § 1.1502–1(h)), 1.1362–3(c)(1) (relating to the termination of the subchapter S election of an S corporation partner), and 1.1377–1(b)(3)(iv) (regarding an election to terminate the taxable year of an S corporation partner), shall be treated as a disposition of the partner's entire interest in the partnership.

* * * * *

(4) *Determination of distributive shares.* See § 1.706–4 for rules regarding the methods to be used in determining the distributive shares of items described in section 702(a) for partners whose interests in the partnership vary as a result of a disposition of a partner's entire interest in a partnership as described in paragraph (c)(2) of this section or as a result of a disposition of less than an entire interest as described in paragraph (c)(3) of this section during the partnership's taxable year.

* * * * *

(d) *Effective/applicability date.* The rules for paragraphs (a) and (b) of this section are applicable for partnership taxable years ending on or after May 17, 2002, except for paragraph (b)(6)(iii) of this section which applies to partnership taxable years beginning the day after final regulations are published in the **Federal Register**. The rules for paragraph (c)(1) of this section apply for partnership taxable years beginning after December 31, 1953. All other paragraphs under paragraph (c) of this section apply for partnership taxable years that begin after the date the final regulations are published in the **Federal Register**, but not before taxable years beginning after December 31, 2009.

Par. 4. Section 1.706–2 is added and reserved to read as follows:

§ 1.706–2 Certain cash basis items prorated over period to which attributable. [Reserved]

Par. 5. Section 1.706–3 is added and reserved to read as follows:

§ 1.706–3 Items attributable to interest in lower-tier partnership prorated over entire taxable year. [Reserved]

Par. 6. Section 1.706–4 is added to read as follows:

§ 1.706–4 Determination of distributive share when a partner's interest varies.

(a) *General rule*—(1) *Methods.* Except as provided in paragraph (b) of this section, if a partner's interest in a partnership varies during the taxable year as a result of a disposition of an entire interest in a partnership as described in § 1.706–1(c)(2) or as a result of the disposition of less than the entire interest in a partnership or with respect to a partner whose interest in a partnership is reduced as described in § 1.706–1(c)(3), the partnership shall determine the partner's distributive share of partnership items by using the interim closing method (described in paragraph (c) of this section). Alternatively, a partnership may, by agreement of the partners, use the proration method (described in paragraph (d) of this section). The partnership and all of its partners shall use the same method (interim closing or proration) and, if applicable, the same convention (described in paragraph (e) of this section) for all variations in the partners' interests occurring within each partnership taxable year.

(2) *Segments*—(i) *General rule.* For purposes of accounting for a variation in a partner's interest within a taxable year of the partnership as a result of dispositions or reductions of interests as described in § 1.706–1(c)(2) or (c)(3), the partnership shall maintain segments, which are specific periods of the partnership's taxable year. The first segment to account for a change in a partner's interest shall commence with the beginning of the taxable year of the partnership and end at the close of the day specified by the convention used by the partnership to account for such change. Any additional segment shall commence with the day specified by the convention used by the partnership to account for a previous change in the partner's interest and shall end as a result of an additional change in the partner's interest at the close of the day specified by the convention used by the partnership to account for such change, provided, however, that the last segment of the taxable year of the partnership shall end no later than the close of the day of the partnership's taxable year. The partnership shall determine the items of income, gain, loss, deduction and credit of the partnership for each segment in accordance with the method of accounting that it uses for the partnership's entire taxable year. In general, a partnership using the interim closing method shall treat each segment as though the segment were a separate distributive share period. For example, a partnership using the interim closing method may compute a net capital loss for a segment of a taxable year even though the partnership has a net capital gain for the entire taxable year.

(ii) *Other provisions.* Any limitation applicable to the partnership year as a whole (for example, the limitation under section 179, relating to elections to expense certain depreciable business assets) must be in connection with the interim closing method apportioned among the segments by the partnership using any reasonable method, provided, however, that the amounts apportioned among segments shall not exceed the limitation applicable to the partnership as a whole.

(b) *Exceptions*—(1) *Permissible changes among contemporaneous partners.* The general rule of paragraph (a) of this section, with respect to the varying interests of a partner described in § 1.706–1(c)(3), will not preclude changes in the allocations of the distributive share of items described in section 702(a) among contemporaneous partners for the entire partnership taxable year, provided that—

(i) Any variation in a partner's interest is not attributable to a contribution of money or property by a partner to the capital of the partnership or a

distribution of money or property by the partnership to a partner that is a return of capital; and

(ii) The allocations resulting from the modification satisfy the provisions of section 704(b) and the regulations promulgated in association with that section.

(2) *Safe harbor for certain service partnerships.* Notwithstanding paragraph (a) of this section, with respect to any taxable year in which there is a change in any partner's interest in a service partnership (as defined below in this subsection), the partnership and such partner may choose to determine the partner's distributive share of partnership income, gain, loss, deduction and credit using any reasonable method to account for the varying interests of the partners in the partnership during the taxable year provided that the allocations are valid under section 704(b). A service partnership is a partnership in which substantially all the activities involve the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, or consulting.

(3) *Safe harbor for publicly traded units of publicly traded partnerships.* Notwithstanding paragraph (a) of this section, a publicly traded partnership (PTP) (as defined in section 7704(b)) using either the interim closing of the books method in paragraph (c) of this section or the proration method in paragraph (d) of this section may treat all transfers of its publicly traded units (as described in § 1.7704–1(b)(1)) during a calendar month as occurring for purposes of determining partner status on the first day of the following month under a consistent method adopted by the partnership or may use the semi-monthly convention described in paragraph (e)(2) of this section. For example, PRS, a PTP, uses the proration method in paragraph (d) of this section. PRS adopts a method treating all transfers of its publicly traded units as occurring on the first day of the month following the transfer. If on May 5, A, a partner in PRS, sells a unit in PRS to B, and on May 12 B sells that unit to C, who holds the interest beyond May 31, PRS may allocate all items with respect to that unit for the month of May to A, and may allocate all partnership items with respect to that unit for the month of June to C. B will not be considered a partner and will receive no allocation of partnership items. Block transfers of PTP units (as described in § 1.7704–1(e)(2)) will not qualify for this safe harbor.

(c) *Interim closing method*—(1) *In general.* A partnership shall take into account any variation in a partner's interest in the partnership as described in § 1.706–1(c)(2) or (c)(3) during the partnership's taxable year by determining the distributive share of partnership items under section 702(a) for each segment of that taxable year using an interim closing of the books method, and by allocating those items among the partners in accordance with their respective partnership interests during that segment.

(2) *Conventions.* A partnership using the interim closing method may use either the calendar day convention provided in paragraph (e)(1) of this section or the semi-monthly convention provided in paragraph (e)(2) of this section to determine when the segments within that taxable year end.

(3) Example. PRS is a partnership that was formed in 2004. It has three partners, P,R, and S, who each own a one-third interest in the partnership. PRS owns and operates a skiing enterprise and under section 706(b)(1)(C), has adopted a calendar year end of June 30th. Each partner is an individual who is on the calendar year. On December 31, 2010, S sold her entire interest in PRS to Y. PRS, for its fiscal year ending June 30, 2011, earned $150,000 of income, and under an interim closing of the books on December 31, 2010, $90,000 of income was earned for the period beginning after December 31, 2010, and $60,000 of income was earned before January 1, 2011. The partnership has no specific provision in the partnership agreement relating to which section 706 method to use with regard to varying interests of the partnership. Thus, pursuant to § 1.706–4(a)(1), PRS will be required to use the interim closing of the books method to account for the varying interests of S and Y in the partnership. As a result, S is allocated one-third of the income earned prior to January 1, 2011, or $20,000. Y is allocated $30,000 which is one-third of the income earned after December 31, 2010. Since S sold her entire interest in PRS, the partnership taxable year closes with respect to her pursuant to § 1.706–1(c)(2)(i). Thus, she must include her share of PRS's income on her 2010 federal income tax return.

(d) *Proration method*—(1) *In general.* Except as provided in paragraph (d)(3) of this section, a partnership may, by agreement of the partners, take into account any variation in a partner's interest in the partnership described in § 1.706–1(c)(2) or (c)(3) during the partnership's taxable year by allocating the distributive share of partnership items under section 702(a) among the partners according to their pro rata shares of such items for the entire taxable year. In determining a partner's pro rata share of partnership items, the partnership shall take into account that partner's interest in such items during each segment. For purposes of this paragraph (d), specific items that are aggregated by the partnership at the end of the year (other than extraordinary items as defined in paragraph (d)(3) of this section) shall be disregarded, and the aggregate of the items shall be considered to be the partnership item for the year.

(2) *Conventions.* A partnership using the proration method shall use the calendar day convention described in paragraph (e)(1) of this section.

(3) *Extraordinary items.* A partnership must allocate extraordinary items among the partners in proportion to their interests at the beginning of the calendar day of the day on which they are taken into account. For purposes of this paragraph (d), an extraordinary item is—

(i) Any item from the disposition or abandonment of a capital asset (other than in the ordinary course of business) as defined in section 1221 (determined without the application of any other rules of law);

(ii) Any item from the disposition or abandonment of property used in a trade or business (other than in the ordinary course of business) as defined in section 1231(b) (determined without the application of any holding period requirement);

(iii) Any item from the disposition or abandonment of an asset described in section 1221(1), (3), (4), or (5), if substantially all the assets in the same category from the same trade or business are disposed of or abandoned in one transaction (or series of related transactions);

(iv) Any item from assets disposed of in an applicable asset acquisition under section 1060(c);

(v) Any section 481(a) adjustment;

(vi) Any item from the discharge or retirement of indebtedness (for example, if a debtor partnership transfers a capital or profits interest in such partnership to a creditor in satisfaction of its recourse or nonrecourse indebtedness, any discharge of indebtedness income recognized under section 108(e)(8) must be allocated among the persons who were partners in the partnership immediately before the discharge);

(vii) Any item from the settlement of a tort or similar third-party liability or payment of a judgment;

(viii) Any credit, to the extent it arises from activities or items that are not ratably allocated (for example, the rehabilitation credit under section 47, which is based on placement in service); or

(ix) Any item which, in the opinion of the Commissioner, would, if ratably allocated, result in a substantial distortion of income in any return in which the item is included.

(4) Example. PRS is a partnership that was formed in 2004. It has three partners, P, R, and S, who each own a one-third interest in the partnership. PRS owns and operates a skiing enterprise, and under section 706(b)(1)(C), has adopted a calendar year end of June 30th. Each partner is an individual who is on the calendar year. On December 31, 2010, S sold her entire interest in PRS to Y. PRS, for its fiscal year ending June 30, 2010, earned $150,000 of income. The partnership has a specific provision in the partnership agreement agreeing to use the proration method when accounting for varying interests in the partnership. (See § 1.706–4(a)(1)). Using the proration method, $75,000 of income is included in the first segment of the year that begins July 1, 2010 and ends December 31, 2010, and $75,000 is included in the second segment of the year that begins January 1, 2011 and ends June 30, 2011. For the first segment, S's distributive share of partnership income is one-third of $75,000, or $25,000. For the second segment, Y's distributive share of partnership income is one-third of $75,000, or $25,000. Because S sold her entire interest in PRS, the partnership taxable year closes with respect to her pursuant to § 1.706–1(c)(2)(i). Thus, she must include her distributive share of PRS's income, or $25,000, on her 2010 Federal income tax return.

(e) *Conventions*—(1) *Calendar day convention.* Under the calendar day convention, the first segment of the partnership's taxable year commences with the beginning of the partnership's taxable year and ends at the close of any day on which the variation occurs in the partner's interest in the partnership. Any additional segment shall commence with the beginning of the day following a prior variation in a partner's interest and end on the earlier of the close of the day on which an additional variation occurs in the partner's interest or the close of the partnership's taxable year, as applicable.

(2) *Semi-monthly convention.* Under the semi-monthly convention, the first segment of the partnership's taxable year commences with the beginning of the partnership's taxable year, and with respect to a partner's variation in interest occurring on the first through the 15th day of a calendar month, is deemed to close at the end of the last day of the immediately preceding calendar month, and with respect to any variation in interest occurring on the 16th through the last day of a calendar month, is deemed to close at the end of the 15th calendar day of that month. Any additional segment of the partnership taxable year shall commence with beginning of the first day, or 16th day of the month of the last segment, as the case may be, as determined for a prior change and shall close at the earlier of the close of the partnership's taxable year, or with respect to a partner's variation in interest occurring on the first through 15th day of a calendar month, is deemed to close at the end of the last day of the immediately preceding calendar month, and with respect to any variation in interest occurring on the 16th through the last day of a calendar month, is deemed to close at the end of the 15th calendar day of that month.

(f) *Effective/applicability date.* Except with respect to paragraphs (c)(2) and (d)(2) of this section, this section is applicable for partnership taxable years that begin the day after the date final regulations are published in the **Federal Register**, but not before taxable years beginning after December 31, 2009. The rules of paragraphs (c)(2) and (d)(2) of this section are applicable for the taxable year of partnerships other than existing publicly traded partnerships that begin after the date the final regulations are published in the **Federal Register**, but not before taxable years beginning after December 31, 2009. For purposes of the immediately preceding sentence, an existing publicly traded partnership is a partnership described in section 7704(b) of the Internal Revenue Code that was formed on a date before these proposed regulations are published in the **Federal Register**. However, existing publicly traded partnerships may rely on the provisions of this section.

Par. 7. Section 1.706–5 is added to read as follows:

§ 1.706–5 Taxable year determination.

(a) *In general.* For purposes of § 1.706–4, the taxable year of a partnership shall be determined without regard to section 706(c)(2)(A) and the regulations promulgated under that Internal Revenue Code section.

(b) *Effective/applicability date.* This section is applicable for partnership taxable years that begin the day after the date final regulations are published in the **Federal Register**, but not before taxable years beginning after December 31, 2009.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E9–8438 Filed 4–13–09; 8:45 am]

BILLING CODE 4830–01–P

POSTAL SERVICE

39 CFR Part 111

Express Mail Refunds for Shipments of Live Animals

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes to revise its refund guarantees for Express Mail® shipments of live animals in an effort to maintain the economic viability of shipping animals as a service.

DATES: Submit comments on or before May 14, 2009.

ADDRESSES: Mail or deliver written comments to the Manager, Mailing Standards, U.S. Postal Service, 475 L'Enfant Plaza, SW., Room 3436, Washington, DC 20260–3436. You may inspect and photocopy all written comments at USPS Headquarters Library, 475 L'Enfant Plaza, SW., 11th Floor N, Washington, DC between 9 a.m. and 4 p.m., Monday through Friday. E-mail comments, containing the name and address of the commenter, may be sent to *MailingStandards@usps.gov*, with a subject line of ''Express Mail Refunds for Shipments of Lives Comments.'' Faxed comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Joel Rosen, 202–268–4329 or Monica Grein, 202–268–8411.

SUPPLEMENTARY INFORMATION: The Postal Service proposes to revise the *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM®) by changing the refund guarantees for Express Mail shipments of live animals delivered within 3 days of the date of mailing. In some instances, the Postal Service must reroute Express Mail shipments of live animals to alternative flights or routes in order to protect the well-being of the live animals. This is particularly necessary if other shipments on the same flight contain dry ice or solid carbon dioxide, which will evaporate en route and may displace oxygen. If live animals were shipped in the same cargo hold, the carbon dioxide could cause asphyxiation. The use of alternative flights and rerouting to protect the well-being of the live animals can delay shipments. Therefore, even though the live animals arrive as promptly as possible and in good health, these shipments may not meet normal Express Mail service guarantees. In those instances, some mailers then apply for full postage refunds.

Currently, postage refunds for Express Mail shipments of live animals are granted based on the next day or second day delivery guarantee provided at the time of mailing. This current postage refund policy does not account for the flight changes that may occur to protect the well-being of the animals. Therefore, the Postal Service is proposing that

Express Mail shipments containing live animals be exempt from the next day or second day delivery guarantee and that the delivery commitment for Express Mail of live animals be extended to within 3 days of the date of mailing. Postage refund requests for Express Mail shipments of live animals delivered after 3 days of the date of mailing would still be granted.

Although we are exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. 553(b), (c)], regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revision of the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. *See* 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR is proposed to be amended as follows:

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

2. Revise the following sections of *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM) as follows:

100 Retail Mail Letters, Cards, Flats, and Parcels

* * * * *

110 Retail Mail Express Mail

* * * * *

114 Postage Payment Methods

* * * * *

3.0 Postage Refunds

3.1 Postage Not Refunded

[Revise the introductory paragraph of 3.1 to read as follows:]

Postage refunds may not be available if delivery was attempted within the times required for the specific service, or for any of the following reasons:

[Revise the first sentence of item a, and add a new item c as follows:]

a. If the item was properly detained for law enforcement purpose; strike or work stoppage; delayed because of an incorrect ZIP Code or address; forwarding or return service was provided after the item was made available for claim; delay or cancellation of flights. * * *

* * * * *

c. The shipment contained live animals and was delivered or delivery was attempted within three days of the date of mailing as shown in the ''Date In'' box on Label 11.

* * * * *

400 Commercial Mail Parcels

* * * * *

410 Commercial Parcels Express Mail

* * * * *

414 Postage Payment and Documentation

* * * * *

3.0 Postage Refunds

[Revise the introductory paragraph of 3.0 to read as follows:]

Postage refunds may not be available if delivery was attempted within the times required for the specific service, or for any of the following reasons:

[Revise the first sentence of item a and add a new item c as follows:]

a. If the item was properly detained for law enforcement purpose; strike or work stoppage; delayed because of an incorrect ZIP Code or address; forwarding or return service was provided after the item was made available for claim; delay or cancellation of flights. * * *

* * * * *

c. The shipment contained live animals and was delivered or delivery was attempted within three days of the date of mailing as shown in the ''Date In'' box on Label 11.

* * * * *

600 Basic Standards For All Mailing Services

601 Mailability

* * * * *

9.0 Perishables

* * * * *

9.3 Live Animals

* * * * *

9.3.4 Adult Fowl

* * * * *

[Add a new item d to read as follows:]

d. Postage refunds may not be available if the Express Mail shipment was delivered or delivery was attempted within three days of the date of mailing as shown in the ''Date In'' box on Label 11.

* * * * *

604 Postage Payment Methods

* * * * *

9.0 Refunds and Exchanges

* * * * *

9.2 Postage and Fee Refunds

* * * * *

9.2.4 Full Refund

A full refund (100%) may be made when:

[Revise item l to read as follows:]

l. Express Mail is not delivered according to the applicable service standard, except as provided in 114.3.1 and 414.3.0. * * *

* * * * *

We will publish an appropriate amendment to 39 CFR 111 to reflect these changes if our proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. E9–8531 Filed 4–13–09; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA–R07–OAR–2008–0793; FRL–8791–7]

Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) and Operating Permits Program to amend the definitions provisions of the rules by adding definitions for stage I/II vapor recovery systems and outstate area, updating the lists of volatile organic compounds and hazardous air pollutants for consistency with the Environmental Protection Agency (EPA) lists, removing unnecessary definitions, and making typographical corrections and clarifications. This revision will ensure consistency between the State and the Federally-approved rules.

DATES: Comments on this proposed action must be received in writing by May 14, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2008–0793, by mail to Amy Bhesania, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Comments may also

be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

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

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the State's revision as a direct final rule without prior proposal because the Agency views this is a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: April 3, 2009.

William Rice,

Acting Regional Administrator, Region 7.

[FR Doc. E9–8486 Filed 4–13–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2008–0708, FRL–8791–5]

RIN 2060–AP36

National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of public comment period.

SUMMARY: On March 5, 2009, EPA proposed national emission standards for existing stationary reciprocating internal combustion engines that either: are located at area sources of hazardous air pollutant emissions; or are located at major sources of hazardous air pollutants and are either non-emergency compression-ignition engines, or are other engines that have a site rating of less than or equal to 500 brake horsepower. In this notice, we are announcing a 30-day extension of the public comment period for the proposal.

DATES: Comments must be received on or before June 3, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0708, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies. EPA requests a separate copy also be sent to the contact person identified below (see **FOR FURTHER INFORMATION CONTACT**). In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Desk Officer for EPA, 725 17th St. NW., Washington, DC 20503.
- *Hand Delivery:* Air and Radiation Docket and Information Center, U.S. EPA, Room B102, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2008–0708. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hardcopy at the Air and Radiation Docket EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mrs. Melanie King, Energy Strategies Group, Sector Policies and Programs Division (D243–01), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2469; facsimile number: (919) 541–5450; e-mail address: *king.melanie@epa.gov*.

SUPPLEMENTARY INFORMATION: This document extends the public comment period established in the notice of proposed rulemaking published in the **Federal Register** on March 5, 2009 (74 FR 9698). That notice proposed national emission standards for hazardous air pollutants (NESHAP) for existing stationary reciprocating internal combustion engines (RICE) that either are located at area sources of hazardous air pollutant emissions or that have a site rating of less than or equal to 500 brake horsepower and are located at major sources of hazardous air pollutant emissions. EPA also proposed NESHAP

for existing non-emergency stationary compression ignition engines greater than 500 brake horsepower that are located at major sources, based on a new review of these engines following the first RICE NESHAP rulemaking in 2004. In addition, EPA proposed to amend the previously promulgated regulations regarding operation of stationary RICE during periods of startup, shutdown and malfunction.

Shortly after publication of the proposed rule, several industry groups formally requested that EPA extend the comment period of the proposed rule. They indicated that an extended comment period was necessary due to the complexities of the proposed regulation and the large number of existing sources that are potentially affected. Furthermore, the request letters mention that the proposed regulation has far-reaching impacts on industrial stakeholders and that those impacts cannot be properly evaluated in the 60-day comment period provided by the proposal.

The letters requesting an extension to the comment period can be found in the docket. EPA is hereby extending the comment period, which was set to end on May 4, 2009, to June 3, 2009.

List of Subjects 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 8, 2009.

Elizabeth Craig,

Acting Assistant Administrator.

[FR Doc. E9–8483 Filed 4–13–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 090224232–9334–02]

RIN 0648–AX50

Endangered and Threatened Species: Advance Notice of Proposed Rulemaking to Designate Critical Habitat for Cook Inlet Beluga Whales

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

ACTION: Advance notice of proposed rulemaking; request for information.

SUMMARY: We, the National Marine Fisheries Service (NMFS), will be designating critical habitat for the endangered Cook Inlet beluga whale (*Delphinapterus leucas*) under the Endangered Species Act (ESA). The designation will involve areas within Cook Inlet, Alaska. This advance notice of proposed rulemaking (ANPR) identifies issues for consideration and evaluation and solicits comments regarding these issues.

DATES: Comments and information regarding the suggested designation process and areas being considered for designation may be sent to NMFS (See **ADDRESSES**) by May 14, 2009.

ADDRESSES: Comments may be sent to Chief, Protected Resources Division, NMFS, P.O. Box 21668, Juneau, AK, 99802–1668.

FOR FURTHER INFORMATION CONTACT: Brad Smith, (907–271–3023) or Kaja Brix (907–586–7235).

SUPPLEMENTARY INFORMATION:

Rulemaking Background

We are responsible for determining whether species, subspecies, or distinct population segments (DPSs) are threatened or endangered and for designating critical habitat for them under the ESA (16 U.S.C. 1531 *et seq.*). To be considered for listing under the ESA, a group of organisms must constitute a ''species'' which is defined in section 3 to include ''any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' We consider a group of organisms to be a DPS for purposes of ESA listing when it is both discrete from other populations and significant to the species to which it belongs (61 FR 4722; February 7, 1996). We found the Cook Inlet beluga whale population segment to be reproductively, genetically, and physically discrete from the four other known beluga populations in Alaska, and significant because it is in a unique ecological setting for the taxon, and its loss would result in a significant gap in the taxon's range. Following completion of a Status Review of the Cook Inlet beluga whale under the ESA, we published a proposed rule to list this DPS as an endangered species on April 20, 2007. We subsequently extended the date for final determination on the proposed action by 6 months, until October 20, 2008, as provided for by the ESA (section 4(b)(6)(B)(i)). A Final Rule to list the Cook Inlet beluga whale as an endangered species was published on October 22, 2008.

Critical Habitat

Section 4(b)(2) of the ESA requires us to designate critical habitat for threatened and endangered species ''on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat.'' This section grants the Secretary of Commerce (Secretary) discretion to exclude any area from critical habitat if he determines ''the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat.'' The Secretary's discretion is limited, as he may not exclude areas that ''will result in the extinction of the species.''

The ESA defines critical habitat under section 3(5)(A) as: ''(i) the specific areas within the geographical area occupied by the species, at the time it is listed . . ., on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed . . . upon a determination by the Secretary that such areas are essential for the conservation of the species.''

Once critical habitat is designated, section 7 of the ESA requires Federal agencies to ensure they do not fund, authorize, or carry out any actions that will destroy or adversely modify that habitat. This requirement is in addition to the section 7 requirement that Federal agencies ensure their actions do not jeopardize the continued existence of listed species.

Issues for Consideration and Evaluation

Section 4(a)(3) of the ESA requires us to designate critical habitat for threatened and endangered species. We are currently in the information-gathering phase, compiling information to propose critical habitat for the Cook Inlet beluga whale. Sections 3, 4(a), and 4(b) of the ESA suggest a number of questions the agency should consider when designating critical habitat:

- What areas were occupied by the species at the time of listing?
- What physical and biological features are essential to the species' conservation?
- Are those essential features ones that may require special management considerations or protection?
- Are there any areas outside those currently occupied that are ''essential for conservation?''

- What are the benefits to the species of critical habitat designation?
- What economic and other relevant impacts would result from a critical habitat designation?
- What is the appropriate geographic scale for weighing the benefits of exclusion and benefits of designation?
- Will the failure to designate any particular area as critical habitat result in the extinction of the species?

Answering these questions involves a variety of biological and economic considerations. To ensure that we have the best scientific data available, we are issuing this ANPR to solicit information before issuing a proposed rule. During the information-gathering phase, we are seeking public input and information (see ''Information Solicited'' below) and will gather and analyze the best available scientific data to inform critical habitat designations. We will then initiate rulemaking with the publication of a proposed designation of critical habitat, opening a period for public comment and the opportunity for public hearings.

Cook Inlet Beluga Whale Biology and Habitat Use

The beluga whale is a small, toothed whale in the family Monodontidae, a family it shares with only the narwhal. Belugas are also known as ''white whales'' because of the white coloration of the adults. The beluga whale is a northern hemisphere species, ranging primarily over the Arctic Ocean and some adjoining seas, where it inhabits fjords, estuaries, and shallow water in Arctic and subarctic oceans. Five distinct stocks of beluga whales are currently recognized in Alaska: Beaufort Sea, eastern Chukchi Sea, eastern Bering Sea, Bristol Bay, and Cook Inlet. The Cook Inlet population is numerically the smallest of these, and is the only one of the five Alaskan stocks occurring south of the Alaska Peninsula in waters of the Gulf of Alaska.

A detailed description of the biology of the Cook Inlet beluga whale may be found in the Proposed Listing Rule (72 FR 19854; April 20, 2007). Belugas generally occur in shallow, coastal waters, and while some populations make long seasonal migrations, Cook Inlet belugas reside in Cook Inlet year round. Data from satellite tagged whales documented that Cook Inlet belugas concentrate in the upper Inlet at rivers and bays in the summer and fall, and then tend to disperse into deeper waters moving to mid Inlet locations in the winter. The Traditional Ecological Knowledge (TEK) of Alaska Natives and systematic aerial survey data document a contraction of the summer range of Cook Inlet belugas. While belugas were once abundant and frequently sighted in the lower Inlet during summer, they are now primarily concentrated in the upper Inlet. This constriction is likely a function of a reduced population seeking the highest quality habitat that offers the most abundant prey, most favorable feeding topography, the best calving areas, and the best protection from predation. An expanding population would likely use the lower Inlet more extensively.

While mating is assumed to occur sometime between late winter and early spring, there is little information available on the mating behavior of belugas. Most calving in Cook Inlet is assumed to occur from mid-May to mid-July (Calkins, 1983), although Native hunters have observed calving from April through August (Huntington, 2000). Alaska Natives described calving areas as the northern side of Kachemak Bay in April and May, off the mouths of the Beluga and Susitna rivers in May, and in Chickaloon Bay and Turnagain Arm during the summer (Huntington, 2000). The warmer waters from these freshwater sources may be important to newborn calves during their first few days of life (Katona *et al.*, 1983; Calkins, 1989). Surveys conducted from 2005 to 2007 in the upper Inlet by LGL, Inc., documented neither localized calving areas nor a definitive calving season, since calves were encountered in all surveyed locations and months (April-October) (McGuire *et al.*, 2008). The warmer, fresher coastal waters may also be important areas for belugas' seasonal summer molt.

Cook Inlet belugas are opportunistic feeders and feed on a wide variety of prey species, focusing on specific species when they are seasonally abundant. Eulachon (locally referred to as hooligan or candlefish) is an important early spring food resource for beluga whales in Cook Inlet, as evidenced by the stomach of a beluga hunted near the Susitna River in April 1998 that was filled exclusively with eulachon (NMFS unpubl. data). These fish first enter the upper Inlet in April, with two major spawning migrations occurring in the Susitna River in May and July. The early run is estimated at several hundred thousand fish and the later run at several million (Calkins, 1989).

In the summer, as eulachon runs begin to diminish, belugas rely heavily on several species of salmon as a primary prey resource. Beluga whale hunters in Cook Inlet reported one whale having 19 adult king salmon in its stomach (Huntington, 2000). NMFS (unpubl. data) reported a 14 foot 3 inch (4.3 m) male with 12 coho salmon, totaling 61.5 lbs (27.9 kg), in its stomach.

The seasonal availability of energy-rich prey such as eulachon, which may contain as much as 21 percent oil (Payne et al., 1999), and salmon are very important to the energetics of belugas (Abookire and Piatt, 2005; Litzow et al., 2006). Native hunters in Cook Inlet have stated that beluga whale blubber is thicker after the whales have fed on eulachon than in the early spring prior to eulachon runs. In spring, the whales were described as thin with blubber only 2–3 inches (5–8 cm) thick compared to the fall when the blubber may be up to 1 ft (30 cm) thick (Huntington, 2000). Eating such fatty prey and building up fat reserves throughout spring and summer may allow beluga whales to sustain themselves during periods of reduced prey availability (e.g., winter) or other adverse impacts by using the energy stored in their blubber to meet metabolic needs. Mature females have additional energy requirements. The known presence of pregnant females in late March, April, and June (Mahoney and Shelden, 2000; Vos and Shelden, 2005) suggests breeding may be occurring in late spring into early summer. Calves depend on their mother's milk as their sole source of nutrition, and lactation lasts up to 23 months (Braham, 1984), though young whales begin to consume prey as early as 12 months of age (Burns and Seaman, 1986). Therefore, the summer feeding period is critical to pregnant and lactating belugas. Summertime prey availability is difficult to quantify. Known salmon escapement numbers and commercial harvests have fluctuated widely throughout the last 40 years; however, samples of harvested and stranded beluga whales have shown consistent summer blubber thicknesses.

In the fall, as anadromous fish runs begin to decline, belugas again return to consume the fish species found in nearshore bays and estuaries. This includes cod species as well as other bottom-dwellers such as Pacific staghorn sculpin and flatfishes, such as starry flounder and yellowfin sole. This change in diet in the fall is consistent with other beluga populations known to feed on a wide variety of food. Pacific staghorn sculpin are commonly found nearshore in bays and estuaries on sandy substrate (Eschmeyer et al., 1983). Flatfish are typically found in very shallow water and estuaries during the warm summer months and move into deeper water in the winter as coastal water temperatures cool (though some

may occur in deep water year-round) (Morrow, 1980).

The available information indicates that Cook Inlet belugas move throughout much of the Inlet in the winter months. They concentrate in deeper waters in mid Inlet past Kalgin Island, with occasional forays into the upper Inlet, including the upper ends of Knik and Turnagain Arms. While the beluga whales move into the mid to lower Inlet during the winter, ice cover does not appear to limit their movements. Their winter distribution does not appear to be associated with river mouths, as it is during the warmer months. The spatial dispersal and diversity of winter prey likely influence the wider beluga winter range throughout the mid Inlet.

There is obvious and repeated use of certain habitats by Cook Inlet beluga whales. Intensive aerial abundance surveys conducted in June and July since 1993 have consistently documented high use of Knik Arm, Turnagain Arm, Chickaloon Bay and the Susitna River delta areas of the upper Inlet. The high use of these areas by belugas is further supported by data from satellite tagging studies.

We considered habitat type and value in our 2008 Cook Inlet Beluga Conservation Plan (NMFS, 2008). That document stratified Cook Inlet into three regions based upon patterns of beluga habitat use, labeling them as valuable habitat types 1, 2, and 3. Type 1 habitat encompasses habitats with intensive beluga use from spring through fall, and which are important foraging and nursery habitats. Type 1 habitat includes all of Cook Inlet northeast of a line drawn from 3 miles southwest of the Beluga River across to Point Possession. Type 2 habitat is based on less concentrated spring and summer beluga use, and known fall and winter use areas. Type 2 habitat is located south of Type 1 habitat and north of a line at 60.2500 north latitude. It also extends south along the west side of the Inlet following the tidal flats into Kamishak Bay around to Douglas Reef, and includes an isolated section within Kachemak Bay. Type 3 habitat encompasses the remaining portions of their range in Cook Inlet; the southern boundary is an opening into the Gulf of Alaska approximately 85 km across from Cape Douglas to Elizabeth Island. Type 1 habitat is believed to be the most valuable of the three habitat types based on the frequency of use and its importance as feeding and calving habitats.

Areas Occupied by the Species at the Time of Listing

The ESA specifies that critical habitat is that habitat occupied by the species ''at the time it is listed'' (ESA section 3(5)(A)(i)). The range of Cook Inlet belugas has been previously defined as the waters of the Gulf of Alaska north of 58 oN. and freshwater tributaries to these waters based on then-available scientific data (65 FR 34590, May 31, 2000; MMPA Sec. 216.15(g); 76 FR 62919, Oct. 22, 2008). There are few beluga sightings in the Gulf of Alaska outside Cook Inlet. In the 1970s and 1980s, beluga sightings occurred across much of the northern and central parts of Cook Inlet, but in the 1990s the summer distribution narrowed to primarily the northernmost portions of Cook Inlet. More of the Inlet was used by beluga whales during the spring, summer, and fall during the 1970s and 1980s than is presently used. However, because sightings continue to occur over the described range, we consider the present range of this DPS to be occupied habitat. The present range of the listed Cook Inlet beluga is limited to Cook Inlet waters north of a line from Cape Douglas to Cape Elizabeth.

Critical Habitat Boundaries

NMFS' ESA regulations relevant to describing a geographical area and ''specific areas'' state that ''each critical habitat will be defined by specific limits using reference points and lines as found on standard topographic maps of the area'' (50 CFR 424.12). These regulations require that we also identify the state(s), county(ies), or other local governmental units within which all or part of the critical habitat is located. However, the regulations note that such political units typically would not constitute the boundaries of critical habitat. In addition, the regulations state that ephemeral reference points (e.g., trees, sand bars) shall not be used in defining critical habitat.

We seek the best scientific information available to make the designations as precise as practicable. During the information-gathering phase, we are seeking information that will allow us to map specific areas, using reference points and lines as found on standard nautical charts and topographic maps, that (1) are currently occupied by the species and (2) contain essential physical and biological features.

We have limited information on the distribution and occurrence of Cook Inlet beluga whales within tributary waters of Cook Inlet. Traditional Knowledge of Alaska Native hunters tells us these whales have occurred several miles up the Susitna and Beluga Rivers in past years, and whales have been observed above tidewater in the Knik River at Turnagain Arm. We seek more information on habitat in estuaries and freshwater as well as marine areas.

Physical and Biological Features Essential for Conservation

As described in ESA section 3(5)(A)(i), we will assemble the best available information to identify those ''specific areas within the geographical area occupied by the species at the time it is listed . . . on which are found those physical or biological features . . (I) essential to the conservation of the species and (II) which may require special management considerations or protection.'' Joint NMFS/FWS regulations for listing endangered and threatened species and designating critical habitat at section 50 CFR 424.12(b) state that the agency ''shall consider those physical and biological features that are essential to the conservation of a given species and that may require special management considerations or protection'' (also referred to as ''Essential Features'' or ''Primary Constituent Elements''). Pursuant to the regulations, such requirements include, but are not limited to the following: (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, rearing of offspring, germination, or seed dispersal; and generally (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species. These regulations go on to emphasize that the agency shall focus on essential features within the specific areas considered for designation. These features ''may include, but are not limited to, the following: roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, geological formation, vegetation type, tide, and specific soil types.''

We seek information on the identification of these essential features for purposes of identifying critical habitat.

Special Management Considerations or Protection

Coupled with the identification of essential features, during the information-gathering phase we seek input on whether the above essential features may require special

management considerations or protection. For example, unrestricted passage and access between habitats within upper Cook Inlet may require management of this waterway for projects that have the potential to disrupt passage, such as dams or causeways. Similarly, essential prey species such as king salmon may require special management to ensure long-term viability and to prevent overharvest. We will document the special management considerations and protection associated with the essential features and relate these to the factors affecting the species and/or critical habitat during formal rulemaking (see ''Schedule and Contents of Rulemaking'').

Areas Outside the Geographical Area Occupied by the Species

Section 3(5)(A)(ii) of the ESA defines critical habitat to include specific areas outside the geographical area occupied by the species only if the Secretary determines them to be essential for the conservation of the species. Section 3(3) of the ESA defines conservation as ''the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary.'' NMFS' ESA regulations at 424.12(e) state that the agency ''shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.'' We would thus include areas outside the occupied geographical area only if areas within the occupied geographical area were not adequate to support conservation. We seek information on the adequacy of the currently occupied habitat to support conservation of the Cook Inlet beluga DPS, and whether areas that are unoccupied might be ''essential for conservation.≥

Determining Economic and Other Relevant Impacts

Section 4(b)(2) of the ESA requires that the Secretary, in deciding to designate critical habitat, consider economic impacts, impacts to national security, and any other relevant impacts of such designation. We seek information relating to any of these impacts.

The ESA gives the Secretary discretion to exclude any area from critical habitat if the benefits of such exclusion outweigh the benefits of specifying the area as part of the critical habitat. During the information-gathering phase, we seek information regarding the benefits of excluding particular areas from the critical habitat designation and the benefits of including each such area as part of the critical habitat designation. We seek information that would allow us to monetize these effects to the extent practicable, as well as information on qualitative impacts to these effects. We also seek input on what approaches would allow us to determine if excluding a particular area from designation will result in the extinction of the species.

Determining Conservation Value

We seek information on the conservation value of potential critical habitat, based on the quality and quantity of the essential feature(s). We also seek input on the best methods for evaluating the conservation value of potential critical habitat areas. We are interested in information relevant to monetizing the conservation value of an area, to the extent useful measurement can be made, and/or to ranking the conservation benefits in an ordinal manner, if full monetization is not practicable.

The Appropriate Geographic Scale for Weighing the Benefits of Exclusion and Benefits of Inclusion

Cook Inlet is a vast region occupying a variety of habitat types and human presence. Much of it is undeveloped, while portions of the Inlet are adjacent to the most populated areas of the State. Consideration of areas for exclusion presents a problem of scale, wherein we wish to maintain the ecological perspective of important habitat for Cook Inlet beluga whales while allowing meaningful distinction between areas to be evaluated under section 4(b)(2).

In some cases, it may be useful to consider habitat units at a finer scale, for example, along the Municipality of Anchorage's waterfront on lower Knik Arm. We seek input on the scale to be used in this analysis for the balancing test.

Information Solicited

Past critical habitat designations have generated considerable public interest. Therefore, we believe it is important to engage the public early and often in the rulemaking process. This ANPR is a key first step, and we encourage all interested parties to submit comments regarding the issues raised in this notice.

In accordance with agency regulations at 50 CFR 424.13, we will consult as appropriate with affected states, interested persons and organizations, other affected Federal agencies, and, in cooperation with the Secretary of State, with the country or countries in which the species concerned are normally found or whose citizens harvest such species from the high seas. Data reviewed may include, but are not limited to, scientific or commercial publications, administrative reports, maps or other graphic materials, information received from experts, and comments from interested parties. Specific data needs include:

(1) Information on the past and current numbers and distribution of Cook Inlet beluga whales;

(2) Information describing the habitat type and quality of marine, estuarine, and freshwater habitats for all Cook Inlet beluga whales;

(3) Within areas occupied by Cook Inlet beluga whales, information regarding the physical and biological features that are essential to the conservation of this DPS;

(4) Any special management considerations or protection currently associated with essential physical and biological features within areas occupied by Cook Inlet beluga whales, such as any land use management plan, a state statute, a municipal ordinance, or other binding local enactment;

(5) Any specific areas within the range of Cook Inlet beluga whales that may not qualify for critical habitat designation because they lack essential physical or biological features or may not require special management consideration or protections;

(6) Any specific areas outside the area occupied by Cook Inlet beluga whales that are essential for their conservation;

(7) Any specific areas that should be excluded from critical habitat designation because the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat;

(8) Any current or planned activities in the range of Cook Inlet beluga whales and their possible impacts on areas that may qualify as critical habitat;

(9) Any economic or other relevant impacts that may result from designating critical habitat, regardless of whether those impacts are attributable co-extensively to other causes, in particular those impacts affecting small entities;

(10) Other benefits of excluding or designating a specific area as critical habitat; and

(11) Potential peer reviewers for proposed critical habitat designations, including persons with biological and economic expertise relevant to the designations.

As described in a joint NMFS/FWS policy on ESA information standards

published on July 1, 1994 (59 FR 34271), we will rely on the best and most comprehensive technical information available; gather and impartially evaluate information that disputes official positions; document evaluation of information; use, retain, and reference primary and original sources of information; and conduct management-level review of documents to verify and assure the quality of the science used to make the critical habitat designations. We will review all comments and information resulting from this ANPR prior to making any proposed designations and will include such documents in our public record. The public may review information submitted by contacting NMFS (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**) or via the internet at *http://www.fakr.noaa.gov/*.

Dated: April 7, 2009.

James W. Balsiger,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. E9–8519 Filed 4–13–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 090224231–9594–01]

RIN 0648–AX54

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; State Waters Exemption

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to allow an exemption from the minimum twine-top mesh size for vessels issued Federal scallop permits and fishing exclusively in State of Maine (ME) waters. In addition, the state waters exemption would provide an exemption from scallop days-at-sea (DAS) for limited access DAS scallop vessels, provided the vessel owner declares that the vessel will fish exclusively in ME state waters. The scallop fishery regulations specify that a state may be eligible for a state waters exemption if it has a scallop fishery and a scallop conservation program that does not jeopardize the biomass and fishing mortality/effort limit objectives of the Atlantic Sea Scallop Fishery Management Plan (FMP). The regulations further state that the Regional Administrator, Northeast Region, NMFS (RA), shall determine which states meet those criteria and shall authorize the exemption for such states by publishing a rule in the **Federal Register**.

DATES: Comments must be received by 5 p.m., local time, on May 14, 2009.

ADDRESSES: Documents supporting this action, including ME's request for the exemption, Amendment 11 to the FMP, and Framework 19 to the FMP, are available upon request from Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930.

You may submit comments, identified by 0648–AX54, 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: Peter Christopher.
- Mail: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on Maine State Waters Exemption.''

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Peter Christopher, Policy Analyst, 978–281–9288; fax 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

Amendment 11 to the FMP (Amendment 11), implemented on June 1, 2008 (73 FR 20090, April 14, 2008), includes a comprehensive new management program for the general category scallop fleet. Amendment 11 created a Northern Gulf of Maine Scallop Management Area (NGOM Area) that includes a total allowable catch (TAC), gear restrictions, and a possession limit for the NGOM Area that are more restrictive than previous regulations for the area. Under Amendment 11, NMFS determined that the exemptions for ME, New Hampshire (NH), and Massachusetts (MA), should be suspended, pending submission of additional information from those states regarding their state waters fisheries and the potential effects of allowing state waters exemptions under the Amendment 11 scallop regulations. In response, ME requested a state waters exemption and provided background information on the State's current scallop fishery management measures, the potential state waters scallop fishery, and information regarding potential new measures that the State was developing at the time.

The scallop fishery regulations at 50 CFR 648.54(c) specify that a state may be eligible for the state waters exemption if it has a scallop fishery and a scallop conservation program that does not jeopardize the biomass and fishing mortality/effort limit objectives of the FMP. The regulations further state that the RA shall determine which states meet those criteria and shall publish a rule in the **Federal Register**, in accordance with the Administrative Procedure Act, to provide the exemption for such states.

Based on the information submitted, NMFS has preliminarily determined that ME state waters qualify for the state waters exemption program under the FMP. The majority of ME's scallop fishery restrictions are either equally or more restrictive than Federal scallop fishing regulations. The exception is that ME allows vessels to use a minimum mesh size of 5.5–in (14–cm) twine tops on scallop dredges, while the Federal regulations require a 10–in (25.4–cm) minimum twine-top mesh size. The state waters exemption would therefore allow an exemption from the 10–in (25.4–cm) minimum twine-top mesh size. In addition, the state waters exemption would provide an exemption from scallop DAS for limited access DAS scallop vessels, but would not exempt such vessels from any other Federal restrictions other than the minimum twine-top mesh size as noted above. To fish under the exemption, owners of scallop vessels would be required to declare their intent to fish exclusively in ME state waters, subject to more restrictive state measures if applicable. Vessels with Federal Incidental Catch scallop permits would still be confined to the 40–lb (18–kg) limit under Federal regulations. The target total allowable catch was set at 50,000 lb (22,680 kg) for these vessels based partly on the very low possession limit. Allowing these vessels to harvest

more than 40 lb per trip could therefore compromise the TAC.

As required by the scallop fishery regulations, exemptions can only be granted if the state's scallop fishery would not jeopardize the biomass and fishing mortality/effort limit objectives of the FMP. The exemption from the Federal twine-top restriction and DAS would have no impact on the effectiveness of Federal management measures for the scallop fishery overall on the NGOM Area because the remainder of ME's scallop fishery regulations are more restrictive and would limit mortality and effort beyond the Federal management program. The twine top minimum mesh size restrictions are designed to help reduce bycatch in the scallop fishery. In particular, larger twine top mesh size is effective at reducing the bycatch of flatfish, including yellowtail, winter, and summer flounder in various areas. Exempting vessels in this program from the 10–in twine top mesh size is not expected to increase bycatch or be inconsistent with the Scallop FMP or Magnuson-Sevens Act. The use of 5.5 in (14–cm) twine top mesh size in the ME fishery is confined to approximately 2 months. The possession limit of 200 lb (90.7 kg) in ME's waters also limits overall fishing time. In addition, vessels with Federal scallop permits may decide not to replace the 10–in (25.4–cm) twine tops for the limited amount of time they might fish in ME state waters. Yellowtail and summer flounder are not common in most of ME state waters, and winter flounder concentrations are offshore primarily during winter months when ME's scallop fishery is open. Low concentrations of these flounder species would limit exposure of these species to the scallop dredge fishing under the exemption. For these reasons, exempting vessels from the 10–in (25.4–cm) twine top mesh size is consistent with the FMP's overall objectives and National Standard 9 requirement of minimizing bycatch and bycatch mortality to the extent practicable. Compliance with other National Standards would not be affected by the proposed exemption since it is fully consistent with the Scallop FMP which has been determined to be consistent with the Magnuson-Stevens Act, including the National Standards and required provisions.

ME is the only state that has requested an exemption. MA has not requested an exemption, and NH state agency staff worked with staff at the Northeast Regional Office to determine that new possession limit restrictions in NH state waters alleviated the need for the exemption program in NH waters.

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 FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

Final Regulatory Flexibility Analyses (FRFA) were completed for both Amendment 11 and Framework 19 (implemented in June 2008) that analyze the economic impacts of current FMP measures on small entities, including Federally permitted scallop vessels that would fish in both state and Federal waters. The proposed action would not generate any additional fishing effort and would not have any additional impacts on Federally permitted vessels than were analyzed in prior Amendment 11 and Framework 19. The exemption would only facilitate fishing in ME state waters, where vessels with Federal scallop permits would fish in ME waters without the exemption. Therefore, the proposed action would not create any additional economic impacts that were not considered in the prior FRFAs.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: April 8, 2009.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.54, paragraphs (a), (b), (c), (d), and (g) are revised to read as follows:

§ 648.54 State waters exemption.

(a) *State eligibility for exemption.* (1) A state may be eligible for a state waters exemption if it has a scallop fishery and a scallop conservation program that does not jeopardize the biomass and fishing mortality/effort limit objectives of the Scallop FMP.

(2) The Regional Administrator shall determine which states have a scallop fishery and which of those states have a scallop conservation program that does not jeopardize the biomass and fishing mortality/effort limit objectives of the Scallop FMP. In such case, the Regional Administrator shall publish a rule in the **Federal Register**, in accordance with the Administrative Procedure Act, to provide the exemption for such states.

(3) A state that has been issued a state waters exemption under paragraph (a)(4) of this section must immediately notify the Regional Administrator of any changes in its scallop conservation program. The Regional Administrator shall review these changes and, if a determination is made that the state's conservation program jeopardizes the biomass and fishing mortality/effort limit objectives of the FMP, or that the state no longer has a scallop fishery, the Regional Administrator shall publish a rule in the **Federal Register**, in accordance with the Administrative Procedure Act, to eliminate the exemption for that state.

(4) The Regional Administrator has determined that the State of Maine has a scallop fishery conservation program for its scallop fishery that does not jeopardize the biomass and fishing mortality/effort limit objectives of the Scallop FMP. A vessel fishing in State of Maine waters may fish under the State of Maine state waters exemption, subject to the exemptions specified in paragraphs (b) and (c) of this section provided the vessel is in compliance with paragraphs (d) through (g) of this section.

(b) *Limited access scallop vessel exemption.* Any vessel issued a limited access scallop permit is exempt from the DAS requirements specified in § 648.53(b) while fishing exclusively landward of the outer boundary of the waters of a state that has been issued a state waters exemption under paragraph (a)(4) of this section, provided the vessel complies with paragraphs (d) through (g) of this section.

(c) *Gear and possession limit restrictions.* Any vessel issued a limited access scallop permit, an LAGC NGOM, or an LAGC IFQ scallop permit is exempt from the minimum twine top mesh size for scallop dredge gear specified in § 648.51(b)(4)(iv) while fishing exclusively landward of the outer boundary of the waters of the State of Maine under the state waters exemption specified in paragraph (a)(4)

of this section, provided the vessel is in compliance with paragraphs (d) through (g) of this section.

(d) *Notification requirements.* Vessels fishing under the exemptions specified in paragraph (b) and/or (c) of this section must notify the Regional Administrator in accordance with the provisions of § 648.10(e).

* * * * *

(g) *Applicability of other provisions of this part.* A vessel fishing under the exemptions provided by paragraphs (b) and/or (c) of this section remains subject to all other requirements of this part.

[FR Doc. E9–8526 Filed 4–13–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071102641–9595–03]

RIN 0648–AR06

Fisheries of the Exclusive Economic Zone Off Alaska; Revision of Single Geographic Location Requirement in the Bering Sea Subarea

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to increase the number of times per year that a stationary floating processor (SFP) that is qualified under the American Fisheries Act (AFA) may move within State of Alaska waters in the Bering Sea (BS) subarea to process pollock harvested in the BS subarea directed pollock fishery. This action also would require AFA SFPs to process all Gulf of Alaska (GOA) pollock and GOA Pacific cod where they processed these species in 2002. This action is necessary to increase operational flexibility for AFA SFPs that process pollock caught in the BS subarea directed fishery while continuing to limit the competitive advantage of AFA SFPs in the GOA pollock and GOA Pacific cod fisheries. This action is intended to promote the goals and objectives of the Magnuson–Stevens Fishery Conservation and Management Act, the Fishery Management Plans for Groundfish of the GOA and for Groundfish of the Bering Sea and Aleutian Islands Management Area, and other applicable laws.

DATES: Comments on the proposed rule must be received no later than the close of business on May 29, 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 ''RIN 0648–AR06'' by any one of the following methods:

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

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.

Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for this action are available from the NMFS Alaska Region website at *http://www.alaskafisheries.noaa.gov* or from the mailing and street addresses listed above.

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

FOR FURTHER INFORMATION CONTACT: Becky Carls, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands Management Area (BSAI) and the GOA under the Fishery Management Plans (FMPs) for groundfish in the respective areas. The North Pacific Fishery Management Council (Council) prepared, and NMFS approved, the FMPs under the authority of the Magnuson–Stevens Fishery Conservation and Management Act (Magnuson–Stevens Act), 16 U.S.C. 1801 *et seq*. Regulations governing U.S. fisheries and implementing the FMPs appear at 50 CFR parts 600 and 679.

Background and Need for Action

The current single geographic location provisions apply to SFPs, which can be AFA or non–AFA qualified. An SFP, as defined at § 679.2, is a vessel of the United States operating as a processor in State of Alaska (State) waters that remains anchored or otherwise remains stationary in a single geographic location while receiving or processing groundfish harvested in the GOA or BSAI. There are two AFA SFPs that are the two largest SFPs operating in Alaska, and six AFA onshore processors. It is unlikely that there will be more AFA SFPs because the regulatory requirements to qualify as an AFA SFP are unlikely to be met by other entities. The two AFA SFPs are semi–permanently moored in protected anchorages in the Aleutian Islands less than 45 nautical miles (nm) (83 km) apart. The F/V *Arctic Enterprise* is located in Akutan Bay, and the F/V *Northern Victor* is located in Beaver Inlet.

History of Single Geographic Location Provisions

In 1992, the final rule implementing Amendment 18 to the BSAI FMP and Amendment 23 to the GOA FMP was published (57 FR 61326, December 24, 1992). Under Amendments 18/23, the Council adopted resource allocations of BSAI and GOA pollock and GOA Pacific cod between inshore and offshore components in response to concerns of one component preempting another in harvesting the total allowable catch in those fisheries. Amendments 18/23 also established the single geographic location provisions for the inshore pollock processing sector to discourage offshore catcher/processors and motherships from entering the inshore sector. Any operational advantage over the shore–based processors due to the offshore processors' mobility would be lost by being limited to one location. The prohibition on processing fish in more than a single geographic location applied on a fishing-year basis and only to vessels processing catch from target pollock and GOA Pacific cod fisheries. A processing vessel could leave the specified inshore fixed geographic location within State waters to process other species of groundfish. If, later, the processor was needed to process catch from target BSAI or GOA pollock or GOA Pacific cod fisheries, the processing vessel would first have to

return to its original location. The processing vessel was not required to return to the original location to process pollock or GOA Pacific cod taken as incidental catch, or to participate in any other fishery. The SFPs were allowed to change locations for processing pollock or GOA Pacific cod between fishing years. These provisions initially were set to expire on December 31, 1995.

Subsequent extensions of the inshore/offshore regulations made no substantive changes to the single geographic location provisions. Amendments 38/40 to the FMPs (60 FR 63654, December 12, 1995) extended the single geographic location provisions to December 31, 1998. Amendments 51/51 extended the single geographic location provisions through 2001. While Amendments 61/61 (described below) were under development, the single geographic location provisions were extended on an interim basis through several emergency interim rules beginning January 28, 2000 (65 FR 4520).

In December 2002, AFA provisions were implemented by the final rule for Amendments 61/61 (67 FR 79692, December 30, 2002). That rule revised SFP regulations to restrict any AFA SFP to processing BSAI pollock to a single geographic location in State waters during a fishing year. While the proposed rule for Amendments 61/61 contained a December 31, 2004, sunset date for the AFA and inshore/offshore regulations, including the single geographic location provisions, that sunset date was removed under the final rule that implemented Amendments 61/61. The December 31, 2004, sunset date was removed due to the passage of the Department of Commerce and Related Agencies Appropriations Act, 2002 (Public Law 107–77, November 28, 2001), Section 211 of title II which removed the December 31, 2004, sunset date for the AFA.

Current and Proposed BS Subarea Single Geographic Location Provisions

Current regulations limit AFA inshore processors, including AFA SFPs, to a single geographic location during a fishing year when processing pollock harvested in the BS subarea directed pollock fishery. The regulations further specify that a single geographic location for an AFA SFP is the location within State waters that is within 5 nm of the position in which the SFP first processed pollock harvested in the subarea directed pollock fishery during a fishing year.

In conjunction with the Council's consideration of Amendments 62/62, the Council considered a regulatory amendment submitted to the Council by industry in April 2001 to allow AFA SFPs to relocate in the BSAI during a fishing year for purposes of processing pollock in the BSAI. In April 2002, as part of its action under Amendments 62/62, the Council adopted the following problem statement regarding the industry proposal:

> Existing regulations require AFA inshore floating processors to operate in a single geographic location, when processing BSAI targeted pollock. The result is a lack of flexibility and inefficient use of these facilities. The problem for the Council is to develop an FMP amendment to remove this restriction in the BSAI while providing continued protection for GOA groundfish processors. The Amendment should increase flexibility for these facilities to provide opportunities for reduced delivery costs and enhanced product quality while avoiding negative environmental impacts.

Originally, two alternatives were considered by the Council. The no action or status quo alternative would continue to restrict AFA SFPs to a single geographic location during a fishing year while processing targeted BSAI pollock. The second alternative would allow AFA SFPs to change locations for processing targeted BSAI pollock from reporting week to reporting week without any limits on the number of location changes. Alternative 2 would maintain the single geographic location requirement but would reduce the relocation waiting period from one year to one week.

None of the six onshore AFA processors expressed opposition to allowing the AFA SFPs to change location during the fishing year. However, representatives of some of the onshore processors expressed a preference that the number of location changes be kept to one or two per year. Most representatives of AFA onshore processors believe the AFA cooperative agreements have, by and large, addressed the concern over preemption of the BSAI pollock fishery, by assigning permanent allocations to each sector and participating cooperative. To address the concerns of AFA onshore processors, the Council added a third alternative that would limit the number of AFA SFP location changes to no more than four per fishing year. Additionally, the single geographic locations were limited to within State waters in only the BS subarea for the purpose of processing pollock harvested in a directed pollock fishery.

Originally, the single geographic location restriction was implemented in the inshore/offshore regulations to prevent floating processors, which have some limited mobility and which operate in the inshore processing sector, from having an unfair economic advantage over operators of onshore processing plants. It was also intended to prevent offshore catcher/processors and motherships that have greater mobility, from entering the inshore sector. With the passage of the AFA, and the associated cooperative agreements, these concerns diminished in the BSAI pollock target fisheries.

In October 2002, the Council took final action on the single geographic location provisions and chose Alternative 3 as its preferred alternative. That alternative allows any AFA SFP to change its location within State waters, from reporting week to reporting week, up to four times during a fishing year for processing pollock harvested in the BS subarea directed pollock fishery. In addition, under the preferred alternative, AFA inshore processors would be required to process all GOA pollock and GOA Pacific cod delivered to them in the same location at which they processed these species in 2002. Note that in the EA/RIR and this proposed rule, the term ''AFA inshore processors'' refers only to the AFA SFPs with which the action is concerned, rather than all AFA inshore processors which would include onshore processors. The Council took this action after receiving public testimony that the AFA inshore pollock allocation and associated fishing cooperatives reduced the need for restricting movement in the BSAI of these AFA SFPs.

Rather than pertaining to the entire BSAI, the alternatives and analysis for the proposed action are limited to the BS subarea to reflect the Council's preferred alternative that was restricted to the BS, and to reflect following Congressional action. In January 2004, Congress passed the Consolidated Appropriations Act of 2004 (Public Law 108–199). Section 803 of the Act requires that future directed fishing allowances of pollock in the Aleutian Islands (AI) be allocated to the Aleut Corporation. The action states that only fishing vessels approved by the Aleut Corporation or its agents will be allowed to harvest this allowance. It is the Council's and NMFS's interpretation that Public Law 108–199 supersedes AFA provisions, including single geographic location requirements, in the AI. As a result, Amendment 82 (70 FR 9856, March 1, 2005) revised AFA regulations to reflect that they were effective only in the BS. This proposed rule is written to reflect this Congressional action and the Council's preferred alternative by limiting provisions to only the BS.

The proposed changes to regulations at § 679.4(l)(5)(iii) would limit AFA inshore processors to processing pollock harvested in the BS subarea directed pollock fishery to only a single geographic location during a fishing week instead of a single geographic location in a fishing year. The regulations at § 679.4(l)(5)(iii)(B) would be revised to further specify that a single geographic location for an AFA SFP is (1) a position identified by fixed location, within State waters in the BS subarea at which an AFA SFP may process BS subarea pollock harvested in a BS subarea directed pollock fishery if the SFP does not change its location to process such pollock more than four times during a fishing year and (2) that the location is a geographic position that is within 5 nautical miles (nm) of the latitude and longitude reported in check–in and check–out reports that are required under regulations at § 679.5(h)(5)(ix)(B). The regulations would no longer limit a single geographic location to the position where the AFA SFP first processed pollock harvested in a BS subarea directed pollock fishery during a fishing year.

The proposed changes to the regulations at § 679.7(k)(3)(iv)(B) would change the single geographic location restriction on AFA SFPs for purposes of processing pollock harvested in a BS subarea directed pollock fishery from a single geographic location per fishing year to no more than four location changes within State waters in the BS. The proposed regulations would specify that no more than a single geographic location would be able to be used during a reporting week, and specifies a single geographic location as the geographic position that is within 5 nm of the latitude and longitude reported in check–in and check–out reports that are required under regulations at § 679.5(h)(5)(ix)(B). As many as five different locations could be used, but the number of times that an AFA SFP may move to change its location for purposes of processing pollock harvested in a BS subarea directed pollock fishery would be limited to four.

Current and Proposed GOA Single Geographic Location Provisions

Current regulations at § 679.7(a)(7)(vi) prohibit all SFPs with a GOA inshore processing endorsement from processing pollock or GOA Pacific cod harvested in a directed fishery in more than a single geographic location during a fishing year. The proposed change to § 679.7(a)(7)(vi) would apply solely to AFA SFPs; the current requirements would remain unchanged for non–AFA SFPs.

This action would require AFA SFPs to process all GOA pollock and all GOA Pacific cod in the same geographic location where they processed these species in 2002. These new regulations would appear at § 679.7(k)(3)(vii). This proposed restriction is intended to reduce the potential for these mobile AFA SFPs to take advantage of increased flexibility for processing locations in the BS subarea and receive and process a larger share of GOA pollock or GOA Pacific cod compared with the status quo in 2002, the year that Council action was taken. Pacific cod or pollock harvested in the GOA also are processed by other inshore processing operations. Without this restriction on AFA SFPs, other inshore processing operations would not be protected from the competitive advantage that could result from increased mobility of the AFA SFPs.

The Council did not intend to increase the operational flexibility of the AFA SFPs in the GOA pollock and GOA Pacific cod fisheries under this action. Therefore, the Council acted to restrict the AFA SFPs to processing GOA pollock and GOA Pacific cod to the location at which they processed these species in 2002. Without this restriction the AFA SFPs could have a significant competitive advantage over the non–AFA SFPs or other GOA inshore processors. For example, the AFA SFPs could process GOA pollock or GOA Pacific cod at a single geographic location in the GOA, move to the BS subarea to process BS subarea directed pollock in up to five locations, and then return to the GOA for further processing of GOA pollock or GOA Pacific cod. If a year later than 2002 were selected, the AFA SFPs could have moved to a potentially more advantageous location for processing GOA species. By selecting 2002, the Council would maintain the status quo for these fisheries that was in place when the Council took final action on these single geographic location provisions, enhancing stability in the GOA pollock and GOA Pacific cod fisheries. The Council's action would continue protection, currently provided under regulations at § 679.7(a)(7)(vi), for the other inshore processing operations in these regulated fisheries from the potentially improved access of AFA SFPs to GOA Pacific cod and GOA pollock.

Likely Effects of Single Geographic Location Changes

It is not possible to provide detailed cost of production data for the two affected SFPs, due to federal and State confidentiality constraints. Accordingly, the likely effects of this proposed action are based primarily on qualitative information rather than quantitative data. The manner in which companies owning the two AFA SFPs may choose to change their operation, should this proposed rule be approved, is not known. A representative of one of these companies indicated that his firm had no current plans to move its processor. A representative from the other company indicated that company may consider moving the processor after the first BS subarea pollock fishing season, but that specific plans had not yet been determined. Thus, any future impacts are highly speculative.

The EA/RIR prepared for this action determined that this proposed rule has the potential to reduce an operational restriction on two AFA SFPs. Current AFA regulations requiring an SFP to operate in a single geographic location when processing BS subarea pollock restrict flexibility and efficient use of these facilities when receiving pollock from some BS subarea locations. Costs of transit time for the catcher vessels delivering to the two AFA SFPs and associated decline in pollock product quality over longer transit periods may be reduced if the existing restrictions were relaxed and those processors choose to operate in areas closer to possible concentrations of pollock than their current locations in Beaver Inlet and Akutan, Alaska. This proposed rule would likely increase operational flexibility for these facilities and for the associated catcher vessels, and provide opportunities for reduced delivery costs, potentially increased time available to fish, and enhanced product quality. This situation, should it occur, would most likely be during the second BS subarea pollock fishing season, and involve operations in St. Paul in the Pribilof Islands. It is not likely that either company would choose to operate away from the major concentrations of pollock near Unimak Pass during the first BS subarea pollock fishing season. The magnitude of these potentially reduced operating costs for catcher vessels cannot be estimated, but the round trip travel time between the current AFA SFP locations and St. Paul is estimated to be 50 hours.

Allowing the two AFA SFPs to relocate during the fishing season has the potential to add greater operational flexibility for their respective companies to deal with regulatory changes to protect Steller sea lions or other time/area closures that may occur in the future. Their respective cooperatives may benefit from this flexibility should

stocks of pollock move northward in the BS subarea due to changing environmental conditions in the BS. Relocating would impose a financial cost, but the moves would be entirely voluntary. In the time since the AFA was enacted, the F/V *Northern Victor* has been located in Beaver Inlet, south of Unalaska; the F/V *Arctic Enterprise* moved one time, in 2000, from Beaver Inlet to Akutan Bay. Because there have been few changes in processing locations by the AFA SFPs in the past, and because of the logistical and economic burden created by a relocation, it seems highly improbable that a maximum of four moves per year would pose a meaningful operational constraint in the foreseeable future.

There are potential benefits to restricting the AFA SFPs to processing GOA pollock and GOA Pacific cod to the location at which they processed these species in 2002. This restriction would maintain the status quo for these fisheries that was in place when the Council took final action in 2002, enhancing stability in the GOA pollock and GOA Pacific cod fisheries. This proposed restriction is intended to mitigate the potential for these mobile AFA SFPs to take advantage of the flexibility with processing locations in the BS subarea and receive and process a larger share of GOA pollock or GOA Pacific cod than would other inshore processing operations under the status quo. While there would be an expense involved if an AFA SFP chose to return to its 2002 location for processing, the amount of GOA pollock and GOA Pacific cod processed by the AFA SFPs historically has been very minor.

There are also potential impacts to entities beyond the AFA SFPs and their associated catcher vessels. There is the possibility that an AFA catcher vessel that is not a member of an AFA SFP's cooperative may choose to deliver part of its ten percent non–specified cooperative allocation to that AFA SFP to benefit from reduced running time to and from the fishing grounds and from the associated increase in fishing time. For example, pollock harvested near St. Paul and delivered to an AFA SFP located in St. Paul harbor would have a substantially reduced delivery time compared to deliveries to these same facilities located in Akutan or near Dutch Harbor.

There also may be regional impacts associated with AFA SFP location changes. Akutan would likely lose tax revenue generated from the local 1 percent raw fish tax on landings processed by the AFA SFP if the SFP relocated to another location outside the community. In addition, Aleutians East Borough would likely lose a portion of the fish tax revenues they currently receive if either AFA SFP relocates to another location outside the Borough. However, communities near a new AFA SFP location may benefit from direct expenditures (e.g., food, fuel, transportation), indirect employment gains supported by an increased level of local economic activity, and an increase in fish tax revenues. Note that any localized increases in economic activity would not represent an overall net benefit to the Nation. Gains to the community to which the AFA SFP relocates would be offset by an equivalent reduction in economic activity in the community in which the SFP previously based its operation.

A potential benefit to the BS subarea region would be the redirection of effluent from processing operations to other areas of State waters adjacent to the BS. This would reduce the impacts from fish processing effluent in any one particular area in which the AFA SFPs might operate.

Benefits to the nation as a whole would include fresher, higher quality product for consumers and a reduction in fuel consumed by catcher vessels running between the AFA SFPs and the fishing grounds. Both of these benefits are attributable to the AFA SFPs being able to relocate closer to the fishing grounds. According to the EA/RIR analysis, this action would successfully avoid negative environmental impacts, fulfilling part of the problem statement as stated above.

Recordkeeping and Reporting

Existing regulations at § 679.5(h)(1) require the manager of an SFP to submit check–in and check–out reports prior to receiving or ceasing to receive or process groundfish. Check–in and check–out reports must be submitted to the Regional Administrator within the appropriate time limits when beginning and when ceasing processing activities. Under the proposed regulations, no more than a single geographic location could be used by an AFA SFP in a weekly reporting period. To monitor this provision, the current check–in report and check–out report table at § 679.5(h)(4) would be amended by adding requirements for the manager of an AFA SFP to notify NMFS of a change in location by submitting a complete check–out report before changing location and a check–in report before receiving groundfish at the new location. The new location would be reported on the check–in report as currently required at § 679.5(h)(5)(ix)(B).

Classification

Pursuant to the Magnuson–Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the BSAI and GOA FMPs, other provisions of the Magnuson–Stevens Act, and other applicable law, subject to further consideration after public comment. This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as those terms are defined in the Regulatory Flexibility Act.

Basis and purpose of rule

The groundfish fisheries in the Exclusive Economic Zone off Alaska are managed under the Fishery Management Plan for Groundfish of the Gulf of Alaska Management Area (GOA FMP), and the Fishery Management Plan for Groundfish in the Bering Sea and Aleutian Islands Management Area (BSAI FMP). The North Pacific Fishery Management Council (Council) prepared the FMPs, under the authority of the Magnuson–Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801, *et seq.* Regulations implementing the FMPs appear at 50 CFR part 679.

Under regulations implementing the American Fisheries Act (AFA), only two specific vessels may participate as SFPs in the BSAI pollock target fisheries. Under current regulations, these two SFPs are precluded from operating in more than one location (which must be within State of Alaska waters) during a fishing year while processing targeted pollock. The purpose of the proposed rule is to redefine the single geographic location rule for these two AFA SFPs. The proposed rule would restrict these AFA SFPs to a single geographic location, within State of Alaska waters, during each reporting week; but would allow the processors to change location from reporting week to reporting week, up to a maximum of four changes per calendar year. In addition, the two AFA SFPs would be required to process any GOA pollock, or GOA Pacific cod, or both, delivered to them, in the same location at which they processed these species in 2002.

This action is necessary to increase the operational flexibility of AFA SFPs that process pollock caught in the Bering Sea subarea directed fishery while restricting them to the location in which they processed GOA pollock or GOA Pacific cod in 2002. The intended effect of this action is to reduce the cost of transporting Bering Sea subarea pollock from distant fishing grounds to an AFA SFP, and to improve the product quality resulting from reduced transit times.

Factual Basis for the Certification

Description and estimate of the number of small entities to which the rule applies

No small entities would be directly regulated by the proposed rule. Only two AFA SFPs potentially would be directly regulated by the proposed change in the single geographic location regulations. Both of these processors would be considered ''large entities,'' because they are part of AFA cooperatives (see NMFS Alaska Region website at *http://www.fakr.noaa.gov/ram*). Each AFA cooperative is considered to be a large entity under Small Business Administration (SBA) criteria, because each entity is believed to employ 500 or more persons, on a full–time, part–time, temporary, or other basis; and when each is taken in combination with all its affiliated operations, worldwide, has combined annual gross receipts in excess of $4.0 million.

Description and estimate of economic impacts on small entities by entity size and industry

Based upon the attached Regulatory Impact Review, the proposed action would not result in imposition of any adverse economic effects on any directly regulated small entities. The American Fishery Act Final Environmental Impact Statement/Regulatory Impact Review/ Final Regulatory Flexibility Analysis, under Section 4.6, provides an extensive treatment of the potential impacts to small entities, from a range of alternatives that fully encompasses this action. Amending the regulations to allow AFA SFPs to process BSAI target pollock in more than one location during a single fishing year, would impose no known costs on any directly regulated small entities. Indeed, the only entities that are ''directly regulated'' by this action are ''large'', based on SBA criteria.

Criteria used to evaluate whether the rule would impose impacts on a substantial number of small entities

The SBA has established size criteria for all major industry sectors in the United States, including fish harvesting and fish processing businesses. A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual gross receipts not in excess of $4.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full–time, part–time, temporary, or other basis, at all its affiliated operations worldwide.

Only two entities, both AFA SFPs, are directly regulated by the proposed rule. Each AFA SFP is considered to be a large entity, because each employs 500 or more persons, on a full–time, part–time, temporary, or other basis when each is taken in combination with all its affiliated operations worldwide. Therefore, no small entities would be directly regulated by this proposed rule.

Criteria used to evaluate whether the rule would impose ''significant economic impacts''

Because no small entities are directly regulated by the proposed rule, no criteria were applied.

Description of, and an explanation of the basis for, assumptions used

SFP size determinations were based on known cooperative affiliations, ownership structure, and anecdotal information about each SFP's employee numbers.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains collection–of–information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by OMB under Control Number 0648–0213. Public reporting burden for the shoreside processor check–in and check–out reports is estimated to average ten minutes per response.

This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e–mail to *David__Rostker@omb.eop.gov*, or fax to 202–395–7285.

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

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: April 8, 2009.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

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

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

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

2. In § 679.4, revise paragraphs (l)(5)(iii) introductory text and (l)(5)(iii)(B) to read as follows:

§ 679.4 Permits.

* * * * *

(l) * * *

(5) * * *

(iii) *Single geographic location requirement.* An AFA inshore processor permit authorizes the processing of pollock harvested in the BS subarea directed pollock fishery only in a single geographic location during a reporting week. For the purposes of this paragraph, single geographic location means:

* * * * *

(B) *Stationary floating processors (SFP).* A geographic position within State of Alaska waters of the BS subarea and that is within a 5 nm radius of the latitude and longitude reported in the check–in and check–out reports at § 679.5(h)(5)(ix)(B). An AFA SFP cannot change its single geographic location more than four times within State of Alaska waters in the BS subarea to process pollock harvested in a BS subarea directed pollock fishery during a fishing year and cannot use more than one single geographic location during a reporting week.

* * * * *

3. In § 679.5, add paragraph (h)(4)(x) to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

* * * * *

(h) * * *

(4) * * *

For ...	If you are a ...	Submit a BEGIN message	Submit a CEASE message
*******			
(x) Change of location	AFA SFP	Before receiving groundfish.	Upon completion of receipt of groundfish from a position and before movement from that position.

* * * * *

4. In § 679.7, revise paragraphs (a)(7)(vi) and (k)(3)(iv)(B) and add paragraph (k)(3)(vii) to read as follows:

§ 679.7 Prohibitions.

* * * * *

(a) * * *

(7) * * *

(vi) Except as provided in paragraph (k)(3)(iv) of this section, use a stationary floating processor with a GOA inshore processing endorsement to process pollock or GOA Pacific cod harvested in a directed fishery for those species in more than one single geographic location during a fishing year.

* * * * *

(k) * * *

(3) * * *

(iv) * * *

(B) *Stationary floating processor (SFP).* A geographic position within State of Alaska waters of the BS subarea and that is within a 5 nm radius of the latitude and longitude reported in the check–in and check–out reports at § 679.5(h)(5)(ix)(B). An AFA SFP cannot change its single geographic location more than four times within State of Alaska waters in the BS subarea to process pollock harvested in a BS subarea directed pollock fishery during a fishing year and cannot use more than one single geographic location during a reporting week.

* * * * *

(vii) *Restrictions for GOA Pacific cod and GOA pollock.* Use an AFA SFP to process GOA pollock or GOA Pacific cod in any location other than the location at which either GOA pollock or GOA Pacific cod were first processed in the year 2002.

* * * * *

[FR Doc. E9–8528 Filed 4–13–09; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 74, No. 70

Tuesday, April 14, 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

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of the Third Dietary Guidelines Advisory Committee Meeting and Solicitation of Written Comments

AGENCIES: U.S. Department of Agriculture (USDA), Food, Nutrition and Consumer Services (FNCS) and Research, Education and Economics (REE); and U.S. Department of Health and Human Services (HHS), Office of Public Health and Science (OPHS).

ACTION: Notice.

SUMMARY: The Department of Agriculture (USDA) and the Department of Health and Human Services (HHS) (a) provide notice of the third meeting of the Dietary Guidelines Advisory Committee, and (b) solicit written comments pertinent to a review of the *Dietary Guidelines for Americans.*

DATES: This Notice is provided to the public on April 14, 2009. (1) The Committee will meet on April 29, 2009, from 1:30–5 p.m. E.D.T. and on April 30, 2009, from 8:30 a.m.–5 p.m. E.D.T. (2) Written comments pertinent to review of the *Dietary Guidelines for Americans* must be received by 5 p.m. E.D.T. on April 23, 2009, to ensure transmission to the Committee prior to this meeting. Written comments will be accepted throughout the Committee deliberation process.

ADDRESSES: The third meeting will be held online, via Webinar format. Details regarding how to assure that your windows computer and browser are compatible with the Webinar format being used will be provided by e-mail following meeting registration and can also be found on the Dietary Guidelines Web site at *http://www.DietaryGuidelines.gov*. Written comments are encouraged to be submitted electronically at *http://www.DietaryGuidelines.gov.*

FOR FURTHER INFORMATION CONTACT: USDA Co-Executive Secretaries: Carole Davis, Designated Federal Officer to the Dietary Guidelines Advisory Committee (telephone 703–305–7600), Center for Nutrition Policy and Promotion, 3101 Park Center Drive, Room 1034, Alexandria, Virginia 22302; or Shanthy Bowman (telephone 301–504–0619), Agricultural Research Service (ARS), Beltsville Human Nutrition Research Center, 10300 Baltimore Avenue, Building 005, Room 125, BARC–WEST, Beltsville, Maryland 20705. HHS Co-Executive Secretaries: Kathryn McMurry (telephone 240–453–8280) or Holly McPeak (telephone 240–453–8280), Office of Disease Prevention and Health Promotion, Office of Public Health and Science, 1101 Wootton Parkway, Suite LL100, Rockville, Maryland 20852. Additional information is available on the Internet at *http://www.DietaryGuidelines.gov*.

SUPPLEMENTARY INFORMATION:

Dietary Guidelines Advisory Committee: The thirteen-member Committee appointed by the Secretaries of the two Departments is chaired by Linda V. Van Horn, PhD, R.D., L.D., Northwestern University, Chicago, Illinois. The Vice Chair of the Committee is Naomi K. Fukagawa, M.D., PhD, University of Vermont, Burlington, Vermont. Other members are: Cheryl Achterberg, PhD, The Ohio State University, Columbus, Ohio; Lawrence J. Appel, M.D., M.P.H., Johns Hopkins Medical Institutions, Baltimore, Maryland; Roger A. Clemens, Dr.P.H, The University of Southern California, Los Angeles, California; Miriam E. Nelson, PhD, Tufts University, Boston, Massachusetts; Sharon M. Nickols-Richardson, PhD, R.D., Pennsylvania State University, University Park, Pennsylvania; Thomas A. Pearson, M.D., PhD, M.P.H., University of Rochester, Rochester, New York; Rafael Pérez-Escamilla, PhD, University of Connecticut, Storrs, Connecticut; Xavier Pi-Sunyer, M.D., M.P.H., Columbia University College of Physicians and Surgeons, New York, New York; Eric B. Rimm, Sc.D., Harvard University, Boston, Massachusetts; Joanne L. Slavin, PhD, R.D., University of Minnesota, St. Paul, Minnesota; and Christine L. Williams, M.D., M.P.H., Columbia University (Retired), Healthy Directions, Inc., New York, New York.

Purpose of the Meeting: Section 301 of Public Law 101–445 (7 U.S.C. 5341, the National Nutrition Monitoring and Related Research Act of 1990, Title III) directs the Secretaries of USDA and HHS to publish the *Dietary Guidelines for Americans* at least every five years. At its first meeting, the Dietary Guidelines Advisory Committee advised that a revision of the 2005 *Dietary Guidelines for Americans* is warranted. After a thorough review of the most current scientific and applied literature and open Committee deliberations, the Committee will provide its recommendations in the form of an advisory report to the Secretaries of both Departments.

Meeting Agenda: The meeting will (a) include presentations by expert speakers on topics that may include the eating environment, economics and nutrient adequacy, and effects of various macronutrient meal plans on weight status; (b) allow individual subcommittees to provide updates on progress made within each subcommittee; and (c) allow for the continued formulation of plans for future work of the Committee. Specific times of presentations and topic area discussions are subject to change.

Public Participation: Members of the public are invited to attend online the Dietary Guidelines Advisory Committee meeting. There will be no opportunity for oral public comments during this online meeting. Written comments, however, are welcome throughout the development process of the 2010 *Dietary Guidelines for Americans.* These can be submitted at *http://www.DietaryGuidelines.gov*. See below for more detailed instructions for submitting written comments.

To attend the Committee meeting, individuals must pre-register at the Dietary Guidelines Web site located at *http://www.DietaryGuidelines.gov*. A link for Meeting Registration will be available to click on. Registration for the meeting is limited. Registrations will be accepted until maximum Webinar capacity is reached and must be completed by 5 p.m. E.D.T April 27, 2009. A waiting list will be maintained should registrations exceed Webinar capacity. Individuals on the waiting list will be contacted as additional space for the meeting becomes available.

Registration questions may be directed to the meeting planner, Crystal Tyler, at 202–314–4701. Registration must include name, affiliation, phone number or e-mail, and days attending. Following pre-registration, individuals will receive a confirmation of registration via e-mail with instructions on how to access the Webinar and check for computer compatibility. Please call Crystal Tyler at 202–314–4701 by COB April 23, 2009 should you require assistance or any special accommodations.

Written Comments: By this notice, the Committee is soliciting submission of written comments, views, information and data pertinent to the review of the *Dietary Guidelines for Americans*. Written comments are encouraged to be submitted electronically at *http://www.DietaryGuidelines.gov*. A ''submit comments'' button is available for access to the public comments database. Lengthy comments or support materials can be uploaded as an attachment. Multiple attachments must be ''zip-filed''. Comments not submitted electronically can be mailed, faxed, or delivered to: Carole Davis, Co-Executive Secretary of the Dietary Guidelines Advisory Committee, Center for Nutrition Policy and Promotion, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1034, Alexandria, VA 22302, 703–305–7600 (telephone), 703–305–3300 (fax). All comments for this meeting must be received by 5 p.m. E.D.T. on April 23, 2009 and will become part of the public comments database. Comments are welcome throughout the Committee's deliberations.

Public Documents: Documents pertaining to Committee deliberations will be available for public viewing from 8:30 a.m. to 4:30 p.m. E.D.T., Monday through Friday (except Federal holidays), at the Reference Desk of the National Agricultural Library, USDA/ARS, 10301 Baltimore Avenue, Beltsville, MD 20705. The Reference Desk telephone phone number is 301–504–5755; however, no advance appointment is necessary. Meeting materials (*i.e.,* agenda, meeting minutes, and transcript), once available, can be found at *http://www.DietaryGuidelines.gov*.

Dated: March 16, 2009.

Robert C. Post,

Acting Executive Director, Center for Nutrition Policy and Promotion, U.S. Department of Agriculture.

Dated: March 16, 2009.

Edward B. Knipling,

Administrator, Agricultural Research Service, U.S. Department of Agriculture.

Dated: March 23, 2009.

Penelope Slade-Sawyer,

Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion), U.S. Department of Health and Human Services.

[FR Doc. E9–8482 Filed 4–13–09; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Risk Management Agency

Notice of Intent To Seek Approval To Conduct an Information Collection

AGENCY: Risk Management Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Risk Management Agency to request approval for the collection of information in support of the agency's mission under section 522(d) of the Federal Crop Insurance Act to develop and implement risk management tools for producers of agricultural commodities through partnership agreements.

DATES: Written comments on this notice will be accepted until close of business, June 15, 2009.

ADDRESSES: Interested persons are invited to submit written comments to Virginia Guzman, United States Department of Agriculture (USDA), Non-Insurance Programs Branch, Federal Crop Insurance Corporation, Risk Management Agency, 6501 Beacon Drive, Mail Stop 813, Kansas City, MO 64133. Written comments may also be submitted electronically to: *RMANIP.PRA@rma.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Virginia Guzman at the Kansas City, MO address listed above, telephone (816) 926–3843.

SUPPLEMENTARY INFORMATION:

Title: Risk Management Tools for Drought.

OMB Number: 0563–NEW.

Type of Request: New Information Collection.

Abstract: The Risk Management Agency intends to collect information for purposes of the development of non-insurance risk management tools and assessment of the tools. Information collection for this study is required for the purposes of (1) Understanding the risk and impacts of drought on agricultural producers; (2) identifying information needed by producers to assist them in their decision making; (3) tool development, and (4) on-going evaluation and testing of the developed tools. The information collection will be conducted through telephone interviews, mail questionnaires, in-person surveys, focus groups and web-based questionnaires. Results of this collection will be used to develop, revise, and improve the risk management tools. We are asking the Office of Management and Budget (OMB) to approve this information collection activity for 3 years.

The purpose of this notice is to solicit comments from the public concerning the information collection activities. These comments will help us:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection information;

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, through use, as appropriate, of automated, electronic, mechanical, or other collection technologies, e.g. permitting electronic submission of responses.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 3 to 15 minutes per response, depending on the survey.

Respondents/Affected Entities: Agricultural Producers, and individuals and organizations involved in education and assistance to agricultural producers, including Cooperative Extension Specialists, government officials, and businesses in the agricultural sector.

Estimated annual number of respondents: 5,470.

Estimated annual number of responses: 4,935.

Estimated total annual burden on respondents: 547 hours.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed in Washington, DC, on *April 6, 2009.*

William J. Murphy,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. E9–8439 Filed 4–13–09; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received June 15, 2009.

FOR FURTHER INFORMATION CONTACT: Michele L. Brooks, Director, Program Development and Regulatory Analysis, USDA, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 5162—South Building, Washington, DC 20250–1522. Telephone: (202) 690–0178. FAX: (202) 720–8435.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8{d}). This notice identifies an information collection that RUS is submitting to OMB for extension.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Michele L. Brooks, Director, Program Development and Regulatory Analysis, USDA Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Washington, DC 20250–1522. FAX: (202) 720–8435.

Title: 7 CFR Part 1786—Prepayment of RUS Guaranteed and Insured Loans to Electric and Telephone Borrowers.

OMB Control Number: 0572–0088.

Type of Request: Extension of a currently approved collection.

Abstract: 7 CFR Part 1786 establishes policies and procedures to implement Sections 306(B) and 306(c) of the Rural Electrification Act of 1936. Part 1786 outlines the procedures for the prepayment of certain Electric and Telephone loans. The information required to be collected consists of materials that will allow the agency to determine which loans qualify for prepayment and provide authorization from the borrower's management.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3.20 hours per response.

Respondents: Not-for-profit organizations; business or, other for-profit.

Estimated Number of Respondents: 5.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 16.00 hours.

Copies of this information collection can be obtained from Gale Richardson, Program Development and Regulatory Analysis, at (202) 720–0992. FAX: (202) 720–8435. E-mail: *gale.richardson@wdc.usda.gov.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: April 8, 2009.

James R. Newby,

Acting Administrator, Rural Utilities Service.

[FR Doc. E9–8443 Filed 4–13–09; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by June 15, 2009.

FOR FURTHER INFORMATION CONTACT: Michele Brooks, Director, Program Development and Regulatory Analysis, USDA Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 5162, South Building, Washington, DC 20250–1522. Telephone: (202) 690–1078. FAX: (202) 720–8435. E-mail: *michele.brooks@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for extension.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Michele Brooks, Director, Program Development and Regulatory Analysis, USDA Rural Utilities Service, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202) 720–8435. E-mail: *michele.brooks@wdc.usda.gov.*

Title: Lien Accommodations and Subordinations, 7 CFR 1717, Subparts R & S.

OMB Control Number: 0572–0100.

Type of Request: Extension of a currently approved collection.

Abstract: The Rural Electrification Act of 1936 (RE Act), as amended (7 U.S.C. 901 *et seq.*), authorizes and empowers the Administrator of Rural Utilities

Service to make loans in the several United States and Territories of the United States for rural electrification and the furnishing of electric energy to persons in rural areas who are not receiving central station service. The RE Act also authorizes and empowers the Administrator of the Agency to provide financial assistance to borrowers for purposes provided in the RE Act by accommodating or subordinating loans made by the national Rural Utilities Cooperative Finance Corporation, the Federal Financing Bank, and other lending agencies. Title 7 CFR part 1717, subparts R & S sets forth policy and procedures to facilitate and support borrowers' efforts to obtain private sector financing of their capital needs, to allow borrowers greater flexibility in the management of their business affairs without compromising RUS loan security, and to reduce the cost to borrowers, in terms of time, expenses and paperwork, of obtaining lien accommodations and subordinations. The information required to be submitted would be limited to necessary information that would allow the Agency to make a determination on the borrower's request to subordinate and accommodate their lien with other lenders.

Estimate of Burden: Public Reporting burden for this collection of information is estimated to average 19 hours per response.

Respondents: Not-for-profit institutions; Business or other for profit.

Estimated Number of Respondents: 15.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 285 hours.

Copies of this information collection can be obtained from Gale Richardson, Program Development and Regulatory Analysis, at (202) 720–0992. FAX: (202) 720–8435.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: April 8, 2009.

James R. Newby,

Acting Administrator, Rural Utilities Service.

[FR Doc. E9–8444 Filed 4–13–09; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Notice of Funding Availability for the Beginning Farmer and Rancher Development Program for Fiscal Year (FY) 2009

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice of funding availability.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) is announcing the release of the FY 2009 Beginning Farmer and Rancher Development Program (BFRDP) Request for Applications (RFA) via Grants.gov.

DATES: The FY 2009 Beginning Farmer and Rancher Development Program RFA (BFRDP) was posted to Grants.gov on Friday, March 13, 2009, and applications are due via Grants.gov by Monday, May 13, 2009.

FOR FURTHER INFORMATION CONTACT: Siva Sureshwaran, 202–720–7536 (phone), 202–401–6070 (fax), or *ssureshwaran@csrees.usda.gov*. Janie Simms Hipp, 202–720–3605 (phone), 202–690–3162 (fax), or *jhipp@csrees.usda.gov*.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Section 7405 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) (7 U.S.C. 3319f) as amended by the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246), directs the Secretary of Agriculture (Secretary) to establish a Beginning Farmer and Rancher Development Program (BFRDP). The authority to carry out the BFRDP has been delegated to CSREES through the Under Secretary for Research, Education, and Economics. The Secretary is authorized to make competitive grants to support new and established local and regional training, education, outreach, and technical assistance initiatives that address the needs of beginning farmers and ranchers (Standard BFRDP Projects). Grants for Standard BFRDP Projects will be awarded to address needs of beginning farmers and ranchers in the following priority areas: Mentoring, apprenticeships, and internship activities; resources and referral; assisting beginning farmers or ranchers in understanding how to acquire land from retiring farmers and ranchers; innovative farm and ranch transfer strategies; entrepreneurship and business training; model land leasing contracts; financial management training; whole farm planning; conservation assistance; risk management education; diversification and marketing strategies; curriculum development; understanding the impact of concentration and globalization; basic livestock and crop farming practices, forestry and range management; acquisition and management of agricultural credit; environmental compliance; information processing; and other similar subject areas of use to beginning farmers and ranchers. The Secretary is also directed to establish beginning farmer and rancher education teams to develop curricula and conduct educational programs and workshops for beginning farmers and ranchers in diverse geographical areas in the United States (Educational Enhancement Projects).

The FY 2009 BFRDP RFA is soliciting grant applications for Standard BFRDP Projects and Educational Enhancement Projects discussed above. In addition, the RFA is soliciting a project application to establish an Online clearinghouse that makes available to beginning farmers or ranchers education curricula and training materials and programs, which may include Online courses for direct use by beginning farmers or ranchers. This award will be made as a cooperative agreement.

The Secretary may make awards to a collaborative State, tribal, local or regionally-based network or partnership of public or private entities, which may include: A State cooperative extension service; a Federal, State, or tribal agency; a community-based and nongovernmental organization; a college or university (including a junior college awarding an associate's degree) or foundation maintained by a college or university; private for-profit organizations; or any other appropriate partner, as determined by the Secretary.

All applicants are required to provide funds or in-kind support from non-Federal sources in an amount that is at least equal to 25 percent of the Federal funds requested.

In making BFRDP awards, priority will be given to partnerships and collaborations that are led by or include nongovernmental and community-based organizations with expertise in new agricultural producer training and outreach.

The estimated amount available for support of this program in FY 2009 is $17,280,000. The eligibility criteria for projects and applicants, and the application forms and associated instructions needed to apply for a BFRDP award, can be accessed through

the Grants.gov Web site and *http://www.grants.gov*.

Done at Washington, DC, this 9th day of April 2009.

Colien Hefferan,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. E9–8543 Filed 4–13–09; 8:45 am]

BILLING CODE

DEPARTMENT OF AGRICULTURE

Forest Service

Plumas County Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Plumas County Resource Advisory Committee (RAC) will hold a meeting on April 24, 2009, in Quincy, CA. The purpose of the meeting is to review applications for Cycle 8 funding and select projects to be recommended to the Plumas National Forest Supervisor for calendar year 2009 funding consideration. The funding is available under Title II provisions of the Secure Rural Schools and Community Self-Determination Act of 2000.

DATE & ADDRESS: The meeting will take place from 9:30–3 at the Mineral Building Plumas/Sierra County Fairgrounds, 208 Fairgrounds Road, Quincy, CA.

FOR FURTHER INFORMATION CONTACT: (Or for special needs): Lee Anne Schramel Taylor, Forest Coordinator, USDA, Plumas National Forest, P.O. Box 11500/159 Lawrence Street, Quincy, CA, 95971; (530) 283–7850; or by e-mail *eataylor@fs.fed.us*.

SUPPLEMENTARY INFORMATION: Agenda items for the April 24 meeting include: (1) Forest Service Update; (2) Committee Review of Applications; and, (3) Recommendations for Cycle 8 funding distribution. The meetings are open to the public and individuals may address the Committee after being recognized by the Chair. Other RAC information may be obtained at *http://www.fs.fed.us./srs*.

Dated: April 6, 2009.

Mark Beaulieu,

Public Services Staff Officer.

[FR Doc. E9–8400 Filed 4–13–09; 8:45 am]

BILLING CODE

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Carolina Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the South Carolina Advisory to the Commission will convene at 1 p.m. and adjourn at 3 p.m. on May 7, 2009, at 300 Senate Street, Columbia, South Carolina 29201. The purpose of the meeting is for the Committee to discuss its report on parental notification of supplemental educational services under the No Child Left Behind Act.

Members of the public are entitled to submit written comments. The address is 61 Forsyth St., SW., Suite 18T40, Atlanta, Georgia 30303. Persons wishing to email comments may do so to *pminarik@usccr.gov*. Persons who desire additional information should contact Peter Minarik, Regional Director, at (404) 562–7000 or 800–877–8339 for individuals who are deaf, hearing impaired, and/or have speech disabilities or by e-mail to *pminarik@usccr.gov*.

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Southern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *http://www.usccr.gov*, or to contact the Southern Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the rules and regulations of the Commission and FACA.

Dated in Washington, DC, April 8, 2009.

Christopher Byrnes,

Chief, Regional Programs Coordination Unit.

[FR Doc. E9–8440 Filed 4–13–09; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Service Annual Survey

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before June 15, 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(s) and instructions should be directed to Ron Farrar, U.S. Census Bureau, 8K145, Washington, DC 20233–6500, (301) 763–6782 or Jeff Barnett, U.S. Census Bureau, 8K045, Washington, DC 20233–6500, (301) 763–2787.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Service Annual Survey (SAS) produces annual nationwide estimates of revenue and expenses for selected service industries. Selected service industries include all or portions of the following North American Industry Classification System (NAICS) sectors: Transportation and Warehousing (NAICS 48 and 49); Information, Finance and Insurance (NAICS 51 and 52); Real Estate and Rental and Leasing (NAICS 53); Professional, Scientific and Technical Services (NAICS 54); Administrative and Support and Waste Management and Remediation Services (NAICS 56); Health Care and Social Assistance (NAICS 62); Arts, Entertainment, and Recreation (NAICS 71); and Other Services (NAICS 81).

For selected industries in Finance, Information, Professional, Scientific and Technical Services, and Administrative Support and Waste Management and

Remediation Services, SAS produces estimates of revenue by detailed North American Product Classification System (NAPCS) products. Inventory estimates for selected industries in the Information sector are produced, as well as estimates of expanded revenues for selected industries across multiple sectors. For industries with a significant non-profit component, separate estimates are developed for taxable firms and organizations exempt from Federal income tax.

These data are needed to provide a sound statistical basis for the formation of policy by various governmental agencies. The Census Bureau is authorized by Title 13, United States Code, to conduct surveys necessary to furnish current data on subjects covered by the major censuses. These surveys provide continuing and timely national statistical data for the period between economic censuses.

The Bureau of Economic Analysis, the primary Federal user of these annual program statistics, uses the information in developing the national income and product accounts, compiling benchmark and annual input-output tables, and computing Gross Domestic Product by industry. The Bureau of Labor Statistics uses the data as inputs to its Producer Price Indexes and in developing productivity measurements. The Centers for Medicare and Medicaid Services use the data in the development of the National Health Expenditure Accounts. The Federal Communications Commission uses the data as a means for assessing FCC policy. The Census Bureau uses the data to provide new insight into changing structural and cost conditions that will impact the planning and design of future economic census questionnaires. Private industry also uses the data as a tool for marketing analysis.

Data are collected from all of the largest firms and from a sample of small- and medium-sized businesses selected using a stratified sampling procedure. The samples are reselected periodically, generally at 5-year intervals. The largest firms continue to be canvassed when the sample is re-drawn, while nearly all of the small- and medium-sized firms from the prior sample are replaced. We collect these data by using a mail-out/mail-back and online survey questionnaire.

The Census Bureau is expanding the industry coverage of the SAS to include Utilities (NAICS 22) and Educational Services (NAICS 61); and the rest of Transportation (NAICS 48); Finance and Insurance (NAICS 52); and Real Estate and Rental and Leasing (NAICS 53) not currently covered by SAS. For expanded industries, the survey will produce estimates of total operating revenue and both total and detailed operating expenses. This expansion will increase the size of the survey sample by about 30 percent.

II. Method of Collection

The Census Bureau collects this information by mail, Internet, fax, and telephone follow-up.

III. Data

OMB Control Number: 0607–0422.

Form Numbers: The SAS program consists of 81 unique forms, which are too extensive to list here.

Type of Review: Regular submission.

Affected Public: Businesses or other for-profit organizations, not-for-profit institutions, Government hospitals and Federal Government.

Estimated Number of Respondents: 78,730.

Estimated Time per Response: 3 hours and 27 minutes.

Estimated Total Annual Burden Hours: 271,619.

Estimated Total Annual Cost: $7,450,509.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 182, 224 and 225.

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: April 9, 2009.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–8463 Filed 4–13–09; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Quarterly Services Survey

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before June 15, 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(s) and instructions should be directed to Lisa Donaldson, U.S. Census Bureau, 8K041, Washington, DC 20233–6500, and 301–763–7296.

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Census Bureau conducts a quarterly survey of service industry production—the Quarterly Services Survey (QSS). The QSS is a principal economic indicator series that produces, for selected service industries, quarterly estimates of total operating revenue and the percentage of revenue by class of customer. The survey also produces estimates of total operating expenses from tax-exempt firms in industries that have a large not-for-profit component. In addition, for hospital services, the survey estimates the number of inpatient days and discharge admissions. Current selected service industries include information services; professional scientific and technical services; hospitals; nursing and residential care facilities; administrative and support and waste management and remediation services; ambulatory health care services; social assistance; credit intermediation and related activities; securities, commodity contracts, and other financial investments and related

activities; truck transportation; courier and messengers; warehousing and storage; rental and leasing services; arts, entertainment, and recreation; and other services except public administration.

Data are collected from all of the largest firms and from a sample of small- and medium-sized businesses selected using a stratified sampling procedure. Each quarter the sample is updated to reflect the addition of new business births and firms and organizations that have gone out-of-business.

The Bureau of Economic Analysis uses data gathered in this survey in developing its quarterly Gross Domestic Product (GDP) and GDP by industry estimates. The data provide the Federal Reserve Board and Council of Economic advisors with timely information to assess current economic performance. Other government and private stakeholders also benefit from a better understanding of important cyclical components of our economy.

We are expanding the industry coverage of the QSS to include utilities; air transportation; water transportation; transit and ground passenger transportation; pipeline transportation; scenic and sightseeing transportation; support activities for transportation; monetary authorities-central bank; insurance carriers and related services; real estate; lessors of nonfinancial intangible assets (except copyrighted works); and educational services. For expanded industries, the survey will produce estimates of total operating revenue and operating expenses from the tax-exempt firms in industries that have a large not-for-profit component.

II. Method of Collection

The Census Bureau will collect this information by mail, fax, Internet, and a telephone follow-up.

III. Data

OMB Control Number: 0607–0907.

Form Number: QSS–1(A), QSS–1(E), QSS–2(A), QSS–2(E), QSS–3(A), QSS–3(E), QSS–4(A), QSS–4(E), QSS–5(A), QSS–5(E), QSS–1A–PEO, QSS–1E–PEO.

Type of Review: Regular submission.

Affected Public: Businesses or other for-profit organizations, not-for-profit institutions, and government hospitals.

Estimated Number of Respondents: 15,400.

Estimated Time per Response: QSS–1(A), QSS–1(E), QSS–2(A), QSS–2(E), QSS–3(A), QSS–3(E), QSS–5(A), QSS–5(E), QSS–1A–PEO, QSS–1E–PEO: 15 minutes, QSS–4(A), QSS–4(E): 10 minutes.

Estimated Total Annual Burden Hours: 13,500.

Estimated Total Annual Cost: $370,305.

Respondents Obligation: Voluntary.

Legal Authority: Title 13 U.S.C. Section 182.

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: April 8, 2009.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–8403 Filed 4–13–09; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–843]

Certain Lined Paper Products from India: Notice of Final Results of the First Antidumping Duty Administrative Review

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

SUMMARY: On October 7, 2008, the Department of Commerce (the Department) published the preliminary results of the antidumping duty administrative review for certain lined paper products (CLPP) from the India.[1] This review covers two mandatory respondents, Kejriwal Exports and Kejriwal Paper Limited (Kejriwal), and Ria ImpEx Pvt. Ltd. (Ria), and 17 other manufacturers and exporters of the subject merchandise (collectively, respondents).[2] The period of review (POR) is April 17, 2006, through August 31, 2007.

Based on our analysis of the comments received, we have made changes to Kejriwal's margin. For these final results, we find that Kejriwal sold subject merchandise at prices below normal value (NV) during the POR. Because it is above *de minimis*, we are applying the calculated weighted–average margin for Kejriwal from this review to those companies that were covered by this review but were not selected for individual examination (non–selected respondents). Therefore, the final results differ from the *Preliminary Results* with respect to Kejriwal and the non–selected respondents. However, we continue to apply an adverse facts available rate of 23.17 percent to Ria.

EFFECTIVE DATE: April 14, 2009.

FOR FURTHER INFORMATION CONTACT: Cindy Lai Robinson or George McMahon, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3797 or (202) 482–1167, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 7, 2008, the Department published the Preliminary Results. On February 2, 2009, the Department extended the time limits for the final results of this review until no later than April 6, 2009. *See Certain Lined Paper Products from India: Extension of Time Limits for Final of Antidumping Duty Administrative Review*, 74 FR 5817 (February 2, 2009).

We invited parties to comment on our *Preliminary Results*. On November 14, 2008, the Association of American School Paper Suppliers and its individual members (the petitioner) and Kejriwal submitted their case briefs. On November 25, 2008, the petitioner, Kejriwal, and Navneet submitted their rebuttal briefs.

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[1] *See Certain Lined Paper Products From India: Preliminary Results of the First Antidumping Duty Administrative Review*, 73 FR 58548 (October 7, 2008) (*Preliminary Results*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 72 FR 61621 (October 31, 2007). The respondents include: Blue Bird India Ltd.; Creative Divya; Exel India Pvt. Ltd.; FFI International; Global Art India Inc.; Kejriwal Exports and Kejriwal Paper Limited; M/S Super ImpEx.; Magic International; Marigold ExIm Pvt. Ltd.; Marisa International; Navneet Publications (India) Ltd. (Navneet); Pioneer Stationery Pvt. Ltd.; Rajvansh International; Ria ImpEx Pvt. Ltd. (Ria); Riddhi Enterprises; SAB International; TKS Overseas; Unlimited Accessories Worldwide; and V. Joshi Co.

Scope of the Order

The scope of this order includes certain lined paper products, typically school supplies (for purposes of this scope definition, the actual use of or labeling these products as school supplies or non–school supplies is not a defining characteristic) composed of or including paper that incorporates straight horizontal and/or vertical lines on ten or more paper sheets (there shall be no minimum page requirement for loose leaf filler paper) including but not limited to such products as single- and multi–subject notebooks, composition books, wireless notebooks, loose leaf 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 8–3/4 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;
- printed books and other books that are case bound through the inclusion of binders board, a 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: pre–printed business forms, lined invoice pads and paper, mailing and address labels, manifests, and shipping log books;
- lined continuous computer paper;
- boxed or packaged writing stationary (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 (''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), 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™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
- 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™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
- 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 2–3/8'' 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™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
- 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™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).

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

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this review are addressed in the ''Issues and Decision Memorandum'' from John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, dated April 6, 2009, (Issues and Decisions Memorandum) which is adopted by this notice. A list of the issues which parties have raised, and to which we have responded in the Issues and Decision Memorandum, is attached to this notice as an Appendix. 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 Central Records Unit (CRU), room 1117 of the main Commerce Building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the world wide web at http://ia.ita.doc.gov/frn/index.html. The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of the comments received, we have made changes to Kejriwal's margin. Specifically, we recalculated Kejriwal's general and administrative (G&A) expenses ratio. *See* Memorandum to Neal M. Halper from Robert B. Greger, Re: Constructed Value Calculation Adjustments for the Final Results - Kejriwal Paper Limited, dated April 6, 2009.

Kejriwal Paper Limited (Kejriwal). As a result of this change, the calculated margin for Kejriwal is no longer a *de minimis* rate, and is assigned to the non–selected companies covered in this review.

Adverse Facts Available

Section 776(a) of the Tariff Act of 1930, as amended (the Act), provides that the Department will apply ''facts otherwise available'' if, *inter alia*, necessary information is not available on the record or an interested party: 1) withholds information that has been requested by the Department; 2) fails to provide such information within the deadlines established, or in the form or manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; 3) significantly impedes a proceeding; or 4) provides such information, but the information cannot be verified.

As discussed in the *Preliminary Results*, Ria is one of the mandatory respondents for this review, but Ria did not submit any questionnaire responses to the Department, nor did it request any further extension after it improperly filed an extension request. By failing to respond to the Department's requests, Ria withheld requested information and significantly impeded the proceeding. Therefore, pursuant to sections 776(a)(2)(A) and (C) of the Act, the Department finds that the use of total facts available for Ria is appropriate.

According to section 776(b) of the Act, if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available. *See also Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025–26 (September 13, 2005); and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (August 30, 2002). Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Rep. No. 103–316, Vol. 1, at 870 (1994) (*SAA*), reprinted in 1994 U.S.C.C.A.N. 4040, 4198–99. Furthermore, ''affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.'' *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997); *see also Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382–83 (Fed. Cir. 2003) (*Nippon*). In this case, despite an improperly filed extension request, the Department granted Ria an opportunity to refile the extension request and a two-week extension to respond to the Department's questionnaire. Ria never responded, refiled, or made an additional request for a further extension. The Department finds that Ria did not act to the best of its ability in this proceeding, within the meaning of section 776(b) of the Act, because it could have responded to the Department's requests for information, but failed to do so. Therefore, an adverse inference is warranted in selecting from the facts otherwise available with respect to Ria. *See Nippon*, 337 F.3d at 1382–83.

Section 776(b) of the Act provides that the Department may use as AFA information derived from: 1) the petition; 2) the final determination in the investigation; 3) any previous review; or 4) any other information placed on the record.

The Department's practice, when selecting an AFA rate from among the possible sources of information, has been to ensure that the margin is sufficiently adverse ''as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See, e.g., Certain Steel Concrete Reinforcing Bars from Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 71 FR 65082, 65084 (November 7, 2006).

In order to ensure that the margin is sufficiently adverse so as to induce cooperation, the Department has assigned a rate of 23.17 percent, which is the highest rate on the record of the proceeding which can be corroborated. *See Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India (India Lined Paper Investigation Final)*, 71 FR 45012 (August 8, 2006). As stated in the India Lined Paper Investigation Final, this rate was assigned as AFA to two companies, which failed to cooperate to the best of their ability, and is based on Kejriwal's data submitted in the investigation. *Id.* The Department finds that this rate is sufficiently high as to effectuate the purpose of the facts available rule (*i.e.*, we find that this rate is high enough to prevent parties from benefitting from non–cooperation in accordance with section 776(b) of the Act).

Corroboration of Information

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as facts available. Secondary information is defined as ''information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See* 19 CFR 351.308(c) and (d); *see also* the SAA at 870. The SAA clarifies that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. *See* the SAA at 870. The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *Id.* To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.

To corroborate secondary information, to the extent practicable, the Department normally examines the reliability and relevance of the information to be used. Unlike other types of information such as input costs or selling expenses, however, there are no independent sources for calculated dumping margins. The only source for margins is administrative determinations. Thus, with respect to an administrative review, if the Department chooses as facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. *See Carbazole Violet Pigment 23 from India: Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 52012 (September 8, 2008) (*Carbazole Violet Pigment 23 from India); see also Antifriction Bearings and Parts Thereof from France, et al.: Preliminary Results of Antidumping Duty Administrative Reviews, Partial Rescission of Administrative Reviews, Notice of Intent to Rescind Administrative Reviews, and Notice of Intent to Revoke Order in Part*, 69 FR 5949, 5953 (February 9, 2004), unchanged in *Antifriction Bearings and Parts Thereof from France, et al.: Final Results of Antidumping Duty Administrative Reviews, Rescission of Administrative Reviews in Part, and Determination To Revoke Order in Part*, 69 FR 55574, 55576–77 (September 15, 2004).

With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996), the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited or judicially invalidated. *See D & L Supply Co. v. United States*, 113 F.3d 1220, 1221 (CAFC 1997).

None of these unusual circumstances is present here. The Department considers the dumping margin of 23.17 percent relevant for use as AFA for this review because this margin is based on information from the investigation and is within the range of transaction–specific margins calculated for a mandatory respondent in the original investigation.[3] Moreover, there is no information on the record of this review that demonstrates that 23.17 percent is not an appropriate AFA rate for Ria. The Department finds that use of the rate of 23.17 percent as an AFA rate is sufficiently high to ensure that Ria does not benefit from failing to cooperate in our review by refusing to respond to our questionnaire. *See Certain Cut–to-Length Carbon–Quality Steel Plate Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Rescission of Administrative Review in Part*, 73 FR 15132, 15133 (March 21, 2008); *see also Carbazole Violet Pigment 23 from India.*

Final Results of Review:

We determine that the following weighted–average margins exist:

Manufacturer/Exporter	Weighted Average Margin (percent)
Kejriwal Exports and Kejriwal Paper Limited	1.22
Ria ImpEx Pvt. Ltd.	23.17

Review–Specific Average Rate Applicable to the Non–Selected Companies Subject to this Review:[4]

Blue Bird India Ltd.	1.22
Creative Divya	1.22
Exel India Pvt. Ltd.	1.22
FFI International	1.22
Global Art India Inc.	1.22
M/S Super ImpEx	1.22
Magic International	1.22
Marigold Exlm Pvt. Ltd.	1.22
Marisa International	1.22
Navneet Publications (India) Ltd.	1.22
Pioneer Stationery Pvt. Ltd.	1.22
Rajvansh International	1.22
Riddhi Enterprises	1.22
SAB International	1.22
TKS Overseas	1.22
Unlimited Accessories Worldwide	1.22
V. Joshi Co.	1.22

Assessment

The Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries, pursuant to 19 CFR 351.212(b). The Department calculated importer–specific duty assessment rates on the basis of the ratio of the total antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer. For all other

[3] The dumping margin of 23.17 percent is the AFA rate for Navneet in the original investigation, which was based on a calculated rate for Kejriwal. *See* the Memorandum to File through James Terpstra, Program Manager, from Cindy Lai Robinson, Case Analyst, entitled ''Analysis Memorandum for Kejriwal Paper, Re: Preliminary Results of Antidumping Duty Administrative Review of Certain Lined Paper Products from India,'' dated September 29, 2008.

[4] For the reasons discussed above, this rate is based on the average of the margins, other than those which were zero, *de minimis*, or based on total facts available, calculated during the review.

companies[5] subject to this review which were not selected for individual examination, we calculated an assessment rate based on the cash deposit rate calculated for Kejriwal in this review.

The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of these final results of review. The Department clarified its ''automatic assessment''' regulation on May 6, 2003 (68 FR 23954). This clarification applies to POR entries of subject merchandise produced by companies examined in this review (*i.e.*, companies for which a dumping margin was calculated) where the companies did not know that their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of certain lined paper products from India entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a) of the Act: (1) for companies covered by this review, the cash deposit rate will be the rate listed above; (2) for previously reviewed or investigated companies other than those covered by this review, the cash deposit rate will be the company–specific rate established for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less–than-fair–value investigation, but the producer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) if neither the exporter nor the producer is a firm covered in this review, a prior review, or the investigation, the cash deposit rate will be 3.91 percent, the all–others rate established in the less–than-fair–value investigation. These deposit requirements shall remain in effect until further notice.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent increase in antidumping duties by the amount of antidumping and/or countervailing duties reimbursed.

Administrative Protective Order

This notice also is the only 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. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

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

Dated: April 6, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

APPENDIX I

List of Comments in the Accompanying Issues and Decision Memorandum

Comment 1: Appropriate Rate for Non–Selected Respondents
Comment 2: Whether to Assign a Higher Adverse Facts Available (AFA) Rate to Ria
Comment 3: General and Administrative Expense Ratio
Comment 4: Financial Expense Ratio
Comment 5: Capitalized Expenses

[FR Doc. E9–8495 Filed 4–13–09; 8:45 am]

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[5] As stated above, Ria will receive an AFA rate of 23.17 percent.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–805]

Certain Pasta from Turkey: Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review

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

SUMMARY: On January 7, 2009, the Department of Commerce (''the Department'') published a notice of initiation of a changed circumstances review of the antidumping duty order of certain pasta from Turkey as requested by Marsan Gida Sanayi ve Ticret A.S. (''Marsan''). After receiving additional information on the operations of Marsan, we preliminarily determine that Marsan is the successor–in-interest to Gidasa Sabanci Gida Sanayi ve Ticaret A.S. (''Gidasa''), and should be accorded the same antidumping duty treatment accorded Gidasa with respect to the antidumping duty order on certain pasta from Turkey. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: April 14, 2009.

FOR FURTHER INFORMATION CONTACT: Christopher Hargett, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4161.

SUPPLEMENTARY INFORMATION:

Background

On July 24, 1996, the Department published in the **Federal Register** an antidumping duty order on certain pasta from Turkey.[1] On December 3, 2008, Marsan requested that the Department initiate and conduct an expedited changed circumstances review to determine that, for purposes of the antidumping law, Marsan is the successor–in-interest to Gidasa. *See* December 3, 2008, letter from Marsan to the Secretary of Commerce. On January 7, 2009, the Department published a notice of initiation of a changed circumstances review of the antidumping order.[2] On February 23, 2009, the Department requested additional information from Marsan regarding its operations in Turkey. *See* February 23, 2009, changed circumstances review questionnaire from the Department to Marsan. On March 16, 2009, Marsan replied to the Department's questionnaire. *See* March 16, 2009, letter from Marsan to the Secretary of Commerce.

Scope of Review

Imports covered by this review are shipments of certain non–egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not

[1] *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey*, 61 FR 68545 (July 24, 1996).

[2] *See Notice of Initiation of Antidumping Duty Changed Circumstances Review: Certain Pasta from Turkey*, 74 FR 681 (January 7, 2009).

enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non–egg dry pasta containing up to two percent egg white.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (''*HTSUS*''). Although the *HTSUS* subheading is provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Preliminary Results of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.216, the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party for review of, an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. In this case, the Department finds that the information submitted by the respondent provided sufficient evidence of changed circumstances to warrant a review to determine whether Marsan is the successor–in-interest to Gidasa. Thus, in accordance with section 751(b) of the Act, the Department initiated a changed circumstances review to determine whether Marsan is the successor–in-interest to Gidasa for purposes of determining antidumping duty liability with respect to imports of certain pasta from Turkey.

In making a successor–in-interest determination, the Department examines several factors including, but not limited to, changes in: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See, e.g., Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber From Japan*, 67 FR 58 (January 2, 2002); *Brass Sheet and Strip from Canada: Final Results of Antidumping Duty Administrative Review*, 57 FR 20460 (May 13, 1992). While no single factor or combination of factors will necessarily provide a dispositive indication of a successor–in-interest relationship, the Department will generally consider the new company to be the successor to the previous company if the new company's resulting operation is not materially dissimilar to that of its predecessor. *See, e.g., Fresh and Chilled Atlantic Salmon from Norway; Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979 (March 1, 1999); *Industrial Phosphoric Acid from Israel; Final Results of Changed Circumstances Review*, 59 FR 6944 (February 14, 1994). Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the former company, the Department will accord the new company the same antidumping treatment as its predecessor.

In accordance with 19 CFR 351.221(c)(3)(i), we preliminarily determine that Marsan is the successor–in-interest to Gidasa. In its December 3, 2008, and March 16, 2009, submissions Marsan provided evidence supporting its claim to be the successor–in-interest to Gidasa. Documentation attached to Marsan's December 3, 2008, submission shows that the acquisition of Gidasa by MGS Marmara Gida Sanayi ve Ticaret A.S. (''MGS'') and the following name change to Marsan resulted in little or no change in management, production facilities, supplier relationships, or customer base. This documentation consists of: (1) organizational charts of both Marsan and Gidasa; (2) the documentation of the name change from Gidasa to Marsan; (3) a list of products before and after the acquisition of Gidasa by MGS; (4) a list of suppliers before and after the name change from Gidasa to Marsan; (5) a list of home market and U.S. customers before and after the name change from Gidasa to Marsan; (6) MGS's articles and notice of incorporation; (7) MGS's 2007 management report to shareholders; and (8) MGS's 2008 draft income statement and balance sheet. The documentation described above demonstrates that there was little to no change in management structure, supplier relationships, production facilities, or customer base and, thus, the operations of Marsan are essentially the same as the operations of Gidasa.

Therefore, we preliminarily find that Marsan is the successor–in-interest to Gidasa and, thus, should receive the same antidumping duty treatment with respect certain pasta from Turkey as the former Gidasa.

Public Comment

Any interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held no later than 44 days after the date of publication of this notice, or the first workday thereafter.[3] Case briefs from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to the issues raised in those comments, may be filed not later than 37 days after the date of publication of this notice.[4] All written comments shall be submitted in accordance with 19 CFR 351.303. Persons interested in attending the hearing, if one is requested, should contact the Department for the date and time of the hearing. The Department will publish the final results of this changed circumstances review in accordance with 19 CFR 351.216(e), including the results of its analysis of issues raised in any written comments.

The current requirement for a cash deposit of estimated antidumping duties on all subject merchandise will continue unless and until it is modified pursuant to the final results of this changed circumstances review.

We are issuing and publishing these results and notice in accordance with sections 751(b)(1) and 777(i)(1) and (2) of the Act and 19 CFR 351.216.

Dated: April 8, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–8498 Filed 4–13–09; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–932]

Certain Steel Threaded Rod from the People's Republic of China: Notice of Antidumping Duty Order

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

SUMMARY: Based on affirmative final determinations by the Department of Commerce (''Department'') and the International Trade Commission (''ITC''), the Department is issuing an antidumping duty order on certain steel threaded rod (''STR'') from the People's Republic of China (''PRC''). On April 6, 2009, the ITC notified the Department of its affirmative determination of material

[3] *See* 19 CFR 351.310.

[4] *See* 19 CFR 351.309.

injury to a U.S. industry. *See Steel Threaded Rod from China* (Investigation No. 731–TA–1145 (Final), USITC Publication 4070, April 2009).

EFFECTIVE DATE: April 14, 2009.

FOR FURTHER INFORMATION CONTACT: Bobby Wong or Toni Dach, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0409, or (202) 482–1655, respectively.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended (''Act''), on February 27, 2009, the Department published its final determination of sales at less than fair value in the antidumping investigation of STR from the PRC. *See Certain Steel Threaded Rod from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 8907 (February 27, 2009).

Scope of the Order

The merchandise covered by this order is steel threaded rod. Steel threaded rod is certain threaded rod, bar, or studs, of carbon quality steel, having a solid, circular cross section, of any diameter, in any straight length, that have been forged, turned, cold–drawn, cold–rolled, machine straightened, or otherwise cold–finished, and into which threaded grooves have been applied. In addition, the steel threaded rod, bar, or studs subject to this order are non–headed and threaded along greater than 25 percent of their total length. A variety of finishes or coatings, such as plain oil finish as a temporary rust protectant, zinc coating (*i.e.*, galvanized, whether by electroplating or hot–dipping), paint, and other similar finishes and coatings, may be applied to the merchandise.

Included in the scope of this order are steel threaded rod, bar, or studs, in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 1.80 percent of manganese, or
- 1.50 percent of silicon, or
- 1.00 percent of copper, or
- 0.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 1.25 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.012 percent of boron, or
- 0.10 percent of molybdenum, or
- 0.10 percent of niobium, or
- 0.41 percent of titanium, or
- 0.15 percent of vanadium, or
- 0.15 percent of zirconium.

Steel threaded rod is currently classifiable under subheading 7318.15.5050, 7318.15.5090, and 7318.15.2095 of the United States Harmonized Tariff Schedule (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Excluded from the scope of the order are: (a) threaded rod, bar, or studs which are threaded only on one or both ends and the threading covers 25 percent or less of the total length; and (b) threaded rod, bar, or studs made to American Society for Testing and Materials (''ASTM'') A193 Grade B7, ASTM A193 Grade B7M, ASTM A193 Grade B16, or ASTM A320 Grade L7.

Scope–HTSUS Modification

On April 1, 2009, U.S. Customs and Border Protection (''CBP'') requested that the Department add HTSUS category 7318.15.2095 as an HTSUS category under which steel threaded rod may be classifiable. Therefore, the Department has modified the scope to reflect the new HTSUS category.[1]

Antidumping Duty Order

On April 6, 2009, in accordance with section 735(d) of the Act, the ITC notified the Department of its final determination, pursuant to section 735(b)(1)(A)(i) of the Act, that an industry in the United States is materially injured by reason of less–than-fair–value imports of subject merchandise from the PRC. Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (''CBP'') to assess, upon further instruction by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise for all relevant entries of STR from the PRC. These antidumping duties will be assessed on all unliquidated entries of STR from the PRC entered, or withdrawn from the warehouse, for consumption on or after October 8, 2008, the date on which the Department published its preliminary determination. *See Certain Steel Threaded Rod from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 58931 (October 8, 2008).

Section 733(d) of the Act states that instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months except where exporters representing a significant proportion of exports of the subject merchandise request the Department to extend that four–month period to no more than six months. At the request of exporters that account for a significant proportion of STR exports, we extended the four–month period to no more than six months. *See Certain Steel Threaded Rod from the People's Republic of China: Amended Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 73 FR 63693 (October 27, 2008). In this investigation, the six–month period beginning on the date of the publication of the preliminary determination ended on April 8, 2009. Furthermore, section 737 of the Act states that definitive duties are to begin on the date of publication of the ITC's final injury determination. Therefore, in accordance with section 733(d) of the Act and our practice, we will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of STR from the PRC entered, or withdrawn from warehouse, for consumption on or after April 8, 2009, and before the date of publication of the ITC's final injury determination in the **Federal Register**. Suspension of liquidation will resume on or after the date of publication of the ITC's final injury determination in the **Federal Register**.

Effective on the date of publication of the ITC's final affirmative injury determination in the **Federal Register**, CBP, pursuant to section 735(c)(3) of the Act, will require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted–average antidumping duty margins as listed below. The ''PRC–wide'' rate applies to all exporters of subject merchandise not specifically listed. The weighted–average dumping margins are as follows:

[1] *See* April 3, 2009, Memorandum to the File, From Toni Dach, International Trade Analyst, Regarding: Certain Steel Threaded Rod from the People's Republic of China: CBP Request to Include Additional HTSUS.

CERTAIN STEEL THREADED ROD FROM THE PRC

Exporter	Producer	Weighted–Average Margin
RMB Fasteners Ltd., and IFI & Morgan Ltd. (''RMB/IFI Group'')	Jiaxing Brother Fastener Co., Ltd. (aka Jiaxing Brother Standard Parts Co., Ltd.)	55.16%
Ningbo Yinzhou Foreign Trade Co. Ltd.	Zhejiang Guorui Industry Co., Ltd.; or Ningbo Daxie Chuofeng Industrial Development Co. Ltd.	206.00%
Shanghai Recky International Trading Co., Ltd.	Shanghai Xiangrong International Trading Co., Ltd.; Shanghai Xianglong International Trading Co., Ltd.; Pighu City Zhapu Screw Cap Factory; or Jiaxing Xinyue Standard Part Co., Ltd.	55.16%
Suntec Industries Co., Ltd.	Jiaxing Xinyue Standard Part Co., Ltd.; or Haiyan County No. 1 Fasteners Factory	55.16%
Hangzhou Grand Imp. & Exp. Co., Ltd.	Zhapu Creative Standard Parts Material Co., Ltd.	55.16%
Shanghai Prime Machinery Co. Ltd.	Haiyan Yida Fasteners Co., Ltd.; or Jiaxing Xinyue Standard Part Co., Ltd.	55.16%
Jiaxing Xinyue Standard Part Co., Ltd.	Jiaxing Xinyue Standard Part Co., Ltd.	55.16%
Certified Products International Inc.	Jiashan Zhongsheng Metal Products Co., Ltd.; or Jiaxing Xinyue Standard Part Co., Ltd.	55.16%
Zhejiang New Oriental Fastener Co., Ltd.	Zhejiang New Oriental Fastener Co., Ltd.	55.16%
Jiashan Zhongsheng Metal Products Co., Ltd.	Jiashan Zhongsheng Metal Products Co., Ltd.	55.16%
Haiyan Dayu Fasteners Co., Ltd.	Haiyan Dayu Fasteners Co., Ltd.	55.16%
PRC–wide Entity		206.00%

This notice constitutes the antidumping duty order with respect to STR from the PRC pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room 1117 of the main Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 351.211.

Dated: April 8, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–8630 Filed 4–10–09; 4:15 pm]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–802]

Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Initiation of Changed Circumstances Review

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

SUMMARY: The Department of Commerce (''Department'') has received information sufficient to warrant initiation of a changed circumstances review of the antidumping duty order on certain frozen warmwater shrimp from the Socialist Republic of Vietnam (''Vietnam'').

DATES: *Effective Date:* April 14, 2009.

FOR FURTHER INFORMATION CONTACT: Scot Fullerton or Jerry Huang, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230; telephone: 202–482–1386 or 202–482–4047, respectively.

SUPPLEMENTARY INFORMATION:

Background

The antidumping duty order for certain frozen warmwater shrimp from Vietnam was published on February 1, 2005. See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam, 70 FR 5152 (February 1, 2005) (''Order''). As part of the Order, Can Tho Agricultural and Animal Products Import Export Company (''CATACO''), received an antidumping duty cash deposit rate of 4.57 percent. Id. In the first administrative review, the Department initiated a review on CATACO. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Reviews, 71 FR 17077 (April 5, 2006). However, the review of CATACO was subsequently rescinded. See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Partial Rescission of the First Administrative Review, 71 FR 42628, 42629 (July 27, 2006). As part of the final results of the second administrative review, in which CATACO was reviewed, the company received an antidumping duty cash deposit rate of 4.57 percent. See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 73 FR 52273, 52275–52276 (September 9, 2008).

On March 13, 2009, CATACO filed a submission requesting that the Department conduct a changed circumstances review of the antidumping duty order on certain frozen warmwater shrimp from Vietnam and requesting that the Department find that Can Tho Import Export Fishery Limited Company (''CAFISH'') is the successor-in-interest to CATACO's shrimp processing operations. See CATACO's submission to the Department regarding Certain Frozen Warmwater Shrimp from Vietnam: Request for Changed Circumstances Review, (Case No. A–552–802) (March 13, 2009).

In its submission, CATACO provided information regarding the events leading to the spin-off of its shrimp processing operations as CAFISH. Additionally, CATACO provided documentation relating to its change in corporate structure from a state owned enterprise to a separate joint stock company, Cantho Import-Export Seafood Joint Stock Company (''CASEAMEX''), which was later again spun off into CAFISH. In addition, CATACO provided documentation comparing CAFISH's current management, facility and equipment, supplier relationships, and customer base to that of the original CATACO. As part of its submission, CATACO requested that the Department conduct an expedited review.

Scope of the Order

The scope of the order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,[1] deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of the order, regardless of definitions in the Harmonized Tariff Schedule of the United States (''HTSUS''), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the Penaeidae family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (Penaeus vannemei), banana prawn (Penaeus merguiensis), fleshy prawn (Penaeus chinensis), giant river prawn (Macrobrachium rosenbergii), giant tiger prawn (Penaeus monodon), redspotted shrimp (Penaeus brasiliensis), southern brown shrimp (Penaeus subtilis), southern pink shrimp (Penaeus notialis), southern rough shrimp (Trachypenaeus curvirostris), southern white shrimp (Penaeus schmitti), blue shrimp (Penaeus stylirostris), western white shrimp (Penaeus occidentalis), and Indian white prawn (Penaeus indicus).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of the order. In addition, food preparations, which are not ''prepared meals,'' that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of the order.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the Pandalidae family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTS subheading 1605.20.10.40); (7) certain dusted shrimp; and (8) certain battered shrimp. Dusted shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a ''dusting'' layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to IQF freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by the order are currently classified under the following HTSUS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of the order is dispositive.

Initiation of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (''Act''), the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party for a review of, an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. The Department has determined that the information submitted by CATACO demonstrates changed circumstances sufficient to warrant a review. See 19 CFR 351.216(d). Additionally, section 751(b)(4) of the Act states that the Department shall not conduct a review less than 24 months after the date of publication of the less-than-fair-value determination, in the absence of good cause. As noted above, CATACO filed its request for a changed circumstances review more than 24 months after the publication of the Order.

In accordance with the above-referenced regulations, the Department is initiating a changed circumstances review to determine whether CAFISH is the successor-in-interest to CATACO. In determining whether one company is the successor to another for purposes of applying the antidumping duty law, the Department examines a number of factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base. See, e.g., Certain Cut-to-Length Carbon Steel Plate from Romania: Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, 70 FR 22847 (May 3, 2005). While no one or several of these factors will necessarily provide a dispositive indication of succession, the Department will generally consider one company to be a successor to another company if its resulting operation is similar to that of its predecessor. See Notice of Initiation of Antidumping Duty Changed Circumstances Review: Certain Forged Stainless Steel Flanges from India, 71 FR 327 (January 4, 2006). Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the prior company, the Department will assign the new company the cash deposit rate of its predecessor.

Due to the complexity and breadth of analysis required for this and five other concurrent changed circumstances reviews, it is not practical to conduct an expedited changed circumstances review. Therefore, we have not issued the preliminary results of this changed circumstances review at this time. The Department will publish in the **Federal Register** a notice of preliminary results of the antidumping duty changed circumstances review, in accordance with 19 CFR 351.221(b)(4) and 19 CFR 351.221(c)(3)(i). This notice will set forth the factual and legal conclusions upon which our preliminary results are based and a description of any action proposed based on those results. Pursuant to 19 CFR 351.221(b)(4)(ii), interested parties will have an opportunity to comment on the preliminary results of the review. In accordance with 19 CFR 351.216(e), the Department will issue the final results of its antidumping duty changed circumstances review not later than 270 days after the date on which this review is initiated, or within 45 days if all parties to the proceeding agree to the outcome of the preliminary findings, and will publish these results in the **Federal Register**.

This notice is published in accordance with sections 751(b)(1) and 777(i) of the Act and 19 CFR 351.216 and 351.221(c)(3).

[1] ''Tails'' in this context means the tail fan, which includes the telson and the uropods.

Dated: March 27, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–7436 Filed 4–13–09; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–809]

Circular Welded Non–Alloy Steel Pipe from the Republic of Korea: Partial Rescission of Antidumping Duty Administrative Review.

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

EFFECTIVE DATE: April 14, 2009.

FOR FURTHER INFORMATION CONTACT: Shane Subler or Joe Shuler, at (202) 482-0189 or (202) 482–1293, respectively; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

In accordance with 19 CFR 351.213(b), on December 1, 2008, Wheatland Tube Company (''Wheatland''), a domestic producer of subject merchandise, and United States Steel Corporation (''U.S. Steel''), an interested party, timely requested an administrative review of the antidumping duty order on circular welded non–alloy steel pipe from the Republic of Korea for the period November 1, 2007, through October 31, 2008. Wheatland requested that the Department conduct an administrative review of the following producers and/or exporters of the subject merchandise: SeAH Steel Corporation (''Seah''); Hyundai HYSCO; Husteel Co., Ltd. (''Husteel''); Daewoo International Corporation; Miju Steel Making Co.; Samsun Steel Co., Ltd. (''Samsun''); Kukje Steel Co., Ltd.; Nexteel Co., Ltd. (''Nexteel''); MSteel Co., Ltd.; Kumkang Industrial Co., Ltd. (''Kumkang''); Histeel Co., Ltd.; Hyundai Corporation; Dongbu Steel Co., Ltd.; Dong–A-Steel Co., Ltd.; Korea Iron & Steel Co., Ltd.; Union Pipe Manufacturing Co., Ltd.; Union Steel Co., Ltd.; Tianjin Huanbohai Import & Export Co.; Huludao Steel Pipe Industrial Co., Ltd.; Huludao City Steel Pipe; Benxi Northern Steel Pipes Co.; and Tianjin Shuangjie Steel Pipe Co. On the same date, U.S. Steel requested the Department conduct an administrative review of the following producers of subject merchandise: Husteel; Hyundai HYSCO; Nexteel; Samsun; and Seah.

On December 24, 2008, the Department of Commerce (''the Department'') initiated an administrative review covering the period November 1, 2007, through October 31, 2008. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 73 FR 79055 (December 24, 2008).

Wheatland and U.S. Steel withdrew their requests for a review of Husteel on January 13, 2009. On March 23, 2009, Wheatland withdrew its request for the following companies: Daewoo International Corporation; Miju Steel Making Co.; Samsun; Kukje Steel Co., Ltd.; MSteel Co., Ltd.; Histeel Co., Ltd.; Hyundai Corporation; Dong–A Steel Co., Ltd.; Union Pipe Manufacturing Co., Ltd.; Tianjin Huanbohai Import & Export Co.; Huludao Steel Pipe Industrial Co., Ltd.; Huludao City Steel Pipe; Benxi Northern Steel Pipes Co.; and Tianjin Shuangjie Steel Pipe Co. U.S. Steel withdrew its request for Samsun on March 24, 2009.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(l), the Department will rescind an administrative review, in whole or in part, if the party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. Wheatland and U.S. Steel withdrew their requests for the noted companies within the 90-day period, and no other party requested a review of these companies. Therefore, in response to Wheatland's and U.S. Steel's withdrawal of their requests for an administrative review of the below–listed Korean producers and/or exporters of subject merchandise, the Department hereby rescinds the administrative review, for the period November 1, 2007, through October 31, 2008, for the following companies: Husteel; Daewoo International Corporation; Miju Steel Making Co.; Samsun; Kukje Steel Co., Ltd.; MSteel Co., Ltd.; Histeel Co., Ltd.; Hyundai Corporation; Dong–A Steel Co., Ltd.; Union Pipe Manufacturing Co., Ltd.; Tianjin Huanbohai Import & Export Co.; Huludao Steel Pipe Industrial Co., Ltd.; Huludao City Steel Pipe; Benxi Northern Steel Pipes Co.; and Tianjin Shuangjie Steel Pipe Co.

Assessment

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. For the companies for which this review is rescinded, the antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of this notice of partial rescission of administrative review.

Notification to Importers

This notice serves as a 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.

Notification Regarding Administrative Protective Order

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

This notice is issued and published in accordance with 19 CFR 351.213(d)(4).

Dated: April 8, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–8500 Filed 4–13–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Internatioinal Trade Administration

[A–580–816]

Certain Corrosion–Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Intent to Rescind Antidumping Duty Administrative Review, In Part

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

SUMMARY: On September 30, 2008, we published the notice of initiation of this antidumping duty administrative review with respect to Dongbu Steel Co., Ltd., Dongkuk Industries Co., Ltd. (Dongkuk), Haewon MSC Co., Ltd., Hyundai HYSCO, LG Chem, Ltd., Pohang Iron and Steel Co., Ltd/Pohang Coated Steel Co., Ltd., and Union Steel Manufacturing Co., Ltd, for the period August 1, 2007, through July 31, 2008. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 73 FR 56795 (September 30, 2008) (*Notice of Initiation*). Dongkuk submitted a letter to the Department that it had no shipments of subject merchandise to the U.S. during the period of review (POR). *See* Letter from Dongkuk to the Secretary of Commerce dated October 20, 2008. The Department corroborated the claim of no shipments by Dongkuk. *See* memo from Christopher Hargett, International Trade Compliance Analyst, Office 3, through James Terpstra, Program Manager, Office 3, to Melissa Skinner, Office Director, Office 3, Import Administration, dated March 27, 2009 (No Shipment Analysis). We have preliminarily determined that the review of Dongkuk should be rescinded. This review will remain in effect for all other companies initiated upon.

EFFECTIVE DATE: April 14, 2009.

FOR FURTHER INFORMATION CONTACT: Christopher Hargett, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4161.

SUPPLEMENTARY INFORMATION:

Background

On September 30, 2008, we published the *Notice of Initiation* of this antidumping duty administrative review with respect to Dongkuk. On October 20, 2008, Dongkuk submitted a letter certifying that it had so sales of subject merchandise to the United States during the POR. The Department used entry data placed on the record for selection of respondents for individual review for the instant review to corroborate Dongkuk's claim. *See* memo from Joy Zhang, International Trade Compliance Analyst, through James Terpstra Program Manager, Office 3 AD/CVD Operations, and Melissa Skinner, Office Director, Office 3, AD/CVD Operations, to the File dated October 2, 2008 (CBP Data). On December 9, 2008, the Department requested the U.S. entry documents from U.S. Customs and Border Protection for clarification of several entries. *See* memo from Melissa Skinner, Office Director, Office Director, Office 3, AD/CVD Operations, to David M. Genovese, Director, AD/CVD/ Revenue Policy & Programs, Office of International Trade, U.S. Customs and Border Protection, dated December 9, 2008 (Entry Documentation Request). On January 26, 2009, the Department received the requested entry documentation. *See* memo from Tom Futtner, Customs Unit, to Melissa Skinner, dated January 2, 2009 (Entry Documentation). On March 27, 2009, the Department determined that Dongkuk's claim of no shipments was corroborated using the entry documentation. *See* No Shipment Analysis.

Scope of the Order

This order covers cold–rolled (cold–reduced) carbon steel flat–rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion–resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron–based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this order are corrosion–resistant flat–rolled products of non–rectangular cross–section where such cross–section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'') – for example, products which have been beveled or rounded at the edges. Excluded from this order are flat–rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (terne plate), or both chromium and chromium oxides (tin–free steel), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this order are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this order are certain clad stainless flat–rolled products, which are three–layered corrosion–resistant carbon steel flat–rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat–rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio.

The above HTSUS item numbers are provided for convenience and customs purposes. The written descriptions remain dispositive.

Intent to Rescind the 2007–2008 Administrative Review, in Part

Dongkuk submitted a letter on October 20, 2008, certifying that it did not have sales of subject merchandise to the United States during the POR. The petitioners, United States Steel Corporation, Nucor Corporation, and Mittal Steel USA ISG, Inc. did not comment on Dongkuk's no–shipment claim.

We conducted an internal customs data query on October 2, 2008, as part of the selection of respondents for individual review. *See* CBP Data. The data query showed several questionable entries, of which the Department requested entry documents. *See* Entry Documentation Request. The documentation showed that the questionable entries from the CBP data were not produced by Dongkuk. *See* Entry Documentation.

Based on our analysis of the shipment data, Dongkuk is a non–shipper for this review. *See* No Shipment Analysis.

Therefore, in accordance with 19 CFR 351.213(d)(3), and consistent with our practice, we preliminarily determine to rescind this review. *See, e.g., Stainless Steel Bar from India; Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review, and Partial Rescission of Administrative Review*, 65 FR 12209 (March 8, 2000); *Persulfates From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Administrative Review*, 65 FR 18963 (April 10, 2000).

Public Comment

An interested party may request a hearing within 30 days of publication of this preliminary notice. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication of this preliminary notice, or the first working day thereafter. Interested parties may submit case briefs no later than 30 days after the date of publication of this preliminary notice. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs, limited to issues raised in such briefs, may be filed no later than five days after the time limit for filing the case brief 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. Further, parties submitting written comments should provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue the final notice, which will include the results of its analysis of issues raised in any such comments, or at a hearing, if requested, within 120 days of publication of this preliminary notice.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: April 8, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–8497 Filed 4–13–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–901

Certain Lined Paper Products from the People's Republic of China: Notice of Final Results of the Antidumping Duty Administrative Review

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

SUMMARY: On October 7, 2008, the U.S. Department of Commerce (the Department) published the preliminary results of the first administrative review of the antidumping duty order on certain lined paper products (CLPP) from the People's Republic of China (PRC). *See Certain Lined Paper Products from the People's Republic of China: Notice of Preliminary Results of the Antidumping Duty Administrative Review*, 73 FR 58540 (October 7, 2008) (*Preliminary Results*). We invited parties to comment on the Preliminary Results. This review covers the following exporters and/or producer/exporters: (1) Shanghai Lian Li Paper Products Co., Ltd. (Lian Li); (2) Hwa Fuh Plastics Co. Ltd./Li Teng Plastics (Shenzhen) Co., Ltd. (H.F. Plastics/ L.T. Plastics); (3) Leo's Quality Products Co., Ltd./ Denmax Plastic Stationery Factory (Denmax/Leo's Products); and (4) the Watanabe Group (which consists of the following three companies: Watanabe Paper Products (Shanghai) Co. Ltd. (Watanabe Shanghai); Watanabe Paper Products (Linqing) Co. Ltd. (Watanabe Linqing); and Hotrock Stationery (Shenzhen) Co. Ltd. (Hotrock Shenzhen)).[1] We find that certain exporters and producers/exporters sold subject merchandise at prices below normal value (NV) during the period of review (POR) of April 17, 2006, through August 31, 2007. Based on our analysis of the comments received and verification findings, we have made changes to certain surrogate values and to Lian Li's margin. Therefore, the final results differ from the *Preliminary Results*.

EFFECTIVE DATE: April 14, 2009.

FOR FURTHER INFORMATION CONTACT: Victoria Cho or Cindy Lai Robinson, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5075 or (202) 482–3797, respectively.

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 72 FR 61621 (October 31, 2007).

SUPPLEMENTARY INFORMATION:

Background

We published the preliminary results of the first administrative review on October 7, 2008, in the **Federal Register**. *See Preliminary Results*. Since the *Preliminary Results*, the following events have occurred:

On October 2 and November 6, 2008, the Department issued two additional supplemental questionnaires to Lian Li. Lian Li submitted its responses on October 16 and November 25, 2008, respectively. In its November 25, 2008, response, Lian Li provided its sales reconciliation and the factors of production reconciliations for all three companies: Lian Li, Sentian Paper Product Co., Ltd. (Sentian), and Shanghai Miaopanfang Paper Product Co., Ltd. (MPF).[2] On October 27 and December 17, 2008, the Association of American School Paper Suppliers, the petitioner, submitted comments on Lian Li's October 16 and November 25, 2008, responses, respectively. On November 6, 2008, Lian Li requested a hearing. The petitioner also requested a hearing on March 6, 2009.

On December 31, 2008, the Department extended the time limit for the final results of this proceeding.[3] On January 9, 2009, the petitioner submitted pre–verification comments regarding Lian Li. From January 12 through 16, 2009, the Department conducted verification on Lian Li's reported sales information and on the reported factors of production (FOP) information submitted by Lian Li and its two suppliers of subject merchandise in Shanghai: Sentian and MPF. On February 26, 2009, the Department issued three verification reports with respect to Lian Li and its two suppliers.[4] On March 6, 2009, Lian Li and the

[2] On April 11, 2008, Lian Li submitted similar reconciliation information for itself, Sentian, and MPF.

[3] *See Certain Lined Paper Products from the People's Republic of China: Extension of Time Limits for Final Results of Antidumping Duty Administrative Review*, 73 FR 80366 (December 31, 2008).

[4] *See* Memorandum to the File, regarding Verification of the sales and Factors of Production Responses of Lian Li Paper Products Co., Ltd. in the First Administrative Review of Certain Lined Paper Products from the People's Republic of China, dated February 26, 2008 (Lian Li Verification Report). *See also* Memorandum to the File, regarding Verification of the Factors of Production Responses of MPF in the First Administrative Review of Certain Lined Paper Products from the People's Republic of China, dated February 26, 2008 (MPF Verification Report). *See also* Memorandum to the File, regarding Verification of the Factors of Production Responses of Sentian in the First Administrative Review of Certain Lined Paper Products from the People's Republic of China, dated February 26, 2008 (Sentian Verification Report).

petitioner filed their case briefs. On March 13, 2009, the Watanabe Group submitted its case brief. The petitioner and Lian Li submitted their rebuttal briefs on March 16, 2009. The Department conducted a hearing on March 18, 2009.

Scope of the Antidumping Duty Order

The scope of this order includes certain lined paper products, typically school supplies (for purposes of this scope definition, the actual use of or labeling these products as school supplies or non–school supplies is not a defining characteristic) composed of or including paper that incorporates straight horizontal and/or vertical lines on ten or more paper sheets (there shall be no minimum page requirement for looseleaf filler paper) 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 8–3/4 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;
- printed books and other books that are case bound through the inclusion of binders board, a 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: pre–printed business forms, lined invoice pads and paper, mailing and address labels, manifests, and shipping log books;
- lined continuous computer paper;
- boxed or packaged writing stationary (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 (''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), 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™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
- 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™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
- 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 2–3/8'' 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™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).

- 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™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope). Merchandise subject to this order is typically imported under headings 4820.10.2050, 4810.22.5044, 4811.90.9090, 4820.10.2010, 4820.10.2020 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS headings are provided for convenience and customs purposes; however, the written description of the scope of this order is dispositive.

Analysis of Comments Received

All issues raised in the briefs are addressed in the Issues and Decision Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, regarding the Final Results of the First Administrative Review of Certain Lined Paper Products from the People's Republic of China, dated April 6, 2009 (Issues and Decision Memorandum), which is hereby adopted by this notice. A list of the issues raised, all of which are in the Issues and Decision Memorandum, is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in the briefs and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit (CRU), room 1117 of the Department of Commerce. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at http://ia.ita.doc.gov/. The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Use of FOP Data submitted by Sentian and MPF

At the *Preliminary Results*, the Department found that Lian Li's two suppliers, Sentian and MPF, did not provide accurate and FOP data, and that they did not act to the best of their ability in this review. This finding was based largely on statements made by these companies which lead the Department to conclude that costs recorded at the individual companies (Sentian and MPF) were not reliable. Specifically, Lian Li stated that:

> ''{d}uring year 2006, Sentian and MPF had two different production sites and the accountant just arbitrarily assigned distributed the sales and manufacturing costs to the two companies' accounting books. As a result, either one company's cost accounts are not complete and the calculations for usage rates based on one company's books are not accurate.''

See Lian Li's April 11, 2008, supplemental response at page 12. Therefore, to be consistent with its practice in similar situations,[5] the Department applied adverse facts available (AFA) in the *Preliminary Results* by assigning the highest NV for any single matching control number (CONNUM) from the three producers at issue in this review, Lian Li, Sentian, and MPF, to all subject merchandise produced by Sentian and MPF. *See Preliminary Results*. This was consistent with the Department's decision in the original investigation, where the Department concluded that Sentian and MPF did not cooperate to the best of their ability with respect to a particular FOP, mixed–pulp paper consumption, and applied facts available (FA) with an adverse inference to Sentian's and MPF's paper consumption. *See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from People's Republic of China*, 71 FR 53079 (September 8, 2006) (*PRC Lined Paper Investigation Final*).

In the *Preliminary Results*, the Department indicated that it would seek additional clarification from these companies regarding their accounting records. On October 16, 2009, Lian Li, Sentian and MPF made a submission in an effort to explain their accounting records. In the submission, Lian Li stated that the previous statements[6] mischaracterized their accounting records; they explained that because the two companies were under common ownership and control, the owners operated them on a consolidated basis. In addition, because one of the two firms, MPF, had a lower tax rate, the companies would sometimes transfer sales and costs between the two firms to lower the overall tax burden. Based on this explanation we asked Lian Li to resubmit a reconciliation between the submitted FOP data and the financial statements; this was received on November 25, 2008. Based upon the explanation and information provided in the November 25, 2008, submission, the Department decided to proceed to verification. In January 2009 the Department conducted sales and FOP verification on the information submitted by Lian Li, Sentian and MPF in Shanghai, PRC. *See* Lian Li Verification Report, MPF Verification Report, and Sentian Verification Report, respectively.

As stated in the Sentian and MPF Verification Reports, although the Department finds that the methodology adopted by Sentian and MPF adequately accounted for the consumption of the material inputs, the Department finds that the methodology did not accurately account for the consumption of labor and electricity. Specifically, for material transfers, the Department has concluded that Sentian and MPF's accounting books properly captured the transfers when the transfers took place. Accordingly, we have concluded that the acutal consumption in Sentian's and MPF's factory was accurately recorded in the company–specific accounting books, which, in turn, was accurately reported in their submitted FOP databases. *See id*. However, at verification, we found that MPF and Sentian derived their reported consumption for labor and electricity by dividing the company–specific labor

[5] *See Certain Tissue Paper Products from the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review*, 73 FR 58113 (October 6, 2008); *see also Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*).

[6] *See* Lian Li's April 11, 2008, response at page 12. *See also* the earlier quoted statement in this section above.

and electricity usage by the post–transferred production quantity, rather than the actual company–specific production quantity. Because the post–transferred production quantity differs from the actual production quantity for each company, the mismatch of using post–transferred production quantity and the actual usage of these two factors resulted in misreporting of consumption for labor and electricity.

Based on Lian Li's two latest responses and the Department's findings at verification, for purposes of these final results, with the exception of labor and electricity consumption (see Application of Partial Adverse Facts Available below), the Department has relied on Sentian and MPF's reported FOP databases submitted on October 16, 2008.

Application of Partial Adverse Facts Available

Section 776(a) of the Act provides that the Department will apply ''facts otherwise available'' if, *inter alia*, necessary information is not available on the record or an interested party: A) withholds information that has been requested by the Department; B) fails to provide such information within the deadlines established, or in the form or manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; C) significantly impedes a proceeding; or D) provides such information, but the information cannot be verified.

It is the Department's practice to rely on accurate information submitted by respondents to calculate dumping margins in an antidumping duty proceeding. *See PRC Wooden Bedroom Furniture.*[7] When the Department finds that a respondent's reported information is not reliable, the Department will resort to FA. *Id.* Specifically, in the Department's recent decision in *PRC Wooden Bedroom Furniture Final Results*, the Department concluded that a respondent's submitted data are not reliable when the data cannot be tied to reliable financial statements or a reliable financial recording system. In this case, Sentian's and MPF's reported labor and electricity usage rate cannot be tied to the books and records of the respective companies.

According to section 776(b) of the Act, if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available. *See also Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025–26 (September 13, 2005); and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (August 30, 2002). Adverse inferences may be employed ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Rep. No. 103–316, Vol. 1, at 870 (1994) (SAA), reprinted in 1994 U.S.C.C.A.N. 4040, 4198–99. Furthermore, ''affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.'' *See Antidumping Duties; Countervailing Duties*; Final Rule, 62 FR 27296, 27340 (May 19, 1997); *see also Nippon Steel*.

In this case, Sentian and MPF were aware of their skewed usage rates reported for labor and electricity in their April 11, 2008, response.[8] After they received a partial AFA rate at the *Preliminary Results* because of their inaccurately reported FOP, the Department issued two more supplemental questionnaires. Although respondent clarified some of the reporting issues, it never attempted to correct the skewed usage rates for labor and electricity. At verification, the Department found that Sentian and MPF kept warehouse records which could be used to derive the actual production quantity for each company. Had Sentian and MPF calculated the actual, company–specific production quantity, they could have accurately calculated the labor and electricity consumption and provided it in their October 16 and November 25, 2008, responses. Therefore, the Department finds that Sentian and MPF did not act to the best of their ability with respect to its labor and electricity consumption information. Therefore, the Department finds applying FA with an adverse inference is warranted with respect to the labor and electricity consumption for these final results. *See Nippon Steel*, 337 F.3d at 1382–83.

In *Nippon Steel*, the Court set out two requirements for drawing an adverse inference under section 776(b) of the Act. First, the Department ''must make an objective showing that a reasonable and responsible importer would have known that the requested information was required to be kept and maintained under the applicable statutes, rules, and regulations.'' Next the Department must ''make a subjective showing that the respondent . . . has failed to promptly produce the requested information'' and that ''failure to fully respond is the result of the respondent's lack of cooperation in either: (a) failing to keep and maintain all required records, or (b) failing to put forth its maximum efforts to investigate and obtain the requested information from its records.'' The Court clarifies further that ''{a}n adverse inference may not be drawn merely from a failure to respond, but only under circumstances in which it is reasonable for Commerce to expect that more forthcoming responses should have been made.'' *See Nippon*, at 1382–83.

As noted above, Sentian and MPF had received a partial AFA in the *Preliminary Results* and in the original investigation and, accordingly, they should have known that they were responsible for demonstrating the reliability of their own data. The Department requested this information on numerous occasions, and Sentian and MPF were aware of the problems with the reported data but did not attempt to remedy their data. Because the Department found both Sentian and MPF were unable to substantiate their reported consumption for labor and electricity, the Department concluded that Sentian and MPF did not cooperate to the best of their ability with respect to their consumption for the reported labor and electricity. *See Nippon Steel* and *PRC Lined Paper Investigation Final*.

Section 776(b) of the Act provides that the Department may use as AFA information derived from: 1) the petition; 2) the final determination in the investigation; 3) any previous review; or 4) any other information placed on the record. The Department's practice, when selecting an AFA rate from among the possible sources of information, has been to ensure that the margin is sufficiently adverse ''as to effectuate the statutory purposes of the

[7] *See Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Results of New Shipper Review and Partial Rescission of Administrative Review*, 73 FR 8273 (February 13, 2008) (*PRC Wooden Bedroom Furniture Preliminary Results*). (Unchanged in the final results *Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review*, 73 FR 49162 (August 20, 2008) (*PRC Wooden Bedroom Furniture Final Results*).

[8] *See* Lian Li's April 11, 2008, supplemental questionnaire response at page 12 where it stated that as a result of the accountant arbitrarily distributing the sales and manufacturing costs to the two companies' accounting book, there are discrepancies with respect to labor and electricity.

adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See Certain Steel Concrete Reinforcing Bars from Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 71 FR 65082, 65084 (November 7, 2006) (quoting *Carbon and Certain Alloy Steel Wire Rod from Brazil: Notice of Final Determination of Sales at LTFV and Final Negative Circumstances*, 67 FR 55792 (August 30, 2002)).

In order to ensure that the margin is sufficiently adverse so as to induce cooperation, the Department has applied the highest monthly consumption rate of labor and electricity reported by each company in this review to all subject merchandise produced by Sentian and MPF. This is consistent with the Department's practice in similar situations.[9]

Corroboration of Information

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as FA. Secondary information is information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise. *See SAA* at 870; *see also* 19 CFR 351.308(c) and (d). The *SAA* clarifies that ''corroborate'' means that the Department will satisfy itself that the ''secondary information to be used has probative value.'' *Id*. The *SAA* and the Department's regulations state that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation or review. *See SAA* at 870; 19 CFR 351.308(d). To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. *See Universal Polybag Co. v. United States*, 577F.Supp. 2d 1284 (CIT 2008); *see also* section 776(c) of the Act.

As stated above, the Department calculated partial AFA based on information reported by the respondents, and thus did not rely upon secondary information for purposes of labor and electricity. Therefore, corroboration is not necessary in this review in accordance with section 776(c) of the Act.

Separate Rates

In proceedings involving non–market economy (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 an investigation 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. *See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588 (May 6, 1991), as amplified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China*, 59 FR 22585 (May 2, 1994), and 19 CFR 351.107(d).

In the Preliminary Results, we stated that Lian Li demonstrated its eligibility for separate–rate status. For these final results, we continue to find that evidence placed on the record of this review demonstrates that Lian Li provided information that shows both a *de jure* and *de facto* absence of government control with respect to its respective exports of the merchandise under review, and, thus is eligible for separate–rate status. *See Preliminary Results* at *58545*.

With respect to the three companies not selected for individual examination in this review: H.F. Plastics/ L.T. Plastics; Denmax/Leo's Products; and the Watanabe Group (non–selected companies), we continue to grant a separate rate to these companies because they are wholly owned by individuals or companies located in a market economy. As wholly foreign–owned companies, we have no evidence indicating that they are under the control of the PRC. Therefore, a separate–rate analysis is not necessary to determine whether these companies are independent from government control. *See Preliminary Results. See also Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China*, 64 FR 71104, 71104–05 (December 20, 1999) (where the respondent was wholly foreign–owned and, thus, qualified for a separate rate).

For these three non–selected companies, the Department continues to apply the calculated weighted–average margin based on an average of the rates it calculated for the mandatory respondents, excluding any rates that are zero, *de minimis*, or based entirely on AFA, pursuant to section 735(c)(5)(A) of the Act.[10] In this proceeding, there is one mandatory respondent. Accordingly, for these final results, we continue to apply the rate calculated for Lian Li, 22.35 percent, to non–selected separate entities. Entities receiving this rate are identified by name in the ''Final Results of Review'' section of this notice.

Changes since the *Preliminary Results*

Based on comments received from the interested parties and findings at verification, we have made the following company–specific changes to Lian Li's margin calculation: 1) for Lian Li, the Department relied on Lian Li's FOP database submitted on October 16, 2008, to calculate the dumping margin; 2) for Sentian and MPF, the Department relied on the companies' FOP databases to derive the dumping margin with respect to material inputs, but as described above, the Department applied the highest monthly consumption rate of labor and electricity reported by each company in this review to all subject merchandise produced by Sentian and MPF with respect to the usage rates of labor and electricity; 3) for creamwove paper and black paperboard, the Department used the actual distance provided by Lian Li's suppliers for these two material inputs, and thus did not apply the *Sigma* cap distance as the Department did in the *Preliminary Results*; and 4) for labor rate, the Department applied the latest labor rate issued by the Office of Policy. *See* ''*Expected Wages of Selected NME Countries*,'' available at *http://ia.ita.doc.gov/wages/index.html*.

Final Results of Review

We determine that the following weighted–average antidumping duty percentage margins exist for the POR:

Exporter	Weighted–Average Margin (Percent)
Shanghai Lian Li Paper Products Co., Ltd.	22.35
Hwa Fuh Plastics Co., Ltd./ Li Teng Plastics (Shenzhen)Co., Ltd.	22.35
Leo's Quality Products Co., Ltd./ Denmax Plastic Stationery Factory	22.35

[9] *See PRC Lined Paper Investigation Final; see also Nippon Steel.*

[10] *See PRC Wooden Bedroom Furniture Preliminary Results. See also PRC Wooden Bedroom Furniture Final Results.*

Exporter	Weighted–Average Margin (Percent)
The Watanabe Group (consisting of the following companies) Watanabe Paper Product (Shenghai) Co., Ltd. Watanabe Paper Product (Linqing) Co., Ltd. Hotrock Stationery (Shenzhen) Co., Ltd.	22.35

For details on the calculation of the antidumping duty weighted–average margin for Lian Li, *see* Lian Li's Analysis Memo. A public version of this memorandum is on file in the CRU.

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b), the Department will determine, and United States Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review. For assessment purposes, where possible, we calculated importer–specific assessment rates for CLPP from the PRC via *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales, in accordance with 19 CFR 351.212 (b). We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for the exporters listed above, the cash deposit rate will be equivalent to the company–specific weighted–average margin established in this review; (2) for PRC exporters who received a separate rate in a prior segment of the proceeding, but were not reviewed in this review, the cash deposit rate will continue to be the rate assigned in that segment of the proceeding; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, including those companies for which this review has been rescinded, the cash deposit rate will be the PRC–wide rate of 258.21 percent; and (4) for all non–PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non–PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

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

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

This administrative review and this notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 6, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix I

List of Comments in the Accompanying Issues and Decision Memorandum

Comment 1: Whether to Apply Adverse Facts Available (AFA) in Calculating Normal Value

Comment 2: Whether to Apply Partial AFA for The Labor and Electricity Data Submitted by Sentian and MPF

Comment 3: Whether to Revise Certain Surrogate Values to Incorporate More Accurate Values and Whether to Apply Adverse Inferences with Respect to Other Values for the Final Results

Comment 4: Surrogate Financial Ratios

Comment 5: Inland Freight and Sigma Cap

Comment 6: The Inclusion of Graph Paper in the Review

Comment 7: Selection of Single Mandatory Respondent

Comment 8: Application of a Partial AFA Margin to Watanabe

Comment 9: Whether Or Not Watanabe Was Deprived of Its Full Opportunity to Participate in the Review

[FR Doc. E9–8395 Filed 4–13–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF22

Marine Mammals; File No. 775–1875

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

ACTION: Notice; receipt of application for permit amendment.

SUMMARY: Notice is hereby given that the NMFS Northeast Fisheries Science Center (NEFSC), Woods Hole, MA, has applied for an amendment to Scientific Research Permit No. 775–1875.

DATES: Written, telefaxed, or e-mail comments must be received on or before May 14, 2009.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the Features box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov*, and then selecting File No. 775–1875 from the list of available applications.

These documents are also available upon written request or by appointment in the following office(s):

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

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978)281–9300; fax (978)281–9333.

Written comments or requests for a public hearing on this application should be submitted 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 this particular application 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 ''File No. 775–1875'' in the subject line of the e-mail comment as a document identifier.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Carrie Hubard, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 775–1875 is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

Permit No. 775–1875, issued on January 16, 2008 (73 FR 4846), authorizes the permit holder to conduct research related to stock assessments on seven species of baleen whales, twenty-five species or stocks of odontocetes, and four species of pinnipeds. Permitted research on pinnipeds includes aerial and vessel surveys, capture for collection of biological samples, and harassment incidental to research and collection of scat. The permit holder is requesting the permit be amended to include authorization for harassment of additional harbor seals (Phoca vitulina) and gray seals (Halichoerus grypus) incidental to scat collection, and collection of additional harbor seal pup carcasses found on rookeries and haulouts. The increases are necessary due to the rapidly increasing seal populations at all major haulouts, which has resulted in researchers encountering more seals than anticipated when the original permit was requested in 2006. The amendment does not represent a change in the manner in which the research is conducted, including location, frequency or duration of research activities. The amendment would be valid for the duration of the permit, which expires on January 15, 2013.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an environmental assessment (EA) was prepared to examine whether significant environmental impacts could result from issuance of Permit No. 775–1875. Based on the analyses in the EA, NMFS determined that issuance of the permit amendment would not significantly impact the quality of the human environment and that preparation of an environmental impact statement is not required. The EA is available upon request.

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

Dated: April 7, 2009.

Tammy C. Adams,

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

[FR Doc. E9–8515 Filed 4–13–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

(C–580–851)

Dynamic Random Access Memory Semiconductors from the Republic of Korea: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review

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

EFFECTIVE DATE: April 14, 2009.

FOR FURTHER INFORMATION CONTACT: Shane Subler at (202) 482–0189 or David Neubacher at (202) 482–5823; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On September 30, 2008, the Department of Commerce (''the Department'') published a notice of initiation of administrative review of the countervailing duty order on dynamic random access memory semiconductors from the Republic of Korea, covering the period January 1, 2007 through December 31, 2007. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 73 FR 56795 (September 30, 2008). On February 17, 2009, the petitioner, Micron Technology, Inc., alleged that the respondent, Hynix Semiconductor, Inc., received new subsidies.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and the final results of review within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Extension of Time Limit for Preliminary Results

This administrative review is extraordinarily complicated due to the complexity of the countervailable subsidy practices found in the investigation and the new subsidy allegations. Because the Department requires additional time to review, analyze, and possibly verify the information, and to issue additional supplemental questionnaires, if necessary, it is not practicable to complete this review within the original time limit (*i.e.*, by May 3, 2009). Therefore, the Department is extending the time limit for completion of the preliminary results by 90 days to not later than August 1, 2009, in accordance with section 751(a)(3)(A) of the Act. August 1, 2009, however, falls on a Saturday. The Department's long–standing practice is to issue a determination on the next business day when the statutory deadline falls on a weekend, federal holiday, or any other day when the Department is closed. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005). Accordingly, the deadline for completion of the preliminary results is now no later than Monday, August 3, 2009.

We are issuing and publishing this notice in accordance with section 751(a)(1) of the Act.

Dated: April 8, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–8499 Filed 4–13–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Islamic Republic of Iran Shipping Lines *et al.*

In the Matter of:

Islamic Republic of Iran Shipping Lines, No. 37, Aseman Tower, Sayyade Shirazee Square, Pasdaran Avenue, P.O. Box 19395–1311, Tehran, Iran; No. 37, Corner of 7th Narenjestan, Sayad Shirazi Square, After

Noboyand Square, Pasdaran Avenue, Tehran, Iran;
Tadbir Sanaat Sharif Technology Development Center, First Floor, No. 25, Shahid Siadat Boulevard, North Zanjan Street, Yadegar Emam Highway, Tehran, Iran; Icarus Marine (Pty) Ltd., 1 River Street, Rosebank, Cape Town, South Africa; Respondents.
Starry Shine International Limited, Suite B 12/F, Two Chinachem Plaza, 135 Des Voeux Road, Central, Hong Kong, Peoples Republic of China;
Ghasem Nabipour, Suite B 12/F, Two Chinachem Plaza, 135 Des Voeux Road, Central, Hong Kong, Peoples Republic of China; and No 143 Shahid Lavasani Avenue, Farmanieh, Tehran, Iran;
Ahmad Sarkandi, Suite B 12/F, Two Chinachem Plaza, 135 Des Voeux Road, Central, Hong Kong, Peoples Republic of China; and No 143 Shahid Lavasani Avenue, Farmanieh, Tehran, Iran; and 2 Abbey Road, Barking Essex 1G11 7AX, London, England;
Shawn Hugo de Villiers, 1 River Street, Rosebank, Cape Town, 7700, South Africa; and 39 Myburgii Street, Somerset West, Western Cape, South Africa;
Gunther Migeotte, Titangata 1, N–1630 Gamle Fredrikstad, Norway; and 1 River Street, Rosebank, Cape Town, 7700, South Africa; and P.O. Box 36623, Menlo Park, 0102, South Africa; and 16 Manu Rua, 262 Sprite Avenue, Faerie Glen, 0081, South Africa;
Icarus Design AS, Titangata 1, N–1630 Gamle Fredrikstad, Norway; Related Persons

Order Making Temporary Denial of Export Privileges Applicable to Related Persons

Pursuant to Section 766.23 of the Export Administration Regulations (''EAR'' or ''Regulations''), the Bureau of Industry and Security (''BIS''), U.S. Department of Commerce, through its Office of Export Enforcement (''OEE''), has requested that I make the temporary denial order that was issued against the above-named Respondents Islamic Republic of Iran Shipping Lines (''IRISL''), Tadbir Sanaat Sharif Technology Development Center (''TSS''), and Icarus Marine (Pty) Ltd. (''Icarus Marine'') on January 23, 2009, and published in the **Federal Register** on February 6, 2009 (74 FR 6,465) (hereinafter referred to as the ''TDO'') applicable to the following entities and individuals, as persons related to the Respondent IRISL or Respondent Icarus Marine:

Starry Shine International Limited, Suite B 12/F, Two Chinachem Plaza, 135 Des Voeux Road, Central, Hong Kong, Peoples Republic of China;
Ghasem Nabipour, Suite B 12/F, Two Chinachem Plaza, 135 Des Voeux Road, Central, Hong Kong, Peoples Republic of China; and No 143 Shahid Lavasani Avenue, Farmanieh, Tehran, Iran;
Ahmad Sarkandi, Suite B 12/F, Two Chinachem Plaza, 135 Des Voeux Road, Central, Hong Kong, Peoples Republic of China; and No 143 Shahid Lavasani Avenue, Farmanieh, Tehran, Iran; and 2 Abbey Road, Barking Essex 1G11 7AX, London, England;
Shawn Hugo de Villiers, 1 River Street, Rosebank, Cape Town, 7700, South Africa; and 39 Myburgii Street, Somerset West, Western Cape, South Africa;
Gunther Migeotte, Titangata 1, N–1630 Gamle Fredrikstad, Norway; and 1 River Street, Rosebank, Cape Town, 7700, South Africa; and P.O. Box 36623, Menlo Park, 0102, South Africa; and 16 Manu Rua, 262 Sprite Avenue, Faerie Glen, 0081, South Africa;
Icarus Design AS, Titangata 1, N–1630 Gamle Fredrikstad, Norway.

I. Background

A. The TDO

The TDO, effective upon issuance on January 23, 2009, denies the export privileges of Respondents IRISL, TSS, and Icarus Marine for 180 days pursuant to Section 766.24 of the Regulations. The TDO issued based upon my review of the evidence and determination that issuance of the TDO was necessary in the public interest to prevent an imminent violation of the Regulations. As more fully set forth in the TDO, the evidence showed, *inter alia,* that the Respondents were about to violate the EAR by re-exporting a Bladerunner 51 powerboat, the ''Bradstone Challenger,'' to TSS in Iran for intended use by the Iranian Revolutionary Guard Corps (''IRGC'') Navy. The TDO also discussed evidence indicating that the vessel the M/V ''Diplomat'' (a/k/a the ''Iran Diplomat'') was going to be used to effect that unlawful transaction by transporting the Bradstone Challenger from South Africa to Iran.

The TDO was sent by fax to IRISL, TSS, and Icarus Marine on the same day that it was issued, January 23, 2009. In spite of the issuance of the TDO prohibiting the re-export of the Bradstone Challenger and broadly prohibiting any participation in the export or re-export of other items subject to the Regulations, the Respondents engaged in the re-export of the Bradstone Challenger from South Africa to Iran. Consistent with BIS's evidence and my findings in the TDO, the M/V Diplomat was used to complete the re-export, as the Bradstone Challenger was transported on the Diplomat beginning on or about January 24, 2009. In addition, subsequent to the issuance of the TDO, BIS received a letter from Respondent TSS on January 28, 2009, in which TSS admitted that it was the owner of the Bradstone Challenger. None of the Respondents has appealed or challenged the TDO.

B. Related Persons Notice Letters

Pursuant to Section 766.23, BIS notified Ghasem Nabipour, Ahmad Sarkandi, and Starry Shine International Limited (''Starry Shine'') of its intent to add them as persons related to Respondent IRISL by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business, through letters dated February 2, 2009 and sent to them in accordance with Sections 766.5(b) and 766.23(b). BIS similarly notified Gunther Migeotte, Shawn Hugo de Villiers, and Icarus Design AS of its intent to add them as persons related to Respondent Icarus Marine, through letters dated and sent to them on February 12, 2009. Each of these six notice letters also requested that the respective person provide information to BIS concerning the recipients' role and contractual relationship with either IRISL or Icarus Marine. In addition, the letters requested information regarding affiliates and subsidiaries associated with the recipients and/or Respondents, as well as any other relevant mitigating information and supporting documentation.

Mr. Nabipour and Mr. Sarkandi responded by letters dated February 27, 2009, via a London-based law firm representing both of them. Mr. de Villiers responded by letter dated March 3, 2009, which he submitted on Icarus Marine letterhead and signed as Managing Director of Icarus Marine. No response has been received from Starry Shine, Icarus Design or Mr. Migeotte.

II. Related Persons Under Section 766.23

Section 766.23(a) of the Regulations provides that:

> In order to prevent evasion, certain types of orders under [Part 766] may be made applicable not only to the respondent, but also to other persons then or thereafter related to the respondent by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business. Orders that may be made applicable to related persons include those that deny or affect export privileges, including temporary denial orders, and those that exclude a respondent from practice before BIS. 15 CFR 766.23(a).

Section 766.23(b) provides, in pertinent part and in conjunction with Section 766.24, that upon a finding by the Assistant Secretary for Export Enforcement that a TDO should be made applicable to a related person or persons in order to prevent evasion of the TDO, the Assistant Secretary shall amend the

TDO by adding those related persons to the TDO. 15 CFR 766.23(b).

III. Findings

Starry Shine

BIS requested that Starry Shine be added to the TDO as a Related Person to Respondent IRISL. BIS has presented evidence indicating, *inter alia,* that Starry Shine is listed as the owner of the M/V Diplomat, the vessel that was used to re-export the Bradstone Challenger to Iran in violation of the TDO and U.S. export control laws; that Starry Shine's only two directors are Ghasem Nabipour and Ahmad Sarkandi, who themselves are persons related to IRISL (as discussed further below); and that IRISL continues to manage and operate the M/V Diplomat. Starry Shine has not opposed being added to the TDO, either to challenge that it is related to IRISL or that adding it to the TDO is justified to prevent evasion.

BIS also has presented evidence indicating, moreover, that beginning in 2008, Respondent IRISL has engaged in a pattern of evasive conduct with Starry Shine and other related entities, by transferring ownership (or at least nominal ownership) of the M/V Diplomat and other vessels subject to United States Government export restrictions to Starry Shine and other co-located entities established at or about the same time and under the direction of Mr. Nabipour and Mr. Sarkandi. Although listed ownership of these entities has been transferred and they no loner fly under an Iranian flag, IRISL has continued to manage and operate them. Furthermore, in published interviews, IRISL's Chairman has acknowledged the use of such methods to evade U.S. export control sanctions.

For example, from 1985, when the vessel first took sail, until 2008, the M/V Diplomat flew under an Iranian flag, was owned by IRISL, and was named the Iran Mufateh. This ship was added as a blocked vessel in September 2008 by the Department of the Treasury's Office of Foreign Assets Control (''OFAC'') to its list of specially designated nationals (''SDN''), at the same time Respondent IRISL became listed as an SDN. According to the Hong Kong Government corporate registry Web site, as of June 2008, the M/V Diplomat is owned by Starry Shine. Shortly before that listed transfer, Ghasem Nabipour and Ahmad Sarkandi had been appointed as directors of Starry Shine on the same day in March 2008. The M/V Diplomat sails under a Hong Kong flag, but is still operated and managed by IRISL.

Besides the M/V Diplomat, Starry Shine owns two other vessels, the Delight and the Apollo, both of which, like the Diplomat, were owned by IRISL until 2008 and continue to be managed and operated by IRISL. The Delight was also designated as a blocked vessel by OFAC at the same time that the Diplomat was so designated.

BIS also has presented evidence that Starry Shine's only two directors—Mr. Nabipour and Mr. Sarkandi—also are the only two directors of other entities formed and used for the same evasive purposes and co-located with Starry Shine, including at least Top Glacier Company Limited, Top Prestige Trading Limited and Ideal Success Investments Limited. Like Starry Shine, each of those entities is the nominal owner of at least one vessel designated as a blocked vessel by OFAC in September 2008, and, in the case of these three entities, IRISL remains the beneficial owner of those vessels.

Furthermore, even in the short time since the issuance of TDO, IRISL has taken action in an effort to evade U.S. export control laws. In early March 2009, after issuance of the TDO in late January 2009, and its publication and the unlawful re-export of the Bradstone Challenger to Iran via the M/V Diplomat in February 2009, Starry Shine changed the name of the M/V Diplomat to M/V Amplify. Given the suspicious timing of this name change and the fact that it did not result from a change in ownership or management, the evidence indicates that Starry Shine intends to continue working in concert with IRISL and others to evade the TDO and the Regulations and to use the M/V Diplomat for that purpose as well.

Based on the foregoing and the evidence as a whole in this matter, I find that Starry Shine is a person related to IRISL by ''ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business'' pursuant to Section 766.23 of the Regulations, and that the TDO should be made applicable to Starry Shine in order to prevent evasion of that order.

Ghasem Nabipour

BIS requested that Mr. Nabipour be added as a Related Person based on evidence that he is a person related to IRISL, a fact he has admitted in his response, as described in greater detail below. In addition, BIS has also now obtained and presented evidence indicating that Mr. Nabipour likewise is affiliated with other persons related to IRISL, further strengthening BIS's request to add him as a related person.

In his response, Mr. Nabipour admits that he manages the day-to-day ship operations of IRISL and also admits that he ''holds a position of responsibility'' within IRISL. Mr. Nabipour nonetheless asserts, without supporting citation or authority, that he should not be added to the TDO, arguing that the Regulations cannot apply to any activities of IRISL or any of its employees and also that he is not in a position to contribute or assist in any possible evasion of the TDO.

Mr. Nabipour's first argument is legally incorrect. The TDO discusses why the Bradstone Challenger and its re-export are subject to the Regulations, which presents just one example of various activities of IRISL and its employees that are or could be subject to the Regulations. His second argument is factually incorrect. His admitted relationship, role as shipping manager, and position of responsibility with IRISL show that he is well-positioned to contribute or assist in the evasion of the TDO. In fact, the unlawful re-export of the Bradstone Challenger occurred after IRISL had been served with a copy of the TDO and the re-export occurred via the M/V Diplomat, but Mr. Nabipour failed to take any action to prevent that unlawful re-export in violation of the TDO, and presumably participated in that unlawful conduct given his role and position at IRISL, as well as his role as director of Starry Shine.

Mr. Nabipour's arguments do not address his role as director of Starry Shine, even though the TDO discusses evidence indicating the central role that BIS expected to be played by the M/V Diplomat, and was in fact played by that IRISL-Starry Shine vessel, in the unlawful re-export of the Bradstone Challenger. Nor does Mr. Nabipour address the evasive action taken in the re-naming of the M/V Diplomat in early March 2009, discussed in the Starry Shine section above, or his role in the broader evasion scheme also detailed in the preceding section above as director of Top Glacier Company Limited, Top Prestige Trading Limited and Ideal Success Investments Limited.

Based on the foregoing and the evidence as a whole in this matter, I find that Ghasem Nabipour is a person related to IRISL by ''ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business'' pursuant to Section 766.23 of the Regulations, and that the TDO should be made applicable to Ghasem Nabipour in order to prevent evasion of that order. The evidence also indicates that Ghasem Nabipour is a person related to Starry Shine, which is being

added to the TDO pursuant to Section 766.23 and this order.

Ahmad Sarkandi

BIS also requested that Mr. Sarkandi be added as a Related Person to IRISL. BIS presented evidence that Mr. Sarkandi is the Managing Director of IRISL UK, a position he admits holding in his response, which he states owns and operates ships ''in international transport,'' and admits that he exercises a ''position of control'' within IRISL UK. He denies being a shareholder or director of IRISL (or a director of Icarus Marine or TSS), but has refused to indicate whether he holds any other position or role within IRISL. IRISL UK is in any event affiliated with IRISL, and Mr. Sarkandi admits that IRISL UK is a member of the ''IRISL group.'' BIS also introduced evidence that Mr. Sarkandi is Managing Director for IRISL's European Regional Office in the UK, where he has been stationed since 2004.

Like Mr. Nabipour, Mr. Sarkandi mistakenly argues that the Regulations cannot apply in any way to IRISL UK or one of its directors. He also similarly argues that his position at IRISL UK renders him incapable of contributing or assisting in any possible evasion of the TDO. He asserts that his activities of IRISL UK are limited to ''managing and expending'' IRISL UK's business enterprises in the UK, Germany, Belgium, and Italy. He does not argue, however, that the shipping operations of these enterprises are limited to those countries, indicating instead that IRISL UK owns and operates ships in international transport. The record, in any event, suggests that IRISL's substantial fleet of vessels frequently call at European, as well as Middle Eastern and Asian ports. Mr. Sarkandi refuses to comment on his role at Starry Shine, though like Mr. Nabipour, he was notified of the role that the Starry Shine's M/V Diplomat played in the re-export of the Bradstone Challenger to Iran for use by the IRGC Navy. His response also omitted his role at other entities organized with Mr. Nabipour, purchasing IRISL's blocked vessels, which were discussed above.

Based on the foregoing and the evidence as a whole in this matter, I find that Ahmad Sarkandi is a person related to IRISL by ''ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business'' pursuant to Section 766.23 of the Regulations, and that the TDO should be made applicable to Ahmad Sarkandi in order to prevent evasion of that order. The evidence also indicates that Ahmad Sarkandi is a person related to Starry Shine, which is being added to the TDO pursuant to Section 766.23 and this order.

Shawn Hugo de Villiers

BIS requested that Shawn Hugo de Villiers be added as a Related Person to Respondent Icarus Marine. Mr. de Villiers is Managing Director of Icarus Marine, a fact he has admitted in various communications with BIS, along with the fact that he and Gunther Migeotte are the only two directors of Icarus Marine, where Mr. de Villiers is one of only four employees. He also has provided BIS evidence that his fellow director/officer, Mr. Migeotte, owns Icarus Design, which in turn owns half of Icarus Marine. Mr. de Villiers denies involvement by Icarus Marine in ''any dealings as described in the'' TDO, including denying knowing ''anything about the sale of this boat and that includes its current whereabouts.'' He does admit, however, that ''we [Icarus Marine] do know the company TSS * * *''. Mr. de Villiers does not elaborate on the nature of that relationship, but denies that Icarus Marine has supplied ''any boats or other equipment to TSS in the past 24 months.''

Mr. de Villiers' denials are undermined by the evidence BIS submitted in connection with the issuance of the TDO and by additional evidence it has since obtained or presented indicating that the transaction occurred as described or alleged in the TDO. In addition, given Mr. de Villiers' admitted role at Icarus Marine and his statement concerning the company's small size, assertions that he lacks knowledge of Icarus Marine's dealings or involvement with the Bradstone Challenger, or a transaction as significant as that described in the TDO, are not credible.

His denials are further undermined by TSS's January 28, 2009 letter claiming ownership of the Bradstone Challenger and by information until recently located on TSS's Web site. The TSS Web site, in a statement removed shortly after the TDO was published, stated that TSS has ''prosperous cooperation'' with ''Icarus Design AS (Norway).'' The TSS Web site further described Icarus Design as ''an engineering and naval architecture company with offices in Alesund Norway and Cape Town[,] South Africa. * * *'' While Icarus Design does not have a listed office in South Africa, Icarus Marine's office is located in Cape Town, South Africa. TSS's admitted knowledge of and dealings with that South Africa office, which it apparently considered to be an Icarus Design office or branch office, is an additional indication that, contrary to Mr. de Villiers' denials, Icarus Marine was involved in the re-export of the Bradstone Challenger from South Africa to TSS in Iran for use by the IRGC Navy.

Based on the foregoing and the evidence as a whole in this matter, I find that Shawn Hugo de Villiers is a person related to Icarus Marine by ''ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business'' pursuant to Section 766.23 of the Regulations, and that the TDO should be made applicable to Shawn Hugo de Villiers in order to prevent evasion of that order.

Gunther Migeotte

BIS also requested that Gunther Migeotte be added to the TDO as a Related Person to Respondent Icarus Marine. Mr. Migeotte has not filed any response opposing his addition to the TDO, or responded to BIS's request for information contained in the notice letter, nor has Icarus Design, of which Mr. Migeotte is the sole owner, Chairman, and Managing Director. I also note that Icarus Marine, which he also controls and manages, has not appealed the issuance of the TDO.

BIS has presented open source evidence confirming that Mr. Migeotte is a principal officer and executive director of Icarus Marine. It also has obtained evidence from Shawn Hugo de Villiers, Managing Director of Icarus Marine, that he and Mr. Migeotte are the directors of Icarus Marine and that Mr. Migeotte also is the sole owner and director of Icarus Design, which owns 50 percent of Icarus Marine and maintains a substantial business relationship with Respondent TSS. Icarus Marine participated in and facilitated the sale and unlawful re-export of the Bradstone Challenger to Iran despite the TDO. Given his role at Icarus Marine, indicating that he either directly participated in or at the very least failed to take action to stop or prevent the violation of the TDO, there is a clear need to add him as a related person.

Based on the foregoing and the evidence as a whole in this matter, I find that Gunther Migeotte is a person related to Icarus Marine by ''ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business'' pursuant to Section 766.23 of the Regulations, and that the TDO should be made applicable to Gunther Migeotte in order to prevent evasion of that order. The evidence also indicates that Gunther Migeotte is a person related to Icarus Design AS, which is being added to the

TDO pursuant to Section 766.23 and this order (as discussed below).

Icarus Design, AS

BIS requested that Icarus Design, AS be added as a Related Person to Respondent Icarus Marine. Icarus Design, like its director and owner Mr. Migeotte, has not opposed or otherwise responded to BIS's letter notifying Icarus Design of its intent to add Icarus Design as a related person. However, information supplied by Mr. de Villiers in his response letter, which he signed as Managing Director of Icarus Marine, substantiates evidence obtained by BIS that Icarus Marine and Icarus Design are related persons. Icarus Design owns half of Icarus Marine, the other half of which is owned by Icarus Marine Trust. Icarus Design's sole owner and sole director is Mr. Migeotte, who along with Mr. de Villiers, is one of only two directors of Icarus Marine. Moreover, I also note, that Icarus Design also has a business relationship with Respondent TSS.

Based on the foregoing and the evidence as a whole in this matter, I find that Icarus Design, AS is a person related to Icarus Marine by ''ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business'' pursuant to Section 766.23 of the Regulations, and that the TDO should be made applicable to Icarus Design AS in order to prevent evasion of that order.

IV. Order

It is Therefore Ordered: First, that having been provided notice and opportunity for comment as provided in Section 766.23 of the Regulations, Starry Shine International Limited (located at Suite B 12/F, Two Chinachem Plaza, 135 Des Voeux Road, Central, Hong Kong, Peoples Republic of China); Ghasem Nabipour (located at Suite B 12/F, Two Chinachem Plaza, 135 Des Voeux Road, Central, Hong Kong, Peoples Republic of China; and No 143 Shahid Lavasani Avenue, Farmanieh, Tehran, Iran); and Ahmad Sarkandi (located at Suite B 12/F, Two Chinachem Plaza, 135 Des Voeux Road, Central, Hong Kong, Peoples Republic of China; and No 143 Shahid Lavasani Avenue, Farmanieh, Tehran, Iran; and 2 Abbey Road, Barking Essex 1G11 7AX, London, England) (each a ''Related Person''), have been determined to be related to Respondent IRISL of Tehran, Iran, by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services, and it has been deemed necessary to make the Order temporarily denying the export privileges of the Respondents applicable to these Related Persons in order to prevent evasion of the Order.

Further, having been provided notice and opportunity for comment as provided in Section 766.23 of the Regulations, Shawn Hugo de Villiers (located at 1 River Street, Rosebank, Cape Town, 7700, South Africa; and 39 Myburgii Street, Somerset West, Western Cape, South Africa); Gunther Migeotte (located at Titangata 1, N–1630 Gamle Fredrikstad, Norway; and 1 River Street, Rosebank, Cape Town, 7700, South Africa; and P.O. Box 36623, Menlo Park, 0102, South Africa; and 16 Manu Rua, 262 Sprite Avenue, Faerie Glen, 0081, South Africa); and Icarus Design (located at Titangata 1, N–1630 Gamle Fredrikstad, Norway) (each a ''Related Person''), have been determined to be related to Respondent Icarus Marine (Pty) Ltd., of Cape Town, South Africa, by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services, and it has been deemed necessary to make the Order temporarily denying the export privileges of the Respondents applicable to these Related Persons in order to prevent evasion of the Order.

The individuals and entities designated above as a Related Person (Starry Shine International Limited, Ghasem Nabipour, Ahmad Sarkandi, Shawn Hugo de Villiers, Gunther Migeotte and Icarus Design, AS) are collectively the ''Related Persons.''

Second, that the denial of export privileges described in the Orders against Respondents, which were issued on January 23, 2009, and published in the **Federal Register** on February 6, 2009 at 74 Fed. Reg. 6465, shall be made applicable to each Related Person, as follows:

I. The Related Person, its successors or assigns, and when acting for or on behalf of the Related Person, its officers, representatives, agents, or employees (collectively, ''Related Person'') may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Related Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Related Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Related Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Related Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Related Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Related Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Related Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that this Order does not prohibit any export, re-export, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Fourth, that in accordance with the provisions of Section 766.23(c) of the Regulations, the Related Persons may, at any time, make an appeal related to this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40

South Gay Street, Baltimore, Maryland 21202–4022.

This Order shall be published in the **Federal Register** and a copy provided to each Related Person.

This Order is effective upon publication and shall remain in effect until the expiration of the TDO on July 22, 2009, unless renewed in accordance with the Regulations.

Entered this 8th day of April 2009.

Kevin Delli-Colli,

Acting Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. E9–8533 Filed 4–13–09; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–X026

International Whaling Commission; 61st Annual Meeting; Nominations

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

ACTION: Notice; request for nominations.

SUMMARY: This notice is a call for nominees for the U.S. Delegation to the June 2009 International Whaling Commission (IWC) annual meeting. The non-federal representative(s) selected as a result of this nomination process is(are) responsible for providing input and recommendations to the U.S. IWC Commissioner representing the positions of non-governmental organizations. Generally, only one non-governmental position is selected for the U.S. Delegation.

DATES: The IWC is holding its 61st annual meeting from June 22–26, 2009, in Madeira, Portugal. All written nominations for the U.S. Delegation to the IWC annual meeting must be received by April 24th, 2009.

ADDRESSES: All nominations for the U.S. Delegation to the IWC annual meeting should be addressed to Bill Hogarth, U.S. Commissioner to the IWC, and sent via post to: Ryan Wulff, National Marine Fisheries Service, Office of International Affairs, 1315 East-West Highway, SSMC3 Room 12620, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Ryan Wulff, 301–713–9090, ext. 196.

SUPPLEMENTARY INFORMATION: The Secretary of Commerce is charged with the responsibility of discharging the domestic obligations of the United States under the International Convention for the Regulation of Whaling, 1946. The U.S. IWC Commissioner has responsibility for the preparation and negotiation of U.S. positions on international issues concerning whaling and for all matters involving the IWC. He is staffed by the Department of Commerce and assisted by the Department of State, the Department of the Interior, the Marine Mammal Commission, and by other agencies. The non-federal representative(s) selected as a result of this nomination process is(are) responsible for providing input and recommendations to the U.S. IWC Commissioner representing the positions of non-governmental organizations. Generally, only one non-governmental position is selected for the U.S. Delegation.

The Annual Meeting of the IWC will be held June 22–26, 2009, at the Pestana Casino Park Hotel in Madeira, Portugal. Once the agenda is finalized it will be available on the IWC website at *www.iwcoffice.org*.

Dated: April 8, 2009.

Rebecca Lent,

Director, Office of International Affairs, National Marine Fisheries Service.

[FR Doc. E9–8514 Filed 4–13–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Regents of the Uniformed Services University of the Health Sciences

AGENCY: Department of Defense; Uniformed Services University of the Health Sciences (USU).

ACTION: Notice of quarterly meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended) and the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), this notice announces the following meeting of the Board of Regents of the Uniformed Services University of the Health Sciences.

DATES: Friday, May 15, 2009, from 9:30 a.m. to 3 p.m.

ADDRESSES: Everett Alvarez Jr. Board of Regents Room (D3001), Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Janet S. Taylor, Designated Federal Official, 4301 Jones Bridge Road, Bethesda, Maryland 20814; telephone 301–295–3066. Ms. Taylor can also provide base access procedures.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: Meetings of the Board of Regents assure that USU operates in the best traditions of academia. An outside Board is necessary for institutional accreditation.

Agenda: The actions that will take place include the approval of minutes from the Board of Regents Meeting held February 3, 2009; acceptance of reports from working committees; approval of faculty appointments and promotions; and the awarding of post-baccalaureate degrees as follows: Doctor of Medicine, Master of Science in Nursing, and master's and doctoral degrees in the biomedical sciences and public health. The President, USU; and the President, Henry M. Jackson Foundation for the Advancement of Military Medicine, will also present reports. These actions are necessary for the University to pursue its mission, which is to provide outstanding health care practitioners and scientists to the uniformed services.

Meeting Accessibility: Pursuant to Federal statute and regulations (5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165) and the availability of space, this meeting is completely open to the public. Seating is on a first-come basis.

Written Statements: Interested persons may submit a written statement for consideration by the Board of Regents. Individuals submitting a written statement must submit their statement to the Designated Federal Official at the address listed above. If such statement is not received at least 10 calendar days prior to the meeting, it may not be provided to or considered by the Board of Regents until its next open meeting. The Designated Federal Official will review all timely submissions with the Board of Regents Chairman and ensure such submissions are provided to Board of Regents Members before the meeting. After reviewing the written comments, submitters may be invited to orally present their issues during the May 2009 meeting or at a future meeting.

Dated: April 9, 2009.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–8435 Filed 4–13–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of Secretary

[Docket ID: DOD–2009–OS–0048]

Privacy Act of 1974; System of Records

AGENCY: Defense Threat Reduction Agency, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Defense Threat Reduction Agency 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 May 14, 2009 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Freedom of Information and Privacy Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda Carter at (703) 767–1771.

SUPPLEMENTARY INFORMATION: The Defense Threat Reduction Agency 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 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: April 9, 2009.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

HDTRA 019

SYSTEM NAME:

Arms Control Inspection Planning System Records (March 17, 2009, 74 FR 11355).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with ''Arms Control Inspection Planning System.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Arms Control Inspection Planning System, Program Lead, Operations Enterprise, Operations Branch, Defense Threat Reduction Agency, Room 4533, HQ Complex, 8725 John J. Kingman Rd., VA 22060–6201.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to Arms Control Inspection Planning System, Program Lead, Operations Enterprise, Operations Branch, Defense Threat Reduction Agency, Room 4533, HQ Complex, 8725 John J. Kingman Road, Ft. Belvoir, VA 22060–6201.

Requests should contain individual's full name and Social Security Number (SSN).''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to Arms Control Inspection Planning System, Program Lead, Operations Enterprise, Operations Branch, Defense Threat Reduction Agency, Room 4533, HQ Complex, 8725 John J. Kingman Road, Ft. Belvoir, VA 22060–6201.

Requests should contain individual's full name and Social Security Number (SSN).''

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''Individual, DTRA Officials, and assignment personnel.''

* * * * *

HDTRA 019

SYSTEM NAME:

Arms Control Inspection Planning System

SYSTEM LOCATION:

Defense Threat Reduction Agency, Room 4533, HQ Complex, 8725 John J. Kingman Road, VA 22060–6201.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals affiliated with the Defense Threat Reduction Agency, either by military assignment, civilian employment, or contractual support agreement. Individuals that are weapons inspectors, linguists, mission schedulers/planners, personnel assistants/specialists, portal rotation specialists, operation technicians, passport managers, clerical staff, and database management specialists.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number (SSN), date of birth, city/state/country of birth, education, gender, race, civilian or military member, military rank, security clearance, occupational category, job organization and location, emergency locator information, and passport numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 302, Delegation of Authority; National Security Directive 41, Organizing to Manage On-site Inspection for Arms Control; and E.O. 9397 (SSN).

PURPOSE(S):

To manage the Arms Control activities, including personnel resources, manpower/billet management, passport status, mission scheduling and planning, inspection team composition, inspector and transport list management, inspector training, and inspection notification generation.

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:

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

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

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

Records may be retrieved by name and/or Social Security Number (SSN), title, personnel type, and passport numbers.

SAFEGUARDS:

Records are maintained in areas accessible only to Defense Threat Reduction Agency personnel who must use the records to perform their duties. The computer files are password protected with access restricted to authorized users. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during non-

duty hours. Records are stored in a computer system with extensive intrusion safeguards.

RETENTION AND DISPOSAL:

Records are maintained for as long as the individual is assigned to Defense Threat Reduction Agency (DTRA). Upon departure from DTRA, records concerning that individual are removed from the active file and retained in an inactive file for two years and then deleted.

SYSTEM MANAGER(S) AND ADDRESS:

Arms Control Inspection Planning System, Program Lead, Operations Enterprise, Operations Branch, Defense Threat Reduction Agency, Room 4533, HQ Complex, 8725 John J. Kingman Rd., VA 22060–6201.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to Arms Control Inspection Planning System, Program Lead, Operations Enterprise, Operations Branch, Defense Threat Reduction Agency, Room 4533, HQ Complex, 8725 John J. Kingman Road, Ft. Belvoir, VA 22060–6201.

Requests should contain individual's full name and Social Security Number (SSN).

RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to Arms Control Inspection Planning System, Program Lead, Operations Enterprise, Operations Branch, Defense Threat Reduction Agency, Room 4533, HQ Complex, 8725 John J. Kingman Road, Ft. Belvoir, VA 22060–6201.

Requests should contain individual's full name and Social Security Number (SSN).

CONTESTING RECORD PROCEDURES:

The DTRA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DTRA Instruction 5400.11; 32 CFR part 318; or may be obtained from the Arms Control Inspection Planning System, Program Lead, Operations Enterprise, Operations Branch, Defense Threat Reduction Agency, Room 4533, HQ Complex, 8725 John J. Kingman Road, Ft. Belvoir VA 22060–6201.

RECORD SOURCE CATEGORIES:

Individual, DTRA Officials, and assignment personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–8432 Filed 4–13–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2009–OS–0049]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Office of the Secretary of Defense is amending DMDC 04 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 May 14, 2009 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the OSD 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 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: April 9, 2009.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DMDC 04

SYSTEM NAME:

Noncombatant Evacuation & Repatriation Data Base (NEO) (October 2, 2007, 72 FR 56067).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with ''Emergency Evacuation Tracking and Repatriation''.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Noncombatant evacuees including service members, their dependents, DoD and non-DoD employees and dependents, U.S. residents in the United States and overseas, foreign nationals and corporate employees and dependents. The Emergency Tracking and Accountability System (ETAS) will include the before mentioned as well as visitors to the United States.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Name, date of birth, gender, Social Security Number (SSN), country of citizenship, marital status, sponsor data, destination or final address, telephone number, emergency contact information, and contact information, passport number, child information, and spouse information.''

* * * * *

PURPOSES:

Delete entry and replace with ''The records for the Non-combatant Tracking System (NTS) and the Emergency Tracking and Accountability System (ETAS) are maintained for the purposes of tracking and accounting for individuals evacuated from emergency situations overseas and in the United States, securing relocation and assistance services, and assessing and recovering relocation costs through the Automated Repatriation Reporting System (ARRS).''

* * * * *

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 Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

Written requests should contain the full name, Social Security Number (SSN), date of birth, and current address and telephone number of the individual.''

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 Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

Written requests should contain the full name, Social Security Number (SSN), date of birth, and current address and telephone number of the individual and be signed.''

* * * * *

DMDC 04

SYSTEM NAME:

Emergency Evacuation Tracking and Repatriation.

SYSTEM LOCATION:

Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771. Information may be accessed by remote terminals at the repatriation centers. The location of the repatriation centers can be obtained from the System manager listed below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Noncombatant evacuees including service members, their dependents, DoD and non-DoD employees and dependents, U.S. residents in the United States and overseas, foreign nationals and corporate employees and dependents. The Emergency Tracking and Accountability System (ETAS) will include the before mentioned as well as visitors to the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, date of birth, gender, Social Security Number (SSN), country of citizenship, marital status, sponsor data, destination or final address, telephone number, emergency contact information, and contact information, passport number, child information, and spouse information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

E.O. 12656, Assignment of Emergency Preparedness Responsibilities, November 18, 1988; DoD Directive 3025.14, Protection and Evacuation of U.S. Citizens and Designated Aliens in Danger Areas Abroad; and E.O. 9397 (SSN).

PURPOSE(S):

The records for the Non-combatant Tracking System (NTS) and the Emergency Tracking and Accountability System (ETAS) are maintained for the purposes of tracking and accounting for individuals evacuated from emergency situations overseas and in the United States, securing relocation and assistance services, and assessing and recovering relocation costs through the Automated Repatriation Reporting System (ARRS).

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 of 1974, these records 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 individuals who have been evacuated but who have been separated from their family and/or spouse. Information will be released to the individual indicating where the family member was evacuated from and final destination.

To Department of State to plan and monitor evacuation effectiveness and need for services and to verify the number of people by category who have been evacuated.

To the American Red Cross so that upon receipt of information from a repatriation center that a DoD family has arrived safely in the U.S., the Red Cross may notify the service member (sponsor) still in the foreign country that his/her family has safely arrived in the United States.

To the U.S. Citizenship and Immigration Service to track and make contact with all foreign nationals who have been evacuated to the U.S.

To the Department of Health and Human Services for purposes of giving financial assistance and recoupment of same. To identify individuals who might arrive with an illness which would require quarantine.

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

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

STORAGE:

Electronic and hard copy storage.

RETRIEVABILITY:

Retrieved by name, Social Security Number, or location of evacuation point or repatriation center.

SAFEGUARDS:

Computerized records are maintained in a controlled area accessible only to authorized personnel. At Defense Manpower Data Center (DMDC), entry to these areas is restricted by the use of locks, guards, and administrative procedures. Access to personal information is limited to those who require the records in the performance of their official duties. Access to personal information is further restricted by the use of passwords which are changed periodically.

RETENTION AND DISPOSAL:

Master file, system documentation, codebooks, record layouts, and other system documentation are permanent. Inputs/Source Records are deleted and/or destroyed after data have been entered into the master file or when no longer needed for operational purposes, whichever is later. Summary reports (electronic or paper) are deleted and/or destroyed when no longer needed for operational purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Defense Manpower Data Center, 1600 Wilson Boulevard, Suite 400, Arlington, VA 22209–2593.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

Written requests should contain the full name, Social Security Number (SSN), date of birth, and current address and telephone number of the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

Written requests should contain the full name, Social Security Number (SSN), date of birth, and current address and telephone number of the individual and be signed.

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 Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

RECORD SOURCE CATEGORIES:

The Military Services, DoD Components, and from individuals via application.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–8434 Filed 4–13–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2009–0024]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Air Force is proposing to amend a system of records notice in 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 May 14, 2009 unless comments are received which result in a contrary determination.

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

FOR FURTHER INFORMATION CONTACT: Mr. Ben Swilley, 703–696–6648.

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 records systems being amended are set forth below followed by the notices, as amended, published in their 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: April 9, 2009.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F011 ACC B

SYSTEM NAME:

Airborne Warning and Control System (AWACS) Records (November 12, 2008, 3 FR 66869).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with ''Command and Control Management System Records.''

* * * * *

SAFEGUARDS:

Delete entry and replace with ''The Command and Control Management System (C2MS)'' provides detailed and specific access levels and permissions to ensure that only authorized users have access to read and or write information, or perform other operations with the system. Access will be granted using the Common Access Card (CAC) or username/password security model. A combination of physical, personnel, and system-enforced security mechanisms control access. All accesses, whether procedural or system- enforced, is adjudicated based on each person's authorized ''need-to-know.''

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Department of Air Force, 552d Air Control Group (552 ACG), ATTN: C2MS PGM, 7575 Sentry Blvd, Suite 117, Tinker AFB, OK 73127–9037.

Individuals may also contact the system manager at each unit utilizing C2MS or the Host Database Manager. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

The requester must submit a written request to 552d Air Control Group (552 ACG), Attn: C2MS Program Manager, 7575 Sentry Blvd, Ste 117, Tinker AFB, OK 73145–2713.

Requests for information should be as specific as possible. The requester must describe the records that he/she seeks in enough detail to enable C2MS personnel to locate them in a reasonable amount of time. Request such as ''all documents related to * * * are extremely difficult and costly to process because they require extensive search of numerous C2MS files. In contrast, a request for a specific document can generally be processed quicker. Such requests should include specific information about each record sought, such as the date, title or name, author, recipient and subject matter of the record.

A C2MS request can be made for any record. However, this does not mean that the C2MS discloses all of the requested records. If the information is of a sensitive nature, C2MS will specify which exemption permits the withholding.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to 552d Air Control Group (552 ACG), ATTN: C2MS PGM, 7575 Sentry Blvd, Suite 117, Tinker AFB, OK 73127–9037.

Individuals may also contact the system manager at each unit utilizing C2MS or the Host Database Manager. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.''

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''Automated system interfaces and source documents. C2MS has an interface with the Air Force Resource Management System (AFORMS).''

* * * * *

F011 ACC B

SYSTEM NAME:

Command and Control Management System Records.

SYSTEM LOCATION:

Department of Air Force, 552d Air Control Wing, Tinker AFB, 552d Air Control Group (552 ACG) 7575 Sentry Blvd, Suite 117, Tinker AFB, OK 73145–9037.

Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force active duty military personnel, Air Force civilian employees, Air Force contractors, Air Force Reserve and those foreign military personnel who are attached to the U.S. Air Force (USAF) for flying support.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel records related to an individual's ancillary training, qualifications, and schedules. Data fields contained in the records include; full name, e-mail address, Social Security Number (SSN), work phone, location, organization, job series, and grade.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 8013, Secretary

of the Air Force; AFI 11–202V2 ACC Sup Aircrew Standardization/ Evaluation Program; AFI 11–401 Aviation Management; ACCI 11–464 Training Records and Performance Evaluation in Formal Flying Training Programs; and E.O. 9397 (SSN).

PURPOSE(S):

To manage and administer Air Force aviation and non-flying operations. This includes aircrew training and evaluation, flight schedule functions, flying safety and related functions needed to attain and maintain combat or mission readiness, ancillary training, scheduling functions, mobility/ deployment requirements tracking.

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 of 1974, these records 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 systems of records notices apply to this system.

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

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Individual's name and/or Social Security Number (SSN).

SAFEGUARDS:

The Command and Control Management System (C2MS) provides detailed and specific access levels and permissions to ensure that only authorized users have access to read and or write information, or perform other operations with the system. Access will be granted using the Common Access Card (CAC) or username/password security model. A combination of physical, personnel, and system-enforced security mechanisms control access. All accesses, whether procedural or system-enforced, is adjudicated based on each person's authorized ''need-to-know.''

RETENTION AND DISPOSAL:

Maintained until superseded, obsolete, or no longer needed. Destroy paper records by tearing, pulping, burning, shredding, or macerating. Destroy computer records by overwriting or degaussing.

SYSTEM MANAGER AND ADDRESS:

Chief, Maintenance Data Systems Analysis Section, Department of Air Force, 552d Air Control Group (552 ACG), ATTN: C2MS PGM, 7575 Sentry Blvd., Suite 117, Tinker AFB, OK 73127–9037.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Department of Air Force, 552d Air Control Group (552 ACG), ATTN: C2MS PGM, 7575 Sentry Blvd., Suite 117, Tinker AFB, OK 73127–9037.

Individuals may also contact the system manager at each unit utilizing C2MS or the Host Database Manager. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

The requester must submit a written request to 552d Air Control Group (552 ACG), Attn: C2MS Program Manager, 7575 Sentry Blvd., Ste. 117, Tinker AFB, OK 73145–2713.

Requests for information should be as specific as possible. The requester must describe the records that he/she seeks in enough detail to enable C2MS personnel to locate them in a reasonable amount of time. Requests such as ''all documents related to * * *'' are extremely difficult and costly to process because they require extensive search of numerous C2MS files. In contrast, a request for a specific document can generally be processed quicker. Such requests should include specific information about each record sought, such as the date, title or name, author, recipient and subject matter of the record.

A C2MS request can be made for any record. However, this does not mean that the C2MS discloses all of the requested records. If the information is of a sensitive nature, C2MS will specify which exemption permits the withholding.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to 552d Air Control Group (552 ACG), ATTN: C2MS PGM, 7575 Sentry Blvd., Suite 117, Tinker AFB, OK 73127–9037.

Individuals may also contact the system manager at each unit utilizing C2MS or the Host Database Manager. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

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 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Automated system interfaces and source documents. C2MS has an interface with the Air Force Resource Management System (AFORMS).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–8433 Filed 4–13–09; 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 May 14, 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, be faxed to (202) 395–6974 or send e-mail to *oira_submission@omb.eop.gov*.

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 Director, Information Collection Clearance Division, 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: April 9, 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: High School Longitudinal Study of 2009 (HSLS:09) Full Scale Collection.

Frequency: One time.

Affected Public: Individuals or household; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 55,672.
Burden Hours: 31,182.

Abstract: The High School Longitudinal Study of 2009 (HSLS:09) is a nationally representative, longitudinal study of more than 20,000 9th graders in 944 schools who will be followed through their secondary and postsecondary years. The study focuses on understanding students' trajectories from the beginning of high school into university or the workforce and beyond. What students decide to pursue when, why, and how are crucial questions for HSLS:09, especially, but not solely, in regards to science, technology, engineering, and math (STEM) courses, majors, and careers. This study will include a new student assessment in algebraic skills, reasoning, and problem solving and like past studies, will survey students, their parents, math and science teachers, school administrators, and school counselors. This first wave of data collection for HSLS:09 will produce not only a nationally representative dataset but also ten individual state representative datasets for each of ten states. The attached change memo reflects changes to the survey instruments and operations based on results of the field test conducted in the fall of 2008.

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 4004. 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, D.C. 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 electronically mailed to *ICDocketMgr@ed.gov*. 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. E9–8503 Filed 4–13–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 15, 2009.

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 Director, Information Collection Clearance Division, 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.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 8, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Extension.

Title: Federal Perkins Loan Program/NDSL Assignment Form.

Frequency: On Occasion.

Affected Public: Businesses or other for-profit; Individuals or household; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 21,262.
Burden Hours: 8,505.

Abstract: The Federal Perkins Loan Program allows for assignment of certain defaulted loans from schools to the Department of Education for continued collection efforts when the school has exhausted all of its efforts in recovering an outstanding loan. The Perkins Assignment Form serves as the transmittal document in the assignment of such loans to the Federal Government.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 4009. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements

should be electronically mailed to *ICDocketMgr@ed.gov*. 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. E9–8502 Filed 4–13–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; State Personnel Development Grants (SPDG) Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009

Catalog of Federal Domestic Assistance (CFDA) Number: 84.323A.

Dates:

Applications Available: April 14, 2009.

Deadline for Transmittal of Applications: May 29, 2009.

Deadline for Intergovernmental Review: July 28, 2009.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to assist State educational agencies (SEAs) in reforming and improving their systems for personnel preparation and professional development in early intervention, educational, and transition services in order to improve results for children with disabilities.

Priority: This priority is from the notice of final priority for this program, published in the **Federal Register** on June 9, 2006 (71 FR 33578).

Absolute Priority: For FY 2009 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This Priority is:

Priority:

The Assistant Secretary establishes a priority to assist SEAs in reforming and improving their personnel preparation and professional development systems for teachers, principals, administrators, related services personnel, paraprofessionals, and early intervention personnel. The intent of this priority is to improve educational results for children with disabilities through the delivery of high quality instruction and the recruitment, hiring, and retention of highly qualified special education teachers.

In order to meet this priority an applicant must demonstrate that the project for which it seeks funding—(1) Provides professional development activities that improve the knowledge and skills of personnel, as defined in section 651(b) of the Individuals with Disabilities Education Act (IDEA), in delivering scientifically based instruction to meet the needs of, and improve the performance and achievement of, infants, toddlers, preschoolers, and children with disabilities; (2) Implements practices to sustain the knowledge and skills of personnel who have received training in scientifically based instruction; and (3) Implements strategies that are effective in promoting the recruitment, hiring, and retention of highly qualified special education teachers in accordance with section 602(10) and section 612(a)(14) of IDEA.

Projects Funded Under This Priority Must Also:

(a) Budget for a three-day Project Directors' meeting in Washington, DC during each year of the project;

(b) Budget $4,000 annually for support of the State Personnel Development Grants Program Web site currently administered by the University of Oregon (*http://www.signetwork.org*); and

(c) If a project receiving assistance under this program authority maintains a Web site, include relevant information and documents in a form that meets a government or industry-recognized standard for accessibility.

Statutory Requirements.

State Personnel Development Plan.

An applicant must submit a State Personnel Development Plan that identifies and addresses the State and local needs for personnel preparation and professional development of personnel, as well as individuals who provide direct supplementary aids and services to children with disabilities, and that—

(a) Is designed to enable the State to meet the requirements of section 612(a)(14) and section 635(a)(8) and (9) of IDEA;

(b) Is based on an assessment of State and local needs that identifies critical aspects and areas in need of improvement related to the preparation, ongoing training, and professional development of personnel who serve infants, toddlers, preschoolers, and children with disabilities within the State, including—

(i) Current and anticipated personnel vacancies and shortages; and

(ii) The number of preservice and inservice programs;

(c) Is integrated and aligned, to the maximum extent possible, with State plans and activities under the Elementary and Secondary Education Act of 1965, as amended (ESEA); the Rehabilitation Act of 1973, as amended; and the Higher Education Act of 1965, as amended (HEA);

(d) Describes a partnership agreement that is in effect for the period of the grant, which agreement must specify—

(i) The nature and extent of the partnership described in accordance with section 652(b) of IDEA and the respective roles of each member of the partnership, including, if applicable, an individual, entity, or agency other than the SEA that has the responsibility under State law for teacher preparation and certification; and

(ii) How the SEA will work with other persons and organizations involved in, and concerned with, the education of children with disabilities, including the respective roles of each of the persons and organizations;

(e) Describes how the strategies and activities the SEA uses to address identified professional development and personnel needs will be coordinated with activities supported with other public resources (including funds provided under Part B and Part C of IDEA and retained for use at the State level for personnel and professional development purposes) and private resources;

(f) Describes how the SEA will align its personnel development plan with the plan and application submitted under sections 1111 and 2112, respectively, of the ESEA;

(g) Describes strategies the SEA will use to address the identified professional development and personnel needs and how such strategies will be implemented, including—

(i) A description of the programs and activities that will provide personnel with the knowledge and skills to meet the needs of, and improve the performance and achievement of, infants, toddlers, preschoolers, and children with disabilities; and

(ii) How such strategies will be integrated, to the maximum extent possible, with other activities supported by grants funded under section 662 of IDEA;

(h) Provides an assurance that the SEA will provide technical assistance to local educational agencies (LEAs) to improve the quality of professional development available to meet the needs of personnel who serve children with disabilities;

(i) Provides an assurance that the SEA will provide technical assistance to entities that provide services to infants and toddlers with disabilities to improve the quality of professional

development available to meet the needs of personnel serving those children;

(j) Describes how the SEA will recruit and retain highly qualified teachers and other qualified personnel in geographic areas of greatest need;

(k) Describes the steps the SEA will take to ensure that economically disadvantaged and minority children are not taught at higher rates by teachers who are not highly qualified; and

(l) Describes how the SEA will assess, on a regular basis, the extent to which the strategies implemented have been effective in meeting the performance goals described in section 612(a)(15) of IDEA.

Partnerships.

Required Partners.

Applicants must establish a partnership with LEAs and other State agencies involved in, or concerned with, the education of children with disabilities, including—

(a) Not less than one institution of higher education; and

(b) The State agencies responsible for administering Part C of IDEA, early education, child care, and vocational rehabilitation programs.

Other Partners.

An SEA must work in partnership with other persons and organizations involved in, and concerned with, the education of children with disabilities, which may include—

(a) The Governor;

(b) Parents of children with disabilities ages birth through 26;

(c) Parents of nondisabled children ages birth through 26;

(d) Individuals with disabilities;

(e) Parent training and information centers or community parent resource centers funded under sections 671 and 672 of IDEA, respectively;

(f) Community-based and other nonprofit organizations involved in the education and employment of individuals with disabilities;

(g) Personnel as defined in section 651(b) of IDEA;

(h) The State advisory panel established under Part B of IDEA;

(i) The State interagency coordinating council established under Part C of IDEA;

(j) Individuals knowledgeable about vocational education;

(k) The State agency for higher education;

(l) Noneducational public agencies with jurisdiction in the areas of health, mental health, social services, and juvenile justice;

(m) Other providers of professional development who work with infants, toddlers, preschoolers, and children with disabilities;

(n) Other individuals; and

(o) In cases where the SEA is not responsible for teacher certification, an individual, entity, or agency responsible for teacher certification, as defined in section 652(b)(3) of IDEA.

Use of Funds.

(a) *Professional Development Activities*—Consistent with the absolute priority announced in this notice, each SEA that receives a SPDG under this program must use the grant funds to support activities in accordance with the State's Personnel Development Plan, including one or more of the following:

(1) Carrying out programs that provide support to both special education and regular education teachers of children with disabilities and principals, such as programs that—

(i) Provide teacher mentoring, team teaching, reduced class schedules and case loads, and intensive professional development;

(ii) Use standards or assessments for guiding beginning teachers that are consistent with challenging State student academic achievement and functional standards and with the requirements for professional development, as defined in section 9101 of the ESEA; and

(iii) Encourage collaborative and consultative models of providing early intervention, special education, and related services.

(2) Encouraging and supporting the training of special education and regular education teachers and administrators to effectively use and integrate technology—

(i) Into curricula and instruction, including training to improve the ability to collect, manage, and analyze data to improve teaching, decision-making, school improvement efforts, and accountability;

(ii) To enhance learning by children with disabilities; and

(iii) To effectively communicate with parents.

(3) Providing professional development activities that—

(i) Improve the knowledge of special education and regular education teachers concerning—

(A) The academic and developmental or functional needs of students with disabilities; or

(B) Effective instructional strategies, methods, and skills, and the use of State academic content standards and student academic achievement and functional standards, and State assessments, to improve teaching practices and student academic achievement;

(ii) Improve the knowledge of special education and regular education teachers and principals and, in appropriate cases, paraprofessionals, concerning effective instructional practices, that—

(A) Provide training in how to teach and address the needs of children with different learning styles and children who are limited English proficient;

(B) Involve collaborative groups of teachers, administrators, and, in appropriate cases, related services personnel;

(C) Provide training in methods of—

(I) Positive behavioral interventions and supports to improve student behavior in the classroom;

(II) Scientifically-based reading instruction, including early literacy instruction;

(III) Early and appropriate interventions to identify and help children with disabilities;

(IV) Effective instruction for children with low incidence disabilities;

(V) Successful transitioning to postsecondary opportunities; and

(VI) Classroom-based techniques to assist children prior to referral for special education;

(D) Provide training to enable personnel to work with and involve parents in their child's education, including parents of low income and limited English proficient children with disabilities;

(E) Provide training for special education personnel and regular education personnel in planning, developing, and implementing effective and appropriate individualized education programs (IEPs); and

(F) Provide training to meet the needs of students with significant health, mobility, or behavioral needs prior to serving those students;

(iii) Train administrators, principals, and other relevant school personnel in conducting effective IEP meetings; and

(iv) Train early intervention, preschool, and related services providers, and other relevant school personnel in conducting effective individualized family service plan (IFSP) meetings.

(4) Developing and implementing initiatives to promote the recruitment and retention of highly qualified special education teachers, particularly initiatives that have proven effective in recruiting and retaining highly qualified teachers, including programs that provide—

(i) Teacher mentoring from exemplary special education teachers, principals, or superintendents;

(ii) Induction and support for special education teachers during their first three years of employment as teachers; or

(iii) Incentives, including financial incentives, to retain special education

teachers who have a record of success in helping students with disabilities.

(5) Carrying out programs and activities that are designed to improve the quality of personnel who serve children with disabilities, such as—

(i) Innovative professional development programs (which may be provided through partnerships with institutions of higher education), including programs that train teachers and principals to integrate technology into curricula and instruction to improve teaching, learning, and technology literacy and that are consistent with the definition of professional development in section 9101 of the ESEA; and

(ii) The development and use of proven, cost effective strategies for the implementation of professional development activities, such as through the use of technology and distance learning.

(6) Carrying out programs and activities that are designed to improve the quality of early intervention personnel, including paraprofessionals and primary referral sources, such as—

(i) Professional development programs to improve the delivery of early intervention services;

(ii) Initiatives to promote the recruitment and retention of early intervention personnel; and

(iii) Interagency activities to ensure that early intervention personnel are adequately prepared and trained.

(b) *Other Activities*—Consistent with the absolute priority announced in this notice, each SEA that receives a SPDG under this program must use the grant funds to support activities in accordance with the State's Personnel Development Plan, including one or more of the following:

(1) Reforming special education and regular education teacher certification (including re-certification) or licensing requirements to ensure that—

(i) Special education and regular education teachers have—

(A) The training and information necessary to address the full range of needs of children with disabilities across disability categories; and

(B) The necessary subject matter knowledge and teaching skills in the academic subjects that the teachers teach;

(ii) Special education and regular education teacher certification (including re-certification) or licensing requirements are aligned with challenging State academic content standards; and

(iii) Special education and regular education teachers have the subject matter knowledge and teaching skills, including technology literacy, necessary to help students with disabilities meet challenging State student academic achievement and functional standards.

(2) Programs that establish, expand, or improve alternative routes for State certification of special education teachers for highly qualified individuals with a baccalaureate or master's degree, including mid-career professionals from other occupations, paraprofessionals, and recent college or university graduates with records of academic distinction who demonstrate the potential to become highly effective special education teachers.

(3) Teacher advancement initiatives for special education teachers that promote professional growth and emphasize multiple career paths (such as paths to becoming a career teacher, mentor teacher, or exemplary teacher) and pay differentiation.

(4) Developing and implementing mechanisms to assist LEAs and schools in effectively recruiting and retaining highly qualified special education teachers.

(5) Reforming tenure systems, implementing teacher testing for subject matter knowledge, and implementing teacher testing for State certification or licensure, consistent with Title II of the HEA (20 U.S.C. 1021 *et seq.*).

(6) Funding projects to promote reciprocity of teacher certification or licensing between or among States for special education teachers, except that no reciprocity agreement developed under this priority may lead to the weakening of any State teacher certification or licensing requirement.

(7) Assisting LEAs to serve children with disabilities through the development and use of proven, innovative strategies to deliver intensive professional development programs that are both cost effective and easily accessible, such as strategies that involve delivery through the use of technology, peer networks, and distance learning.

(8) Developing, or assisting LEAs in developing, merit-based performance systems and strategies that provide differential and bonus pay for special education teachers.

(9) Supporting activities that ensure that teachers are able to use challenging State academic content standards and student academic achievement and functional standards, and the results of State assessments for all children with disabilities to improve instructional practices and improve the academic achievement of children with disabilities.

(10) When applicable, coordinating with, and expanding centers established under section 2113(c)(18) of the ESEA to benefit special education teachers.

(c) *Contracts and Subgrants*—An SEA that receives a grant under this program—

(1) Must award contracts or subgrants to LEAs, institutions of higher education, parent training and information centers, or community parent resource centers, as appropriate, to carry out the State plan; and

(2) May award contracts and subgrants to other public and private entities, including the lead agency under Part C of IDEA, to carry out the State plan.

(d) *Use of Funds for Professional Development*—An SEA that receives a grant under this program must use—

(1) Not less than 90 percent of the funds the SEA receives under the grant for any fiscal year for the Professional Development Activities described in paragraph (a); and

(2) Not more than 10 percent of the funds the SEA receives under the grant for any fiscal year for the Other Activities described in paragraph (b).

(e) *Grants to Outlying Areas*—Pub. L. 95–134, permitting the consolidation of grants to the outlying areas, does not apply to funds received under this program authority.

Within this absolute priority, we are particularly interested in applications that address the following invitational priorities.

Background:

The Secretary is especially interested in applications that propose programs of personnel preparation and professional development to address the inequitable distribution of highly qualified special education teachers between low and high poverty schools. Teacher quality is one of the most important factors in improving student achievement and eliminating achievement gaps between our neediest students and their more advantaged peers. Research shows that effective teaching is integral to improving the academic achievement of students who are at greatest risk of not meeting high academic standards. It is critical that children with disabilities from low-income and minority backgrounds have the same access to highly qualified special education teachers as do children with disabilities attending low poverty schools. One of the principal goals of the American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. 111–5, is making improvements in teacher effectiveness and in the equitable distribution of qualified teachers for all children, particularly children who are most in need. Section 14005(d)(2) of the ARRA recognizes that States need to make

significant progress in remedying the inequitable distribution of highly qualified teachers between low and high poverty schools and to ensure that low-income and minority children are not taught at higher rates by inexperienced, unqualified, or out-of-field teachers.

These invitational priorities, which focus on applications that promote teacher effectiveness to reduce inequities in highly qualified special education teacher distribution between low and high poverty schools, are consistent with the absolute priority for this program to improve results for children with disabilities through the delivery of high quality instruction and the recruitment, retention, and hiring of highly qualified special education teachers.

Invitational Priorities: Under 34 CFR 75.105(c)(1) we do not give an application that meets one of these invitational priorities a competitive or absolute preference over other applications.

These Priorities Are:

(1) Projects that will improve effectiveness of special education teachers of children with disabilities from low-income or minority backgrounds attending high poverty schools.

(2) Projects that will address inequities in the distribution of highly qualified special education teachers between low and high poverty schools.

(3) Projects that will work to ensure that low-income and minority children with disabilities are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers.

Program Authority: 20 U.S.C. 1451 through 1455.

Applicable Regulations: (a) EDGAR in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, and 99. (b) The notice of final priority for this program published in the **Federal Register** on June 9, 2006 (71 FR 33578).

Note: The regulations in 34 CFR part 79 apply to all applicants except Federally recognized Indian tribes.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: We estimate that $4,965,000 will be available for new awards for this program in FY 2009. Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2010 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $500,000–$4,000,000 (for the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico). In the case of an outlying area awards will be not less than $80,000.

Maximum Award: We will reject any application that proposes a budget exceeding $4,000,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: We will set the amount of each award after considering—

(1) The amount of funds available for making the grants;

(2) The relative population of the State or outlying area;

(3) The types of activities proposed by the State or outlying area;

(4) The alignment of proposed activities with section 612(a)(14) of IDEA;

(5) The alignment of proposed activities with State plans and applications submitted under sections 1111 and 2112, respectively, of the ESEA; and

(6) The use, as appropriate, of scientifically-based research and instruction.

Estimated Average Size of Awards: $993,000, excluding outlying areas.

Estimated Number of Awards: 5.

Note: The Department is not bound by any estimates in this notice.

Project Period: Not less than one year and not more than five years.

III. Eligibility Information

1. *Eligible Applicants:* An SEA of one of the 50 States, the District of Columbia, or the Commonwealth of Puerto Rico or an outlying area (United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands).

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Other: General Requirements*—The projects funded under this program must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.323A.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.*, braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 100 pages, using the following standards:

- A ‘‘;page’’ is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, abstracts and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the résumés, the bibliography, the references, or the letters of support. However, the page limit does apply to the application narrative section.

We will reject your application if you exceed the page limit or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: April 14, 2009.

Deadline for Transmittal of Applications: May 29, 2009.

Applications for grants under this competition may be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants system, or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV.6.

Other Submission Requirements of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: July 28, 2009.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this program may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

If you choose to submit your application to us electronically, you must use e-Application, accessible through the Department's e-Grants portal page at: *http://e-grants.ed.gov*.

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please Note the Following:

- Your participation in e-Application is voluntary.
- You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The e-Application system will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The regular hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

- We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If the e-Application system is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application.

Extensions referred to in this section apply only to the unavailability of the Department's e-Application system. If the e-Application system is available, and, for any reason, you are unable to submit your application electronically or you do not receive an automatic acknowledgment of your submission, you may submit your application in paper format by mail or hand delivery in accordance with the instructions in this notice.

b. Submission of Paper Applications by Mail. If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education,Application Control Center, Attention: (CFDA Number 84.323A), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not

accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.323A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 and are listed in the application package.

2. *Peer Review:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The Standing Panel requirements under IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications. However, if the Department decides to select an equal number of applications in each group for funding, this may result in different cut-off points for fundable applications in each group.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The goal of the SPDG Program is to reform and improve State systems for personnel preparation and professional development in early intervention, educational, and transition services in order to improve results for children with disabilities. Under the Government Performance and Results Act of 1993, the Department has developed performance measures to assess the success of the program in meeting these goals. These measures are: (1) The percent of personnel receiving professional development through the SPDG Program based on scientific- or evidence-based instructional practices; (2) the percentage of SPDG projects that have implemented personnel development/training activities that are aligned with improvement strategies identified in their State Performance Plan; (3) the percentage of professional development/training activities provided through the SPDG Program based on scientific- or evidence-based instructional/behavioral practices; (4) the percentage of professional development/training activities based on scientific- or evidence-based instructional/behavioral practices, provided through the SPDG Program, that are sustained through ongoing and comprehensive practices (*e.g.*, mentoring, coaching, structured guidance, modeling, continuous inquiry, etc.); (5) in States with SPDG projects that have special education teacher retention as a goal, the Statewide percentage of highly qualified special education teachers in State-identified professional disciplines (*e.g.*, teachers of children with emotional disturbance, deafness, *etc.*), consistent with sections 602(a)(10) and 612(a)(14) of IDEA, who remain teaching after the first three years of employment; (6) the percentage of SPDG projects that successfully replicate the use of scientific- or evidence-based instructional/behavioral practices in schools; and (7) the percentage of SPDG projects whose cost per personnel receiving professional development on scientific- or evidence-based practices is within a specified range.

Each grantee must annually report its performance on these measures in the project's annual performance report to the Department in accordance with section 653(d) of IDEA and 34 CFR 75.590.

VII. Agency Contact

For Further Information Contact: Jennifer Doolittle, U.S. Department of Education, 400 Maryland Avenue, SW., room 4096, Potomac Center Plaza (PCP), Washington, DC 20202–2550. Telephone: (202) 245–6673.

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.*, braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts

Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Delegation of Authority: The Secretary of Education has delegated authority to Andrew J. Pepin, Executive Administrator for the Office of Special Education and Rehabilitative Services to perform the functions of the Assistant Secretary for Special Education and Rehabilitative Services.

Dated: April 9, 2009.

Andrew J. Pepin,

Executive Administrator for Special Education and Rehabilitative Services.

[FR Doc. E9–8522 Filed 4–13–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–264–B]

Application To Export Electric Energy; ENMAX Energy Marketing, Inc.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: ENMAX Energy Marketing, Inc. (ENMAX) 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 May 14, 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 May 30, 2002, the Department of Energy (DOE) issued Order No. EA–264 authorizing ENMAX 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. On May 19, 2004, DOE issued Order No. EA–264–A which renewed that authorization for a five-year period. That Order will expire on May 19, 2009. On April 7, 2009, ENMAX filed an application with DOE to renew the export authority contained in Order No. EA–264–A for an additional five-year term.

The electric energy which ENMAX proposes to export to Canada would be surplus energy purchased from electric utilities, Federal power marketing agencies, and other entities within the United States.

The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by ENMAX 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 sections 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 ENMAX application to export electric energy to Canada should be clearly marked with Docket No. EA–264–B. Additional copies are to be filed directly with Penny Haldane, Regulatory Affairs Specialist, ENMAX Corporation, 141–50 Ave SE, Calgary, AB T2G 4S7. 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 April 8, 2009.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. E9–8489 Filed 4–13–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13369–000]

Community Hydro, LLC; Notice of Preliminary Permit Applications Accepted for Filing and Soliciting Comment, Motions To Intervene, and Competing Applications

April 7, 2009.

On February 6, 2009, Community Hydro, LLC, filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Knightville Dam Hydroelectric Project, to be located on the Middle Branch of the Westfield River, in Hampshire and Hampden Counties, Massachusetts.

The proposed Knightville Dam Hydroelectric Project would be located at: (1) the existing 1,200-foot-long U.S. Army Corps of Engineers Knightville Dam; (2) an existing Corps intake and control works; and (3) an existing 960-acre reservoir with 49,000 acre-feet of storage.

The project would consist of: (1) six new turbine generating units connected to the intake with a total installed capacity of 1.175 megawatts; (2) a new 45-kilovolt 3-phase transmission line and transformer connected to an existing above ground distribution system; and (3) appurtenant facilities. The Knightville Dam Project would have an estimated average annual generation of 3,980 megawatt-hours, which would be sold to local utilities.

Applicant Contact: Ms. Lori Barg, Community Hydro, LLC, 113 Bartlett

Rd., Plainfield, VT 05667, phone (802) 454–1874.

FERC Contact: John Ramer, (202) 502–8969.

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 the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–13369) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–8456 Filed 4–13–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13371–000]

Town of West Stockbridge; Notice of Preliminary Permit Applications Accepted for Filing and Soliciting Comment, Motions To Intervene, and Competing Applications

April 7, 2009.

On February 9, 2009, Town of West Stockbridge filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Shaker Mill Dam Hydroelectric Project, to be located on the Williams River, in Berkshire County, Massachusetts.

The proposed Shaker Mill Dam Hydroelectric Project would be located at: (1) The existing 33-foot-long, 18.3-foot-high Shaker Mill Dam; (2) existing control works and discharge pipes; and (3) an existing 31.88-acre head pond with 198 acre-feet of storage.

The project would consist of: (1) A new powerhouse enclosing two new turbine generating units with a total installed capacity of 9.0 kilowatts; (2) a new 600 volt, transmission line connect to an existing above ground transformer and distribution system; and (3) appurtenant facilities. The Blue Heron Hydro LLC project would have an estimated average annual generation of 6.7 megawatt-hours, which would be sold to power marketers, local industrial users, or used by the applicant to offset current utility costs.

Applicant Contact: Town of West Stockbridge, c/o Curt G. Wilton, Chairman, Board of Selectman, 21State Line Rd., P.O. Box 525, West Stockbridge, MA 01266, phone (413) 232–0300 ext. 319.

FERC Contact: John Ramer, (202) 502–8969.

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 the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–13371) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–8458 Filed 4–13–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12679–002]

ORPC Alaska, LLC; Notice of Intent To File License Application, Filing of Draft Application, Request for Waivers of Integrated Licensing Process Regulations Necessary for Expedited Processing of a Hydrokinetic Pilot Project License Application, and Soliciting Comments

April 7, 2009.

a. *Type of Filing:* Notice of Intent to File a License Application for an Original License for a Hydrokinetic Pilot Project.

b. *Project No.:* 12679–002.

c. *Date Filed:* March 31, 2009.

d. *Submitted By:* ORPC Alaska, LLC.

e. *Name of Project:* Cook Inlet Tidal Energy Pilot Project.

f. *Location:* In upper Cook Inlet off the north shore of Fire Island in the boroughs of Anchorage and Matanuska-Susitna, Alaska. Three proposed alternatives for transmission line alignment would occupy varying amounts of federal lands on Fire Island administered by the U.S. Coast Guard and Federal Aviation Administration.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Applicant Contact:* ORPC Alaska, LLC, 151 Martine Street, Suite 102–5C, Fall River, MA 02723; (813) 417–6660.

i. *FERC Contact:* Matt Cutlip (503) 552–2762.

j. ORPC Alaska, LLC (ORPC Alaska) has filed with the Commission: (1) A notice of intent (NOI) to file an application for an original license for a hydrokinetic pilot project and a draft license application with monitoring plans; (2) a request for waivers of the integrated licensing process regulations necessary for expedited processing of a hydrokinetic pilot project license application; (3) a proposed process plan and schedule; (4) a request to be designated as the non-federal representative for section 7 of the Endangered Species Act consultation; and (5) a request to be designated as the non-federal representative for section 106 consultation under the National Historic Preservation Act (collectively the pre-filing materials).

k. With this notice, we are soliciting comments on the pre-filing materials listed in paragraph j above, including the draft license application and monitoring plans. All comments should be sent to the address above in paragraph h. In addition, all comments (original and eight copies) must be filed

with the Commission at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All filings with the Commission must include on the first page, the project name (Cook Inlet Tidal Energy Pilot Project) and number (P–12679–002), and bear the heading ''Comments on the proposed Cook Inlet Tidal Energy Pilot Project.'' Any individual or entity interested in submitting comments on the pre-filing materials must do so by April 30, 2009.

Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. 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.

l. With this notice, we are approving ORPC Alaska's request to be designated as the non-federal representative for section 7 of the Endangered Species Act (ESA) and its request to initiate consultation under section 106 of the National Historic Preservation Act; and recommending that it begin informal consultation with: (a) the U.S. Fish and Wildlife Service and the National Marine Fisheries Service as required by section 7 of ESA; and (b) the Alaska State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

m. This notice does not constitute the Commission's approval of ORPC Alaska's request to use the Pilot Project Licensing Procedures. Upon its review of the project's overall characteristics relative to the pilot project criteria, the draft license application contents, and any comments filed, the Commission will determine whether there is adequate information to conclude the pre-filing process.

n. The proposed Cook Inlet Tidal Energy Pilot Project would be implemented in two phases. Phase 1 would occur in year 1 of the pilot project license and would consist of deployment of one OCGen module (module), containing 4 turbine-generator units with a combined capacity of 1 megawatt. Phase 2 would occur in year 2 of the license and would consist of deployment of four additional modules each with a capacity of 1 megawatt, for a total capacity of 5 megawatts. The project would also consist of: (1) Underwater transmission cables from the modules to a shore station on Fire Island; (2) a transmission line connecting the shore station to an interconnection point on Fire Island; and (3) appurtenant facilities for operation and maintenance. The estimated annual generation of phase 1 would be 2,700 megawatt-hours. The estimated annual generation of phase 2 would be 15,000 megawatt-hours.

o. A copy of the draft license application and all pre-filing materials are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659.

p. *Pre-filing process schedule*. The pre-filing process will be conducted pursuant to the following tentative schedule. ORPC plans to complete studies in 2009 to provide further support for the environmental analysis. Revisions to the schedule below may be made based on staff's review of the draft application and any comments received.

Milestone	Date
Comments on pre-filing materials due	April 30, 2009.
Issuance of meeting notice (if needed)	May 15, 2009.
Public meeting/technical conference (if needed)	June 14, 2009.
Issuance of notice concluding pre-filing process and ILP waiver request determination	May 30, 2009 (if no meeting is needed); June 29, 2009 (if meeting is needed).

q. Register online at *http://ferc.gov/esubscribenow.htm* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–8454 Filed 4–13–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13370–000]

Blue Heron Hydro, LLC; Notice of Preliminary Permit Applications Accepted for Filing and Soliciting Comment, Motions To Intervene, and Competing Applications

April 7, 2009.

On February 6, 2009, Blue Heron Hydro, LLC, filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the North Springfield Dam Hydroelectric Project, to be located on the Black River, in Windsor County, Vermont.

The proposed North Springfield Dam Hydroelectric Project would be located at: (1) The existing 2,940-foot-long U.S. Army Corps of Engineers North Springfield Dam; (2) an existing Corps intake tower and control works; and (3) an existing 1,200-acre reservoir with 50,000 acre-feet of storage.

The project would consist of: (1) Three new turbine generating units connected the intake tower with a total installed capacity of 0.65 megawatts; (2) a new 12.47-kilovolt transmission line and transformer connected to an existing above ground distribution system; and (3) appurtenant facilities. The North Springfield Dam Project would have an estimated average annual generation of 2,200 megawatt-hours, which would be sold to local utilities.

Applicant Contact: Ms. Lori Barg, Blue Heron Hydro, LLC, 113 Bartlett Rd., Plainfield, VT 05667, phone (802) 454–1874.

FERC Contact: John Ramer, (202) 502–8969.

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 the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–13370) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–8457 Filed 4–13–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

April 07, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER01–1418–010; ER02–1238–010; ER03–28–004; ER03–398–011.

Applicants: Effingham County Power, LLC; MPC Generating, LLC; Walton County Power, LLC; Washington County Power, LLC.

Description: Effingham County Power, LLC *et al.* submits substitute tariff sheets to the 12/31/08 filing of updated market power analysis.

Filed Date: 04/06/2009.

Accession Number: 20090407–0354.

Comment Date: 5 p.m. Eastern Time on Thursday, April 16, 2009.

Docket Numbers: ER08–682–002.

Applicants: Idaho Power Company.

Description: Compliance Filing of Idaho Power Company.

Filed Date: 04/06/2009.

Accession Number: 20090406–5122.

Comment Date: 5 p.m. Eastern Time on Monday, April 27, 2009.

Docket Numbers: ER08–1360–001.

Applicants: PacifiCorp.

Description: PacifiCorp submits Second Amended and Restated Transmission Service and Operating Agreement between PacifiCorp and Utah Municipal Power Agency.

Filed Date: 03/30/2009.

Accession Number: 20090403–0137.

Comment Date: 5 p.m. Eastern Time on Monday, April 20, 2009.

Docket Numbers: ER09–88–002.

Applicants: Southern Company Services, Inc.

Description: Southern Companies submits the attached two tariffs sheets to Southern Companies Market-Based Rate Tariff.

Filed Date: 04/03/2009.

Accession Number: 20090407–0543.

Comment Date: 5 p.m. Eastern Time on Friday, April 24, 2009.

Docket Numbers: ER09–404–002.

Applicants: Langdon Wind, LLC.

Description: Refund Report of Langdon Wind, LLC.

Filed Date: 04/06/2009.

Accession Number: 20090406–5114.

Comment Date: 5 p.m. Eastern Time on Monday, April 27, 2009.

Docket Numbers: ER09–556–001; ER08–367–004; ER06–615–044.

Applicants: California Independent System Operator Corporation

Description: California Independent System Operator Corp submits a compliance filing.

Filed Date: 03/30/2009.

Accession Number: 20090403–0141.

Comment Date: 5 p.m. Eastern Time on Monday, April 20, 2009.

Docket Numbers: ER09–642–001.

Applicants: Niagara Mohawk Power Corporation.

Description: Niagara Mohawk Power Corporation *et al.* submits amended Huntley IA in an Order 614- compliant format as Attachment A to the instant filing.

Filed Date: 04/03/2009.

Accession Number: 20090407–0539.

Comment Date: 5 p.m. Eastern Time on Friday, April 24, 2009.

Docket Numbers: ER09–729–001.

Applicants: Avista Corporation.

Description: Avista Corporation submits FERC Revised Sheet 1 *et al.* to FERC Electric Tariff Revised Volume 11 for approval.

Filed Date: 04/03/2009.

Accession Number: 20090407–0541.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 14, 2009.

Docket Numbers: ER09–730–001.

Applicants: PJM Interconnection LLC.

Description: PJM Interconnection, LLC submits revised PJM Open Access Transmission Tariff sheets.

Filed Date: 03/30/2009.

Accession Number: 20090403–0140.

Comment Date: 5 p.m. Eastern Time on Monday, April 20, 2009.

Docket Numbers: ER09–952–000.

Applicants: Dayton Power and Light Company, Duke Energy Business Services, LLC.

Description: Duke Energy Ohio, Inc submits Interconnection Agreement between The Dayton Power and Light Company and Duke Energy Business, LLC.

Filed Date: 04/03/2009.

Accession Number: 20090406–0097.

Comment Date: 5 p.m. Eastern Time on Friday, April 24, 2009.

Docket Numbers: ER09–953–000.

Applicants: PJM Interconnection LLC.

Description: PJM Interconnection, LLC submits executed interconnection service agreement entered into among PJM, Virginia Electric and Power Company.

Filed Date: 04/03/2009.

Accession Number: 20090406–0099.

Comment Date: 5 p.m. Eastern Time on Friday, April 24, 2009.

Docket Numbers: ER09–955–000.

Applicants: Southwestern Electric Power Company.

Description: Southwestern Electric Power Company submits 2009 Formula Rates: Post Employment Benefits Other Than Pensions and Post Employment Benefits.

Filed Date: 04/03/2009.

Accession Number: 20090406–0100.

Comment Date: 5 p.m. Eastern Time on Friday, April 24, 2009.

Docket Numbers: ER09–956–000.

Applicants: Ameren Services Company.

Description: Union Electric Company submits Original Service Agreement 2037 to FERC Electric Tariff, Third Revised Volume 1.

Filed Date: 04/03/2009.

Accession Number: 20090406–0098.

Comment Date: 5 p.m. Eastern Time on Friday, April 24, 2009.

Docket Numbers: ER09–957–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits letter agreement between SCE and First Solar Electric, LLC.

Filed Date: 04/06/2009.

Accession Number: 20090407–0545.

Comment Date: 5 p.m. Eastern Time on Monday, April 27, 2009.

Docket Numbers: ER09–958–000.

Applicants: Central Vermont Public Service Corp.

Description: Central Vermont Public Service Corporation revisions to Schedule 2—CV of the ISO New

England, Inc FERC Electric Tariff 3 Section II—Open Access Transmission Tariff.

Filed Date: 04/06/2009.

Accession Number: 20090407–0544.

Comment Date: 5 p.m. Eastern Time on Monday, April 27, 2009.

Docket Numbers: ER09–959–000.

Applicants: Westar Energy, Inc.

Description: Westar Energy, Inc submits Petition for Approval of Settlement Agreement.

Filed Date: 04/06/2009.

Accession Number: 20090407–0548.

Comment Date: 5 p.m. Eastern Time on Monday, April 27, 2009.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES09–24–000.

Applicants: The Detroit Edison Company.

Description: Application of The Detroit Edison Company for Authorization of the Issuance of Short-term Debt Securities.

Filed Date: 04/07/2009.

Accession Number: 20090407–5014.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 28, 2009.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR07–16–006.

Applicants: North American Electric Reliability Corp.

Description: Compliance Filing of the North American Electric Reliability Corporation in Response to February 19, 2009 Order Concerning SPP Regional Entity Use of NERC System of Accounts.

Filed Date: 04/06/2009.

Accession Number: 20090406–5113.

Comment Date: 5 p.m. Eastern Time on Monday, April 27, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–8451 Filed 4–13–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

April 8, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP96–320–105.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Co, LP submits amendments to negotiated rate letter agreements.

Filed Date: 04/06/2009.

Accession Number: 20090407–0536.

Comment Date: 5 p.m. Eastern Time on Monday, April 20, 2009.

Docket Numbers: RP00–469–014. RP01–22–016. RP03–177–011.

Applicants: East Tennessee Natural Gas, LLC.

Description: Segmentation Report of East Tennessee Natural Gas, LLC for April 1, 2008 to March 31, 2009.

Filed Date: 04/06/2009.

Accession Number: 20090406–5121.

Comment Date: 5 p.m. Eastern Time on Monday, April 20, 2009.

Docket Numbers: RP08–633–001.

Applicants: National Fuel Gas Supply Corporation.

Description: National Fuel Gas Supply Corp informs that they anticipate commencing the service under the proposed agreement on 5/1/09.

Filed Date: 03/25/2009.

Accession Number: 20090326–0037.

Comment Date: 5 p.m. Eastern Time on Monday, April 13, 2009.

Docket Numbers: RP09–61–004.

Applicants: Gulf Crossing Pipeline Company LLC.

Description: Gulf Crossing Pipeline Company LLC submits First Revised Sheet 103 *et al.* to FERC Gas Tariff, Original Volume 1 under RP09–61.

Filed Date: 02/03/2009.

Accession Number: 20090204–0050.

Comment Date: 5 p.m. Eastern Time on Monday, April 13, 2009.

Docket Numbers: RP09–366–002.

Applicants: Mississippi Canyon Gas Pipeline, LLC.

Description: Mississippi Canyon Gas Pipeline, LLC submits Sub First Revised Sheet No. 247 *et al.* to FERC Gas Tariff, First Revised Volume No. 1.

Filed Date: 04/06/2009.

Accession Number: 20090407–0535.

Comment Date: 5 p.m. Eastern Time on Monday, April 20, 2009.

Docket Numbers: RP09–501–000.

Applicants: Northwest Pipeline GP.

Description: Northwest Pipeline, GP requests waiver of FERC Gas Tariff (Section 25.2 of General Terms and Conditions).

Filed Date: 04/06/2009.

Accession Number: 20090407–0533.

Comment Date: 5 p.m. Eastern Time on Monday, April 20, 2009.

Docket Numbers: RP09–502–000.

Applicants: CenterPoint Energy Gas Transmission Co.

Description: CenterPoint Energy Gas Transmission Co submits Twentieth Revised Sheet No. 17 *et al.* to FERC Gas Tariff, Sixth Revised Volume No. 1.

Filed Date: 04/06/2009.

Accession Number: 20090407–0534.

Comment Date: 5 p.m. Eastern Time on Monday, April 20, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously

intervened in the same docket. 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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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.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–8450 Filed 4–13–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

April 06, 2009.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC09–54–000.

Applicants: MACH Gen, LLC, New Athens Generating Company, LLC, New Harquahala Generating Company, LLC, Millennium Power Partners, LP, Strategic Value Partners, LLC.

Description: Amendment to Application of Strategic Value Partners, LLC, *et al.*

Filed Date: 03/31/2009.

Accession Number: 20090331–5227.

Comment Date: 5 p.m. Eastern Time on Friday, April 10, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER99–2541–012; ER01–1764–009; ER01–3121–020; ER02–2085–014; ER02–417–019; ER02–418–019; ER03–1326–018; ER03–296–021; ER03–416–022; ER03–951–021; ER04–582–010; ER04–94–019; ER05–1146–019; ER05–1262–020; ER05–332–019; ER05–365–019; ER05–534–019; ER05–731–006; ER06–1093–016; ER06–200–018; ER07–1378–011; ER07–195–013; ER07–240–013; ER07–242–012; ER07–287–012; ER07–460–009; ER08–387–009; ER08–912–005; ER08–933–006; ER08–934–007; ER09–279–001; ER09–281–001; ER09–30–002; ER09–31–002; ER09–32–002; ER09–33–002; ER09–382–002; ER97–3553–008; ER97–3556–020; ER99–220–017; ER99–221–015; ER07–254–012; ER05–481–019; ER09–282–001.

Applicants: Carthage Energy, LLC; PEI Power II, LLC; Klamath Energy LLC; Northern Iowa Windpower LLC; Phoenix Wind Power LLC; Klamath Generation LLC; Colorado Green Holdings, LLC; Flying Cloud Power Partners, LLC; Klondike Wind Power II LLC; Moraine Wind LLC; Hartford Steam Company; Mountain View Power Partners III, LLC; Shiloh I Wind Project LLC; Flat Rock Windpower LLC; Klondike Wind Power II LLC; Elk River Windfarm LLC; Duke Energy Grays Harbor, LLC; Eastern Desert Power LLC; Central Maine Power Company; Flat Rock Windpower II, LLC; Big Horn Wind Project LLC; Providence Heights Wind, LLC; Locust Ridge Wind Farm, LLC; Twin Buttes Wind LLC; MinnDakota Wind LLC; Casselman Windpower, LLC; Klondike Wind Power III LLC; Dillion Wind LLC; Atlantic Renewable Projects II, LLC; Iberdrola Renewables, Inc.; Lempster Wind, LLC; Locust Ridge II, LLC; Buffalo Ridge I LLC; Pebble Springs Wind; Elm Creek Wind, LLC; Farmers City Wind, LLC; Barton Windpower LLC; Barton Windpower II LLC; Hay Canyon Wind LLC; Rochester Gas & Electric Corporation; Energetix, Inc.; NYSEG Solutions Inc; New York State Electric & Gas Corp; Trimont Wind I LLC; Moraine Wind II LLC.

Description: Notice of Non-Material Change in Status of Iberdrola Renovables, S.A., *et al.*

Filed Date: 04/01/2009.

Accession Number: 20090401–5215.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 22, 2009.

Docket Numbers: ER00–136–000.

Applicants: FortisUS Energy Corporation.

Description: Motion of FortisUS Energy Corporation's Supplement to Notice of Non-Material Change in Status.

Filed Date: 04/03/2009.

Accession Number: 20090403–5097.

Comment Date: 5 p.m. Eastern Time on Friday, April 24, 2009.

Docket Numbers: ER01–48–014.

Applicants: Powerex Corp.

Description: Powerex Corp. submits an amendment to its existing market-based rate schedule, designated as Third Revised Rate Schedule No. 1.

Filed Date: 03/31/2009.

Accession Number: 20090403–0130.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 21, 2009.

Docket Numbers: ER04–1181–004; ER04–1182–004; ER04–1184–004; ER04–1186–004.

Applicants: KGen Hinds LLC, KGen Hot Spring LLC, KGEN Murray I and II LLC, KGen Sandersville LLC.

Description: Notice of Change in Status of KGen Hinds LLC, KGen Hot Spring LLC, KGen Murray I and II LLC, and KGen Sandersville LLC.

Filed Date: 04/02/2009.

Accession Number: 20090402–5061.

Comment Date: 5 p.m. Eastern Time on Thursday, April 23, 2009.

Docket Numbers: ER06–613–007.

Applicants: ISO New England Inc. & New England Power.

Description: ISO New England Inc. submits report on the status of stakeholder consideration of the possible implementation in New England of a forward Ten Minute Spinning Reserve market.

Filed Date: 04/01/2009.

Accession Number: 20090403–0142.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 22, 2009.

Docket Numbers: ER07–1106–003; ER01–1418–011; ER02–1238–011; ER03–28–005; ER03–398–012; ER06–744–005.

Applicants: ArcLight Energy Marketing, LLC, Effingham County Power, LLC, MPC Generating, LLC, Washington County Power, LLC, Walton County Power, LLC, Sabine Cogen, LP.

Description: Notice of Change in Status of ArcLight Energy Marketing, LLC, *et al.*

Filed Date: 04/03/2009.

Accession Number: 20090403–5110.

Comment Date: 5 p.m. Eastern Time on Friday, April 24, 2009.

Docket Numbers: ER07–1174–004; OA07–74–004.
Applicants: MATL LLP.
Description: MATL LLP submits a filing to comply with the Commission's 3/3/09 Order.
Filed Date: 04/02/2009.
Accession Number: 20090403–0136.
Comment Date: 5 p.m. Eastern Time on Thursday, April 23, 2009.

Docket Numbers: ER08–585–002.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corporation submits Attachment A Clean Sheet Grid Management Charge Compliance filing *et al.*
Filed Date: 03/31/2009.
Accession Number: 20090403–0138.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 21, 2009.

Docket Numbers: ER09–894–000.
Applicants: PacifiCorp.
Description: PacifiCorp. submits Third Revised Sheet 8 *et al.* to FERC Electric Tariff, 7th Revised Volume 11 First Revised Service Agreement 66.
Filed Date: 04/01/2009.
Accession Number: 20090403–0063.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 22, 2009.

Docket Numbers: ER09–931–000.
Applicants: Kansas City Power & Light Company.
Description: Kansas City Power & Light Company submits amendatory agreement No. 3 to KCP&L's rate schedule FERC No. 90.
Filed Date: 04/01/2009.
Accession Number: 20090402–0187.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 22, 2009.

Docket Numbers: ER09–932–000.
Applicants: ISO New England Inc. and New England Power Pool.
Description: ISO New England Inc. *et al.* submits amendment to the ISO Financial Assurance Policy for Market Participants that is Exhibit IA to Section I of the ISO tariff etc.
Filed Date: 04/01/2009.
Accession Number: 20090402–0186.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 22, 2009.

Docket Numbers: ER09–933–000.
Applicants: Entergy Services, Inc.
Description: Entergy Services, Inc. submits ESI's Third Revised Rate Schedule No. 435.
Filed Date: 04/01/2009.
Accession Number: 20090402–0185.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 22, 2009.

Docket Numbers: ER09–934–000.
Applicants: Bangor Hydro-Electric Company.
Description: Bangor Hydro-Electric Company submits revisions to Schedule 21–BHE of the ISO-New England tariff.
Filed Date: 04/01/2009.
Accession Number: 20090402–0176.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 22, 2009.

Docket Numbers: ER09–935–000.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corporation submits Transmission Access Charge Informational filing.
Filed Date: 04/01/2009.
Accession Number: 20090402–0177.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 22, 2009.

Docket Numbers: ER09–936–000.
Applicants: Bangor Hydro-Electric Company.
Description: Bangor Hydro-Electric Company submits informational filing, updating Bangor Hydro's existing formula rate for charges that may become effective 6/1/09.
Filed Date: 04/01/2009.
Accession Number: 20090402–0175.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 22, 2009.

Docket Numbers: ER09–939–000.
Applicants: Interstate Power and Light Company.
Description: Interstate Power and Light Co submits proposed changes re its book depreciation rates related to non-nuclear production service.
Filed Date: 04/01/2009.
Accession Number: 20090402–0184.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 22, 2009.

Docket Numbers: ER09–940–000.
Applicants: Northern Virginia Electric Cooperative.
Description: Northern Virginia Electric Cooperative, Inc. submits revenue requirement with supporting testimony and data *et al.*
Filed Date: 04/01/2009.
Accession Number: 20090402–0183.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 22, 2009.

Docket Numbers: ER09–941–000.
Applicants: Idaho Power Company.
Description: Idaho Power Company submits 3/2/09 Project Construction Agreement between Idaho Power Company and PacifiCorp.
Filed Date: 04/01/2009.
Accession Number: 20090402–0182.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 22, 2009.

Docket Numbers: ER09–942–000.
Applicants: Astoria Generating Company, LP.
Description: Joint Request for limited one-time tariff waiver and for Commission action by 5/31/09.
Filed Date: 04/01/2009.
Accession Number: 20090402–0181.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 22, 2009.

Docket Numbers: ER09–943–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool submits revised pages to its Open Access Transmission Tariff to correct an administrative error resulting in the improper designation of certain Tariff sheets previously filed with, and accepted by the Commission.
Filed Date: 04/01/2009.
Accession Number: 20090402–0180.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 22, 2009.

Docket Numbers: ER09–944–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison submits revised rate sheets to the Agreement for Interconnection Service between SCE and Harbor Cogeneration Company, Service Agreement 2 under SCE's Transmission Owner Tariff, FERC Electric Tariff etc.
Filed Date: 04/01/2009.
Accession Number: 20090402–0179.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 22, 2009.

Docket Numbers: ER09–945–000.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator, Inc submits proposed revisions to its Market Administration and Control Area Services Schedule II to the OATT etc.
Filed Date: 04/01/2009.
Accession Number: 20090402–0188.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 22, 2009.

Docket Numbers: ER09–946–000.
Applicants: Beech Ridge Energy LLC.
Description: Beech Ridge Energy LLC submits application of Beech Ridge for authorization to make market-based wholesale sales of energy, capacity, and ancillary services under Beech Ridge's FERC Electric Tariff 1 etc.
Filed Date: 04/02/2009.
Accession Number: 20090403–0147.
Comment Date: 5 p.m. Eastern Time on Thursday, April 23, 2009.

Docket Numbers: ER09–947–000.
Applicants: Public Service Company of New Mexico.
Description: Public Service Co of New Mexico submits two transmission service agreements with Southwestern Public Service Co.
Filed Date: 04/02/2009.
Accession Number: 20090403–0134.
Comment Date: 5 p.m. Eastern Time on Thursday, April 23, 2009.

Docket Numbers: ER09–948–000.
Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits a Notice of Termination of Large Generator Interconnection Agreement.

Filed Date: 04/02/2009.

Accession Number: 20090403–0133.

Comment Date: 5 p.m. Eastern Time on Thursday, April 23, 2009.

Docket Numbers: ER09–949–000.

Applicants: Central Illinois Light Company, Central Illinois Public Service Company, Illinois Power Company.

Description: Ameren Illinois Utilities submits an Electric Resource Sharing Agreement for Capacity.

Filed Date: 04/02/2009.

Accession Number: 20090403–0132.

Comment Date: 5 p.m. Eastern Time on Thursday, April 23, 2009.

Docket Numbers: ER09–950–000.

Applicants: Xcel Energy Services, Inc.

Description: Public Service Co of Colorado submits a notice of cancellation of the Joint Load Control Area Agreement.

Filed Date: 04/02/2009.

Accession Number: 20090403–0131.

Comment Date: 5 p.m. Eastern Time on Thursday, April 23, 2009.

Docket Numbers: ER09–951–000.

Applicants: Xcel Energy Services Inc.

Description: Public Service Co of Colorado submits proposed revisions to the Xcel Energy Operating Companies Joint Open Access Transmission Tariff.

Filed Date: 04/02/2009.

Accession Number: 20090403–0135.

Comment Date: 5 p.m. Eastern Time on Thursday, April 23, 2009.

Docket Numbers: ER09–954–000.

Applicants: Ameren Services Company.

Description: Union Electric Company submits Original Service Agreement 2026 to FERC Electric Tariff, Third Revised Volume 1.

Filed Date: 04/03/2009.

Accession Number: 20090406–0045.

Comment Date: 5 p.m. Eastern Time on Friday, April 24, 2009.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA09–24–000.

Applicants: Idaho Power Company.

Description: Idaho Power submits Unreserved use Penalty Distribution Compliance Filing.

Filed Date: 03/31/2009.

Accession Number: 20090403–0145.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 21, 2009.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR07–16–005.

Applicants: North American Electric Reliability Corporation

Description: Additional Compliance Filing of the NERC in Response to October 18, 2007 Order—Comparisons of Budgeted to Actual Costs for 2008 for NERC and the Regional Entities; and Additional Compliance Items Concerning SPP Regional Entity.

Filed Date: 04/01/2009.

Accession Number: 20090401–5204.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 22, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–8452 Filed 4–13–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–91–000]

High Island Offshore System, LLC; Notice of Petition for Declaratory Order

April 7, 2009.

Take notice that on March 31, 2009, High Island Offshore System, LLC (HIOS), 1100 Louisiana Street, Houston Texas 77002 in Docket No. CP09–91–000, filed a Petition for Declaratory Order, requesting that the Commission declare that all HIOS facilities located at and upstream of High Island Block A–264 are in their entirety, gathering facilities and not subject to the Commission's jurisdiction under the Natural Gas Act (NGA).

Any person desiring to intervene or to protest this filing in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date indicated below. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. 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.

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, April 30, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–8460 Filed 4–13–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP09–318–000]

Northern Natural Gas Company; Notice of Technical Conference

April 7, 2009.

Take notice that the Commission Staff will convene a technical conference in the above-referenced proceeding on Tuesday, April 21, 2009, at 10 a.m. (EST), in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The technical conference will afford the Commission staff and the parties to the proceeding an opportunity to discuss all of the issues raised by Northern Natural Gas Company's (Northern) filing, including but not limited to the proposed increase in the Market Area 2009 summer season fuel percentage. At the technical conference, Northern should be prepared to fully explain its methodology for determining the periodic adjustments for fuel and provide a clear explanation as to the basis of the increase in the Market Area 2009 summer season fuel percentage. Any party proposing alternatives to Northern's proposed reimbursement adjustment and its methodology should be prepared to similarly support its position.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

All interested persons are permitted to attend. For further information please contact Jacob Silverman at (202) 502–8445 or e-mail *Jacob Silverman@ferc.gov*.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–8459 Filed 4–13–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP09–427–000]

Southern Natural Gas Company; Notice of Technical Conference

April 7, 2009.

Take notice that the Commission Staff will convene a technical conference in the above-referenced proceeding on Thursday, April 30, 2009, at 9 a.m. (EST), in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The issues to be addressed at the technical conference include those Southern identified as changes to its terms and conditions of service. These include Southern's proposal to: (1) Modify its general requirements applicable to the installation or modification of interconnection facilities; (2) require a shipper that has not used its point to move its primary receipt point; (3) modify its open season requirements; (4) allow a shipper and Southern to agree to a prepayment for services; and (5) modify its ROFR time frames.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

All interested persons are permitted to attend. For further information please contact Robert McLean at (202) 502–8156 or e-mail *Robert_McLean@ferc.gov*.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–8453 Filed 4–13–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting Notice

April 9, 2009.

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: April 16, 2009, 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda. Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's Web site at *http://www.ferc.gov* using the eLibrary link, or may be examined in the Commission's Public Reference Room.

947TH—MEETING, REGULAR MEETING, APRIL 16, 2009, 10 A.M.

Item No.	Docket No.	Company
ADMINISTRATIVE		
A–1	AD02–1–000	Agency Administrative Matters.
A–2	AD02–7–000	Customer Matters, Reliability, Security and Market Operations.
A–3	AD06–3–000	Energy Market Update.
ELECTRIC		
E–1	EL09–20–000	Northeast Utilities Service Company and NSTAR Electric Company.

947TH—MEETING, REGULAR MEETING, APRIL 16, 2009, 10 A.M.—Continued

Item No.	Docket No.	Company
E–2	ER08–394–007, ER08–394–009	Midwest Independent Transmission System Operator, Inc.
E–3	OMITTED	
E–4	OMITTED	
E–5	ER09–467–000	ISO New England Inc.
E–6	OMITTED	
E–7	ER09–149–002	Southwest Power Pool, Inc.
E–8	ER09–14–002	NSTAR Electric Company.
E–9	ER07–521–006, ER07–521–007, ER07–521–008	New York Independent System Operator, Inc.
E–10	EL09–11–000	Interstate Power and Light Company v. ITC Midwest, LLC.
GAS		
G–1	RM08–1–003, RM07–4–000, RM06–21–000	Promotion of a More Efficient Capacity Release Market.
G–2	IS07–75–001, IS08–78–001, IS07–75–002, IS08–78–002	BP Pipelines (Alaska) Inc.
	IS07–56–001, IS08–62–001, IS07–56–002, IS08–62–002	ConocoPhillips Transportation Alaska, Inc.
	IS07–55–001, IS08–65–001, IS07–55–002, IS08–65–002	ExxonMobil Pipeline Company.
	IS07–48–002, IS08–64–001, IS07–48–003, IS08–64–002	Koch Alaska Pipeline Company LLC.
	IS07–41–001, IS08–53–001, IS07–41–002, IS08–53–002	Unocal Pipeline Company.
CERTIFICATES		
C–1	CP95–35–001	EcoEléctrica, L.P.
C–2	CP08–158–000	Williston Basin Interstate Pipeline Company.
C–3	CP08–467–000	Texas Gas Transmission, LLC.

Kimberly D. Bose,

Secretary.

A free webcast of this event is available through *http://www.ferc.gov*. Anyone with Internet access who desires to view this event can do so by navigating to *www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or contact Danelle Springer or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. E9–8565 Filed 4–10–09; 11:15 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8791–8]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree to address a lawsuit filed by Sierra Club, the Center for Biological Diversity, Preston Forsythe, and Dr. Hilary Lambert (collectively ''Plaintiffs'') in the United States District Court for the District of Columbia: *Sierra Club, et al.* v. *Jackson*, No. 1:08–cv–01999 (D.D.C.). Plaintiffs filed a deadline suit to compel the Administrator to respond to an administrative petition seeking EPA's objection to a CAA Title V operating permit issued by the Kentucky Department of Environmental Protection to the Tennessee Valley Authority's Paradise Fossil Plant, in Drakesboro, Kentucky (''TVA Paradise''). Under the terms of the proposed consent decree, EPA has agreed to respond to the petition by June 13, 2009.

DATES: Written comments on the proposed consent decree must be received by *May 14, 2009*.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2009–0244, online at *http://www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov*; by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Gautam Srinivasan, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564–5647; fax number (202) 564–5603; e-mail address: *srinivasan.gautam@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

This proposed consent decree would address a lawsuit seeking a response to an administrative petition to object to a CAA Title V permit issued by the Kentucky Department of Environmental Protection to the Tennessee Valley Authority's Paradise Fossil Plant, in Drakesboro, Kentucky (''TVA

Paradise''). Under the proposed consent decree, EPA has agreed to respond to the petition by June 13, 2009. If despite best efforts EPA cannot meet the June 13, 2009 deadline, the proposed decree states that the deadline may be extended by up to 30 days by stipulation of the Plaintiffs and EPA. The proposed consent decree further states that EPA shall expeditiously deliver notice of such action on the TVA Paradise permit to the Office of the Federal Register for prompt publication and, if EPA's response contains an objection in whole or in part, transmit within 15 business days following signature the response to the Kentucky Environment and Public Protection Cabinet, Department for Environmental Protection, Division of Air Quality.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, based on any comment submitted, that consent to this consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How Can I Get a Copy of the Consent Decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2009–0244) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *http://www.regulations.gov*. You may use the *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *http://www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD–ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *http://www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through *http://www.regulations.gov*, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: April 8, 2009.

Richard B. Ossias,

Associate General Counsel.

[FR Doc. E9–8485 Filed 4–13–09; 8:45 am]

BILLING CODE 6560–50–P

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. E8–7920published on page 15982 of the issue for Wednesday, April 8, 2009.

Under the Federal Reserve Bank of Richmond heading, the entry for David L. Sokol, Omaha, Nebraska, is revised to read as follows:

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. David L. Sokol as trustee of the David L. Sokol Revocable Trust, Omaha, Nebraska; to acquire voting shares of Middleburg Financial Corporation, and thereby indirectly acquire voting shares of Middleburg Bank, both of Middleburg, Virginia.

Comments on this application must be received by April 21, 2009.

Board of Governors of the Federal Reserve System, April 9, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–8476 Filed 4–13–09; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Non-competitive Replacement Award

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of Non-competitive Replacement Award.

SUMMARY: The Health Resources and Services Administration (HRSA) is issuing a temporary non-competitive replacement award to the National Jewish Hospital and Research Center to avoid disruption and continue outreach, medical screening and referral services to former uranium mine workers and individuals in the states of Colorado, Wyoming and portions of Southeastern Utah exposed to radioactive fallout during prior testing of nuclear weapons.

SUPPLEMENTARY INFORMATION:

Intended Recipient of the Award: National Jewish Hospital and Research Center in Denver, Colorado.

Amount of the Award: $120,106.00 (an 8-month supplement, January 1, 2009, through August 31, 2009) to ensure ongoing services to the target populations.

Project Period: The period of supplemental support is from January 1, 2009, to August 31, 2009.

Authority: This activity is under the authority of the Public Health Service Act, Section 417C of Public Law 106–245.

Catalogue of Federal Domestic Assistance Number: 93.257

Justication for the Exception to Competition: Critical funding for outreach, medical screening and referral services to the target populations in Colorado, Wyoming and portions of Southeastern Utah will be continued through a temporary, non-competitive replacement award to the National Jewish Hospital and Research Center (NJHRC) as the new recipient. This temporary award is needed because the former grantee, St. Mary's Hospital and Medical Center, relinquished, effective December 31, 2008, the original award (project period September 1, 2008, through August 31, 2011). NJHRC, nationally known as the ''Center for Research and Treatment of Respiratory Conditions,'' is uniquely qualified to provide screening and diagnosis of occupationally related radiogenic diseases for the target populations. NJHRC has administered the HRSA-funded Black Lung Clinic Program (BLCP) grant for the past five years and is well suited to undertake operations of the Radiation Exposure Screening and Education Program under the previously approved scope of project. Additionally, this organization has a thorough understanding of the characteristics and needs of miners (both current and retired) as well as other workers at risk for occupational diseases. HRSA's Office of Rural Health Policy is not aware of any other organization that could provide such treatment and services to the impacted service populations without additional time and resources being devoted to bringing that organization's service capacity up to the level needed under the project scope of this award.

This temporary non-competitive replacement award will permit the new recipient to ensure continuity of services to the affected populations. The supplemental funding will provide support for 8 months. Further funding beyond August 31, 2009, for this service area will be provided through a limited service area competition to be announced in the near future.

FOR FURTHER INFORMATION CONTACT: Tom Morris, Associate Administrator, Office of Rural Health Policy, Health Resources and Services Administration, 5600 Fishers Lane, Rockville, MD 20857; phone 301–443–0835; *tmorris@hrsa.hhs.gov*.

Dated: April 9, 2009.

Marcia K. Brand,

Deputy Administrator.

[FR Doc. E9–8442 Filed 4–13–09; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences, Division of Extramural Research and Training; Proposed Collection; Comment Request Hazardous Waste Worker Training

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute of Environmental Health Sciences (NIEHS), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Hazardous Waste Worker Training—42 CFR part 65. *Type of Information Collection Request:* Revision of OMB No. 0925–0348 and expiration date September 30, 2009. *Need and Use of Information Collection:* This request for OMB review and approval of the information collection is required by regulation 42 CFR part 65(a)(6). The National Institute of Environmental Health Sciences (NIEHS) was given major responsibility for initiating a worker safety and health training program under Section 126 of the Superfund Amendments and Reauthorization Act of 1986 (SARA) for hazardous waste workers and emergency responders. A network of non-profit organizations that are committed to protecting workers and their communities by delivering high-quality, peer-reviewed safety and health curricula to target populations of hazardous waste workers and emergency responders has been developed. In twenty-one years (FY 1987–2008), the NIEHS Worker Training program has successfully supported 20 primary grantees that have trained more than 2.2 million workers across the country and presented over 130,250 classroom and hands-on training courses, which have accounted for nearly 30 million contact hours of actual training. Generally, the grant will initially be for one year, and subsequent continuation awards are also for one year at a time. Grantees must submit a separate application to have the support continued for each subsequent year. Grantees are to provide information in accordance with S65.4(a), (b), (c) and 65.6(a) on the nature, duration, and purpose of the training, selection criteria for trainees' qualifications and competency of the project director and staff, cooperative agreements in the case of joint applications, the adequacy of training plans and resources, including budget and curriculum, and response to meeting training criteria in OSHA's Hazardous Waste Operations and Emergency Response Regulations (29 CFR 1910.120). As a cooperative agreement, there are additional requirements for the progress report section of the application. Grantees are to provide their information in hard copy as well as enter information into the WETP Grantee Data Management System. The information collected is used by the Director through officers, employees, experts, and consultants to evaluate applications based on technical merit to determine whether to make awards. *Frequency of Response:* Biannual. *Affected Public:* Non-profit organizations. *Type of Respondents:* Grantees. The annual reporting burden is as follows: *Estimated Number of Respondents:* 18; *Estimated Number of Responses per Respondent:* 2; *Average Burden Hours per Response:* 14; and *Estimated Total Annual Burden Hours Requested:* 504. The annualized cost to respondents is estimated at: $16,380. There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies should

address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Joseph T. Hughes, Jr., Director, Worker Education and Training Branch, Division of Extramural Research and Training, NIEHS, P.O. Box 12233, Research Triangle Park, NC 27709 or call non-toll-free number (919) 541–0217 or E-mail your request, including your address to *wetp@niehs.nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: April 2, 2009.

Marc S. Hollander,

NIEHS Associate Director for Management.

[FR Doc. E9–8472 Filed 4–13–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–P–0250] (formerly Docket No. 2007P–0341)

Determination That ZOMETA (Zoledronic Acid for Injection), Equivalent to 4 Milligrams Base Per Vial, Lyophilized Powder for Injection, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that ZOMETA (zoledronic acid for injection), equivalent to (EQ) 4 milligrams (mg) base/vial, lyophilized powder for injection, was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for zoledronic acid lyophilized powder for injection, 4-mg base/vial.

FOR FURTHER INFORMATION CONTACT: Nancy Boocker, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6244, Silver Spring, MD 20993–0002, 301–796–3601.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under 21 CFR 314.161(a)(1), the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. FDA may not approve an ANDA that does not refer to a listed drug.

ZOMETA (zoledronic acid for injection), EQ 4-mg base/vial, lyophilized powder for injection, is the subject of approved NDA 21–223 held by Novartis Pharmaceuticals Corp. (Novartis). Zoledronic acid, lyophilized powder for injection, EQ 4-mg base/vial, is indicated for treatment of hypercalcemia of malignancy. It also is indicated for the treatment of patients with multiple myeloma and patients with documented bone metastases from solid tumors, in conjunction with standard antineoplastic therapy. Novartis ceased manufacturing ZOMETA (zoledronic acid for injection), EQ 4 mg-base/vial, lyophilized powder for injection, in May 2003. On September 13, 2007, Kendle International, on behalf of Sun Pharmaceutical Industries Ltd., submitted a citizen petition (Docket No. 2007P–0341/CP1), under 21 CFR 10.30, requesting that the agency determine whether zoledronic acid lyophilized powder for injection, EQ 4-mg base/vial, was withdrawn from sale for reasons of safety or effectiveness.

The agency has determined that ZOMETA (zoledronic acid for injection), EQ 4-mg base/vial, lyophilized powder for injection, was not withdrawn from sale for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that zoledronic acid lyophilized powder for injection, 4-mg base/vial, was withdrawn from sale as a result of safety or effectiveness concerns. FDA's independent evaluation of relevant information has uncovered no information that would indicate this product was withdrawn for reasons of safety or effectiveness.

After considering the citizen petition and reviewing agency records, FDA determines that for the reasons outlined previously, ZOMETA (zoledronic acid for injection), EQ 4-mg base/vial, lyophilized powder for injection, was not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will continue to list ZOMETA (zoledronic acid for injection), 4-mg base/vial, lyophilized powder for injection, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to ZOMETA (zoledronic acid for injection), EQ 4-mg base/vial, lyophilized powder for injection, may be approved by the agency as long as they meet all relevant legal and regulatory requirements for the approval of ANDAs. If FDA determines that the labeling of this drug product should be revised to meet current standards, the agency will advise ANDA applicants to submit such labeling.

Dated: March 7, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–8524 Filed 4–13–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of Federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Insect Salivary Proteins as Potent Adjuvants for Enhancing Immune Responses

Description of Technology: This invention relates to the discovery that specific sand fly salivary proteins have marked effects on the outcome of Leishmania infection. These proteins have the ability to stimulate strong Th1 and Th2 responses. The Th1 responses with one protein, PpSP15, result in immune protection while the Th2 responses to another protein, PpSP44, exacerbate infection. The protective protein enhanced a specific immune response to the infection, suggesting that it acts as an adjuvant to alter the environment and presentation of the parasite antigens.

These immunogenic salivary proteins, capable of driving Th1 or Th2 responses, can be used as adjuvants in vaccine development for a broad spectrum of diseases that require different immune responses. They may therefore be used to enhance immune responses to pathogens other than Leishmania parasites. They are also very potent in their effect, and small doses are sufficient to elicit a strong immune response. This potency can reduce the need to use chemical adjuvants, which often require large mounts of material and can have deleterious side effects.

Applications:

- Vaccine for Leishmania parasite and other pathogenic infections.
- Potent adjuvant for a broad spectrum of diseases.

Advantages: Efficient, potent, and less toxic than many chemical adjuvants.

Development Status: Early Stage.

Market:

- 88 countries with an estimated 2 million people affected each year.
- Estimated 350 million at risk worldwide.

Inventors: Jesus G. Valenzuela *et al.* (NIAID).

Publication: F Oliveira, PG Lawyer, S Kamhawi, JG Valenzuela. Immunity to distinct sand fly salivary proteins primes the anti-Leishmania immune response towards protection or exacerbation of disease. PLoS Negl Trop Dis. 2008 Apr 16;2(4):e226.

Patent Status: U.S. Provisional Application No. 61/089,884 filed 08 Aug 2008 (HHS Reference No. E–303–2008/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Jeffrey A. James PhD; 301–435–5474; jeffreyja@mail.nih.gov.

Collaborative Research Opportunity: The NIAID, Office of Technology Development is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the Insect Salivary Proteins as potent immune response adjuvants. Please contact Charles Rainwater at *crainwater@niaid.nih.gov* or 301/496–2644 for more information.

Anti-Cancer Oligodeoxynucleotides

Description of Technology: A majority of human cancers originate from epithelial tissue. A common cancer of epithelial cell origin is non-melanoma skin cancer (NMSC), including basal cell carcinoma (BCC) and squamous cell carcinoma (SCC), with more than seven hundred thousand (700,000) new cases diagnosed each year in the United States alone. BCC is rarely life-threatening because it is slow growing and is mostly localized. Unlike BCC, SCC metastasizes at a rate of two (2) to six (6) percent over several years after the initial diagnosis. A highly malignant form invades and destroys tissue, and then metastasizes, initially to a regional lymph node before more distant organs such as the lungs or brain are affected. SCC is commonly encountered in a number of epithelial tissues, including the oral cavity, esophagus, larynx, bronchi, intestines, colon, genital tract, and skin.

This application relates to suppressive CpG oligodeoxynucleotides (ODNs). This application claims suppressive ODN compositions and their use to prevent or delay the formation of a tumor, reducing the risk of developing a tumor, treating a tumor, preventing conversion of a benign to a malignant lesion, or preventing metastasis. Topical application of the ODNs of this invention in preclinical studies resulted in significantly fewer animals developing papillomas and fewer papillomas/animal. The invention also relates to use of suppressive ODNs to prevent/delay cancer when administered systemically as well as locally.

Application: Development of anti-cancer vaccines, therapeutics and diagnostics.

Development Status: ODNs have been synthesized and preclinical studies have been performed.

Inventors: Dennis M. Klinman and Hidekazu Ikeuchi (NCI)

Patent Status: U.S. Provisional Application No. 61/119,998 filed 04 Dec 2008 (HHS Reference No. E–296–2008/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301–435–4646; *soukasp@mail.nih.gov*.

Collaborative Research Opportunity: The National Cancer Institute, Laboratory of Experimental Immunology, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact John D. Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Neutralization of Hepatitis C Virus (HCV)

Description of Technology: Available for licensing and commercial development are compositions and methods for preventing and/or treating infection caused by hepatitis C virus (HCV). The invention is based on mapping studies conducted by the inventors of two epitopes within HCV E2: epitope I and epitope II. It has been discovered that epitope I is involved in virus neutralization but that epitope II mediates antibody interference,

probably an adaptation of the virus to obfuscate the immune system. In an effort to attenuate or disable the interference effect of HCV–E2 epitope II, the present invention is directed to a HCV E2 polypeptide substitution/deletion of native amino acids LFY in epitope II, a HCV E2 polypeptide insertion of amino acids between the native LFY in epitope II, or the use of epitope II as a molecular decoyant or to affinity-purify an immune globulin to deplete interfering antibodies from, and enrich neutralizing antibodies in, the preparation.

Applications: HCV vaccines; HCV therapeutics.

Advantages: Improved HCV vaccines and therapeutics.

Development Status: The technology is currently in the preclinical stage of development.

Inventors: Pei Zhang, Marian Major, Stephen Feinstone (FDA).

Publications:

1. P Zhang *et al.* Hepatitis C virus epitope-specific neutralizing antibodies in Igs prepared from human plasma. Proc Natl Acad Sci USA. 2007 May 15;104(20):8449–8454.

2. MY Yu *et al.* Neutralizing antibodies to hepatitis C virus (HCV) in immune globulins derived from anti-HCV-positive plasma. Proc Natl Acad Sci USA. 2004 May 18;101(20):7705–7710.

Patent Status:

U.S. Provisional Application No. 61/002,031 filed 06 Nov 2007 (HHS Reference No. E–276–2007/0–US–01).

PCT Application No. PCT/US2008/082368 filed 04 Nov 2008 (HHS Reference No. E–276–2007/1–PCT–01).

Licensing Status: Available for licensing.

Licensing Contact: RC Tang, JD, LLM; 301–435–5031; *tangrc@mail.nih.gov*.

Collaborative Research Opportunity: The FDA Center for Biologics Evaluation and Research, Laboratory of Plasma Derivatives, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact Alice Welch, PhD at 301–827–0359 or *Alice.Welch@fda.hhs.gov* for more information.

Live-Attenuated West Nile Virus Vaccines with Improved Immune Responses

Description of Technology: West Nile virus (WNV), the etiologic agent of West Nile virus fever and encephalitis, is an emerging human and veterinary pathogen in North America. WNV also periodically poses a serious threat to public health in Africa, Australia, Europe, the Middle East, and Asia. There is no vaccine available. WNV strains are phylogenetically grouped into two distinct lineages based primarily on differences within the envelope (Env) protein gene segment. The highly virulent strains recently emergent on the North American continent are of lineage I. Lineage I viruses are primarily also isolated in the Middle East, Europe, and parts of Africa. Lineage II viruses are mostly isolated in Africa. Both lineages include highly neurovirulent as well as relatively attenuated strains of WNV.

WN vaccine viruses developed by others are chimeric live attenuated WN vaccine viruses. The genomes of these viruses encode the C and NS proteins of dengue or yellow fever virus, respectively, along with the WNV prM and Env proteins, which are the major targets of the humoral immune response to flaviviruses. These chimeric live attenuated WN vaccines have been successful in animal testing and some are currently in clinical trials. However, these vaccines have two potential disadvantages due to their heterogeneous genetic composition: (i) Animal host range may be different from that of wild-type WNV, rendering the vaccines less than optimal for immunization of some at-risk species and (ii) the elicited immune response may be suboptimal in duration or quality, due to the absence from these vaccines of homologous WN NS proteins.

FDA's technology that is available for licensing comprises live attenuated West Nile viruses that are not chimeric, but instead have one or more mutations in the 3′ terminal stem loop secondary structure, resulting in decreased neurovirulence. The related patent application also claims methods of making the viruses claimed in the application and methods for using these viruses to prevent or treat WN infection. More specifically, the inventors modified infectious WN DNA such that all or segments of the wild-type WN 3′ stem loop nucleotide sequence was replaced with analogous dengue virus serotype 2 3′ stem loop sequences. The inventors also created a number of point mutations in the nucleotide sequence of the WN 3′ stem loop sequence.

Application: Development of live attenuated West Nile Virus vaccines, therapeutics and diagnostics.

Development Status: Vaccine candidates have been prepared and preclinical (mouse) studies have been performed.

Inventors: Lewis Markoff and Li Yu (FDA/CBER).

Publication: L Yu *et al.* Attenuated West Nile viruses bearing 3′SL and envelope gene substitution mutations. Vaccine. 2008 Nov 5;26(47):5981–5988.

Patent Status:

HHS Reference No. E–022–2004/0—

- U.S. Provisional Patent Application No. 60/579,396 filed 14 Jun 2004.
- PCT Patent Application No. PCT/US2005/0207327 filed 14 Jun 2005.
- U.S. Patent Application No. 11/629,560 filed 14 Dec 2006.

Licensing Status: Available for licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301–435–4646; *soukasp@mail.nih.gov*.

Collaborative Research Opportunity: The FDA Office of Vaccines Research & Review is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize West Nile Virus vaccines. Please contact Alice Y. Welch, PhD, at 301–827–0359 or *Alice.Welch@fda.hhs.gov* for more information.

Neuronal Decoding Algorithm for Prosthetic Limbs

Description of Technology: The invention is a new algorithm for decoding neuronal responses based on the discovery that neuronal spike trains can be described using order statistics. The device has applications in the direct control of prosthetic limbs by neuronal signals originating from electrodes placed in the brain. The method allows for decoding neuronal responses by monitoring sequences of potentials from neurons while specific motor tasks are carried out. The sequences are then characterized using the innovative technique of applying order statistics to the spike train, such that subsequent action potentials representing unidentified motor tasks can be decoded to determine the unknown task. The invention is of substantial importance because it appears to have achieved a closed form interpretation of neuronal responses upon which a motor prosthetic device might be based.

Applications: Direct control of prosthetic limbs by neurons; Closed form interpretation of neuronal response for prosthetic devices.

Development Status: Early Stage.

Inventors: Barry J. Richmond and Matthew C. Wiener (NIMH).

Patent Status: U.S. Patent No. 7,442,212 issued 28 Oct 2008 (HHS Reference No. E–038–2001/0–US–03).

Licensing Status: Available for licensing.

Licensing Contact: Jeffrey A. James, PhD; 301–435–5474; *jeffreyja@mail.nih.gov*.

Collaborative Research Opportunity: The National Institute of Mental Health, Laboratory of Neuropsychology, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize decoding algorithm for neuronal responses. Please contact Suzanne Winfield at *winfiels@mail.nih.gov* or 301–402–4324 for more information.

Dated: April 7, 2009.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E9–8473 Filed 4–13–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing: Methods for Improvements and Enhancements of Diffusion Tensor MRI

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of Federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting either Uri Reichman, PhD, MBA (Phone: 301–435–4616; Fax: 301–402–0220; E-mail: *UR7a@nih.gov*) or John Stansberry, PhD (Phone: 301–435–5236; Fax: 301–402–0220; E-mail: *stansbej@mail.nih.gov*) at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

SUPPLEMENTARY INFORMATION: The technology offered for licensing is in the field of Diffusion Magnetic Resonance Imaging (MRI). Specifically, three new methods have been described and claimed that enhance the scope and applicability of Diffusion Tensor MRI (DTI or DT–MRI).

The invention of DTI represented a breakthrough in MRI. It provides a method and system for measuring the effective diffusion tensor of spin-labeled molecules, and for generating images of key tensor-derived parameters that indicate features of tissue microstructure, organization and even physiological state. DTI data has improved the diagnosis of a large number of diseases, disorders, and conditions, and is also being used therapeutically, for instance, to aid neurosurgical planning.

One of the pioneers in Diffusion MRI, Dr. Peter Basser, a Principal Investigator in NIH's Eunice Kennedy Shriver National Institute of Child Health and Human Development (NICHD), is the primary inventor of DTI. Dr. Basser's first contribution in this field is described in US Patent #5,539,310 (issued July 23, 1996), entitled ''Method and System for Measuring the Diffusion Tensor and for Diffusion Tensor Imaging.'' His new inventions (described below) extend the specificity and clinical value of diffusion MRI data, particularly in elucidating fine microstructural details and features that are not detectable using DTI.

Diffusion Tensor and q-Space MRI Specimen Characterization

Description of Technology

Diffusion Tensor MRI (DTI or DT–MRI) provides information primarily about how water diffuses in the extracellular compartment of tissues, where water mobility is hindered (*i.e.*, where water diffuses freely but encounters barriers from which it is reflected). However, DTI does not provide a complete characterization of diffusion in the intracellular compartment of some cells, particularly myelinated axons, where water mobility is restricted by impermeable membranes (*i.e.*, where water is trapped but otherwise free to diffuse within the cell).

The subject invention provides a new modeling framework that self-consistently describes 3–D anisotropic diffusion within a hindered extracellular compartment and within a restricted intra-axonal compartment. It results in an improved characterization and measurement tissue and cell microstructure in neuronal tissue, which promises to advance diagnosis of neurological conditions (*e.g.*, Stroke, MS, Alzheimer's disease), possibly cognitive and behavioral disorders (*e.g.*, schizophrenia), as well as our ability to follow normal development and aging processes.

More specifically, this new in vivo diffusion MRI method, especially suited for the characterization of brain white matter, marries q-space and DTI concepts: Diffusion within axons is modeled as hindered diffusion parallel to the axis of the axon, and restricted diffusion perpendicular to the axis. Diffusion exterior to axons is modeled as hindered diffusion with differing diffusivities parallel and perpendicular to the nerves' axis. To practice this method, diffusion weighted (DW) MRI data are acquired from specimens at different q-values (with different diffusion gradient magnitudes and directions). Parameters associated with tissue microstructure, such as the intra and extra-axonal principal diffusivities and their corresponding principal directions, and the volume fractions of intra and extra-axonal space are then estimated from these data. Improved angular resolution of fiber tract orientation can be obtained for tractography studies and more microstructural information can be gleaned for both diagnostic and therapeutic purposes than from conventional DTI. This technology has been named CHARMED (Composite Hindered and Restricted Model of Diffusion).

Inventors

Peter J. Basser (NICHD) *et al.*

Publications

1. Y Assaf, RZ Freidlin, GK Rohde, PJ Basser. New modeling and experimental framework to characterize hindered and restricted water diffusion in brain white matter. Magn Reson Med. 2004 Nov;52(5):965–978.

2. Y Assaf and PJ Basser. Composite hindered and restricted model of diffusion (CHARMED) MR imaging of the human brain. Neuroimage 2005 Aug 1;27(1):48–58.

3. L Avram, E Özarslan, Y Assaf, A Bar-Shir, Y Cohen, PJ Basser. Three-dimensional water diffusion in impermeable cylindrical tubes: theory versus experiments. NMR Biomed. 2008 Oct;21(8):888–898.

4. A Bar-Shir, L Avram, Y Assaf, PJ Basser, Y Cohen. Experimental Parameters and Diffraction Patterns at High q Diffusion MR: Experiments and Theoretical Simulations. Proc Intl Soc Mag Reson Med. 2007;15:1530.

Patent Status

U.S. Patent Application No. 10/888,917 filed 08 Jul 2004, claiming

priority to 08 Jul 2003 (HHS Reference No. E–079–2003/0–US–02).

Non-Invasive in vivo MRI Axon Diameter Measurement Methods

Description of Technology

This invention describes an improvement and continuation of the CHARMED MRI framework described above, extending this technology to measure the axon diameter distribution (ADD) of nerve bundles (fascicles) in the central and peripheral nervous systems.

The invention essentially consists of a non-obvious combination of CHARMED MRI and an improvement of an NMR method, originally developed for particle sizing in porous media applications, which was extended and enhanced to provide a direct measurement of the ADD within nerve fascicles in the brain, spine or other parts of the peripheral nervous system on a voxel-by-voxel basis. Additionally this approach can be extended to measure the fiber orientation distribution of axons within each voxel of an imaging volume and particularly the myelin content within each voxel.

The significance of this invention is that it represents a way to provide a non-invasive, painless, in vivo measurement of microanatomical (histological) features of nerves (and possibly muscles) that are critically important in medicine and the neurosciences and previously were only available using invasive histological means requiring biopsy. The ADD is altered in abnormal development (possibly even in autism), in degenerative processes (*e.g.*, aging, alcoholism, Alzheimer's disease) and diseases such as ALS (Lou Gehrig's disease). The ADD is a critically important parameter of a nerve bundle from a neuroscience perspective because axon diameter determines the conduction velocity of action potentials, and thus the arrival time and latency of nerve impulses traveling along them. The orientation or directional distribution of axons is important in Tractography applications to help determine how different cortical regions of the brain are connected to each other via white matter pathways. Myelin is dynamically regulated in vivo and affects the electrical insulating property of axons, and thus the conduction velocity of nerves. Myelin content is a critically important parameter in MS and a large number of dysmyelinating and demyelinating diseases as well as in normal and abnormal development.

Inventors

Peter J. Basser (NICHD) *et al.*

Publications

1. Y Assaf, T Blumenfeld-Katzir, Y Yovel, PJ Basser. AxCaliber: a method for measuring axon diameter distribution from diffusion MRI. Magn Reson Med. 2008 Jun;59(6):1347–1354.

2. D Barazany, PJ Basser, Y Assaf. In vivo measurement of axon diameter distribution in the corpus callosum of rat brain. Brain 2009; p 1–11.

3. D Barazany, PJ Basser, Y Assaf. In-vivo measurement of the axon diameter distribution in the rat's corpus callosum. In Proc Intl Soc Mag Reson Med. 2008;16:567.

4. D Barazany, P Basser, Y Assaf. AxCaliber—in-vivo measurement of axon diameter distribution with MRI. In 16th Annual Meeting of The Israel Society for Neuroscience, Eilat, Israel; November 25–27, 2007; p. 8–9.

5. PJ Basser, T Blumenfeld, G Levin, Y Yovel, Y Assaf. AxCaliber: an MRI method to measure the diameter distribution and density of axons in neuronal tissue. In Magn Reson Imaging 2007;25:550.

6. Y Assaf and PJ Basser. Non parametric approach for axon diameter distribution estimation from diffusion measurements. In Proc Intl Soc Mag Reson Med. 2007;15:1536.

7. PJ Basser, T Blumenfeld, G Levin, Y Yovel, Y Assaf. AxCaliber: an MRI method to measure the diameter distribution and density of axons in neuronal tissue. In 8th International Bologna Conference on Magnetic Resonance in Porous Media 2006; p. 37.

8. Y Assaf, T Blumenfeld, G Levin, Y Yovel, PJ Basser. AxCaliber—a method to measure the axon diameter distribution and density in neuronal tissues. In Proc Intl Soc Mag Reson Med. 2006;14:637.

Patent Status

U.S. Patent Application No. 12/114,713 filed 02 May 2008 (HHS Reference No. E–079–2003/1–US–01), which is a CIP of the above U.S. Patent Application No. 10/888,917.

Magnetic Resonance Specimen Evaluation Using Multiple Pulse Field Gradient Sequences

Description of Technology

A further enhancement to the diffusion MRI technologies described above is offered in this further extension. The invention proposes and claims an MRI-method that is based on the measurement and acquisition of multiple pulsed field gradient (m-PFG) rather than the previously used single-pulsed field gradient (s-PFG) MRI sequences. In particular, double PFG (d-PFG) sequences offer higher sensitivity and greater robustness, as it is more sensitive to the effect of ''restriction'', *i.e.*, to water trapped within the axon's intracellular space, and thus to the diameter of the axons. It renders the MR sequence more sensitive to ''pore size'' and ''pore shape'' and thus makes the measurement of the ADD more sensitive and accurate. Moreover, measurements using the multiple-PFG sequence can be performed readily at ''low b'' or ''low q'', making it biologically relevant and clinically feasible.

Inventors

Peter J. Basser and Evren Özarslan (NICHD).

Publications

1. E Özarslan and PJ Basser. Microscopic anisotropy revealed by NMR double pulsed field gradient experiments with arbitrary timing parameters. J Chem Phys 2008 Apr 21;128(15):154511.

2. ME Komlosh, MJ Lizak, F Horkay, RZ Freidlin, PJ Basser. Observation of microscopic diffusion anisotropy in the spinal cord using double-pulsed gradient spin echo MRI. Magn Reson in Med. 2008 Apr;59(4):803–809.

3. E Özarslan and PJ Basser. MR diffusion -''diffraction'' phenomenon in multi-pulse-field-gradient experiments. J Magn Reson. 2007 Oct;188(2):285–294.

4. ME Komlosh, F Horkay, RZ Freidlin, U Nevo, Y Assaf, PJ Basser. Detection of microscopic anisotropy in gray matter and in a novel tissue phantom using double Pulsed Gradient Spin Echo MR. J Magn Reson. 2007 Nov;189(1):38–45.

5. ME Komlosh, RZ Freidlin, F Horkay, Y Assaf, PJ Basser. Detection of microscopic anisotropy in gray matter using d-PGSE. In Proc Intl Soc Mag Reson Med. 2005;13:843.

6. ME Komlosh, MJ Lizak, F Horkay, RZ Friedlin, PJ Basser. (2006) Detection of local anisotropy using double-PGSE filtered imaging. In 47th Experimental Nuclear Magnetic Resonance Conference, 2006.

7. E Özarslan and PJ Basser. Diffusion-Diffraction Phenomenon in multi-PFG experiments. In Science Networking Development Scheme Meeting. Ein–Boqeq, Israel, 2007.

8. M E Komlosh, MJ Lizak, F Horkay, RZ Freidlin, PJ Basser. Observation of microscopic diffusion anisotropy in the spinal cord using double-pulsed gradient spin echo MRI. In Proc Intl Soc Mag Reson Med. 2008;16:763.

9. E Özarslan and PJ Basser. Microscopic anisotropy revealed by double-PFG NMR. In 9th International Bologna Conference on Magnetic Resonance in Porous Media 2008; p. 26.

10. E Özarslan, CG Koay, PJ Basser. Double-PFG diffusion-diffraction in ellipsoidal pores. In 9th International Bologna Conference on Magnetic Resonance in Porous Media 2008; p. 115.

Patent Status

U.S. Provisional Application No. 61/087,968 filed 11 Aug 2008 (HHS Reference No. E–276–2008/0–US–01).

Advantages

The three inventions described above and collectively offered for licensing offer a non-invasive, painless means for measurement quantities such as the axon diameter distribution (ADD) and significant improvements in sensitivity and robustness to existing MRI methods, in particular for imaging of the Central Nervous System, and for *in vivo* measurement of microanatomical (histological) features of nerves (and possibly muscles) that are critically important in medicine and in particular in neuroscience. Furthermore, ADD is altered in abnormal development (possibly even in autism), in degenerative process (*e.g.*, aging, alcoholism, Alzheimer's disease) and diseases such as ALS (Lou Gehrig's disease) and thus the improved sensitivities offered by the subject inventions is of utmost significance for public health.

Development Status

These inventions are fully developed.

Market

The market for MRI in human diagnostics is huge and rapidly growing. The race to improve the sensitivities of MRI measurement and to enhance the capabilities of measuring and examining fine structures in general, and in neuroscience in particular is of significant magnitude. The three inventions described above may collectively offer significant commercial opportunity to MRI companies.

The market for medical imaging equipment industry is approximately $9.0 billion dollars now and has been growing by approximately 7.6% annually. MRI instrumentation constitutes a significant portion of this market.

Related Technology

U.S. Patent No. 5,539,310 issued 23 Jul 1996—''Method and System for Measuring the Diffusion Tensor and for Diffusion Tensor Imaging'' (HHS Reference No. E–203–1993/0).

Licensing Status

Available for licensing.

Licensing Contacts

Uri Reichman, PhD, MBA; 301–435–4616; *UR7a@nih.gov;* John Stansberry, PhD; 301–435–5236; *stansbej@mail.nih.gov*.

Collaborative Research Opportunity

The Eunice Kennedy Shriver National Institute of Child Health and Human Development, Section on Tissue Biophysics and Biomimetics, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize novel MRI methods to probe tissue structure and organization, particularly for neuroimaging applications. Please contact Alan Hubbs, PhD at 301–594–4263 or *hubbsa@mail.nih.gov* for more information.

Dated: April 7, 2009.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E9–8475 Filed 4–13–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Clinical Trials in Motor Neuron Disease.

Date: April 20, 2009.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call)

Contact Person: Shanta Rajaram, PhD, Scientific Review Administrator, Scientific Review Branch, Division Of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC9529, Bethesda, MD 20852, (301) 435–6033, *rajarams@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: April 7, 2009.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–8471 Filed 4–13–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; ''Comparative Evaluation of Assisted Reproductive Technologies and Birth Outcomes''.

Date: May 6, 2009.

Time: 2 p.m. to 3 p.m.

Agenda: To provide concept review of proposed concept review.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Boulevard, Room 5b01, Bethesda, MD 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: April 7, 2009.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–8479 Filed 4–13–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Aneurysm Trial.

Date: April 23, 2009.

Time: 3:15 p.m. to 5:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Richard D. Crosland, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–594–0635, *rc218u@nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Review of NINDS PPG on CA^2+ Signaling in Spines.

Date: April 24, 2009.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Ernest W Lyons, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–4056, *lyonse@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: April 7, 2009.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–8481 Filed 4–13–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of a Public Consultation Meeting on Proposed Revisions to the NIH Guidelines for Research Involving Recombinant DNA Molecule (NIH Guidelines)

There will be a public consultation meeting to solicit stakeholder input regarding the proposed revisions to the NIH Guidelines. The meeting will be held on Tuesday, June 23, 2009 at the Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, Virginia, 22202, from approximately 8 a.m. to 5 p.m.

Discussions will focus on the proposed revisions to the NIH Guidelines which include: (1) Broadening the scope of the NIH Guidelines, which currently cover laboratory and clinical research involving DNA molecules created via recombinant techniques (i.e., joining of DNA molecules), to apply to nucleic acids that are synthesized chemically or by other means without the use of recombinant technology; (2) Revising the criteria for determining when the introduction of a drug resistance trait into a microorganism must be reviewed by the Recombinant DNA Advisory Committee and approved by the NIH Director; and (3) Changing the level of review required for recombinant or synthetic experiments involving more than one-half but less than two-thirds of the genome of certain viruses in tissue culture as described in Section III–E–1 of the NIH Guidelines.

The Notice of Consideration of a Proposed Action under the NIH Guidelines was published in the **Federal Register** on March 4, 2009 (74 FR 9411) and may be located at the following link: *http://oba.od.nih.gov/rdna/rdna.html*.

For further information concerning this meeting contact Ms. Laurie Lewallen, Advisory Committee Coordinator, Office of Biotechnology Activities, Office of the Director, National Institutes of Health, 6705 Rockledge Drive, Room 750, Bethesda, MD 20892–7985, 301–496–9838, *lewallenl@od.nih.gov*.

The meeting will be open to the public, with attendance limited to the 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 above in advance of the meeting.

A draft agenda and additional information for the meeting will be posted on the OBA Web site: *http://oba.od.nih.gov/rdna/rdna.html*. Background and supplemental information may also be obtained by contacting NIH OBA by e-mail *oba@od.nih.gov*.

Dated: April 8, 2009.

Jacqueline Corrigan-Curay,

Acting Director, Office of Biotechnology Activities, National Institutes of Health.

[FR Doc. E9–8478 Filed 4–13–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Request for Research Sites To Measure Composition of Sealed Area Atmosphere in Coal Mines

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), is seeking research sites to measure composition of sealed area atmosphere in coal mines.

NIOSH seeks to conduct scientific studies of the composition of sealed area atmospheres and the mechanisms of methane accumulation within sealed areas. Research questions to be addressed are: (1) Whether potentially explosive gas mixtures exist within sealed areas, (2) how extensive such mixtures might be, (3) how the gas composition changes over time, (4) whether methane layering exists, (5) the homogeneity of the atmosphere, and (6) how barometric pressure changes impact the sealed atmosphere. NIOSH will document measurements of the composition of the sealed area atmosphere over time, analyze the

findings, and report the findings generically to all interested parties.

DATES: Letter of interest must be received within 90 calendar days of publication in the **Federal Register**.

ADDRESSES: Mining companies able to provide NIOSH with mine sites for this research should submit a letter of interest to the NIOSH Pittsburgh Research Laboratory (PRL) Director. The letter should provide the name of the mine and a brief description of the anticipated sealing plans. Any questions should be addressed by phone or e-mail. Please send letter of interest to: R. Güner Gürtunca, PhD, NIOSH Pittsburgh Research Laboratory (PRL), 626 Cochrans Mill Road, Post Office Box 18070, Pittsburgh, PA 15236, telephone (412) 386–6601, E-mail *GGurtunca@cdc.gov*.

Background: Recent research reports published by NIOSH and the U.S. Army Corps of Engineers describe the potential for explosive methane mixtures to develop within sealed areas of underground coal mines. The composition and behavior of the atmosphere within sealed areas are not scientifically well-understood. Areas of interest include the extent and nature of explosive mixtures of gases, how the composition of these mixtures change over time, whether methane layering exists, the homogeneity of the atmosphere, and how barometric pressure changes impact the atmosphere behind seals.

Description: To conduct these measurements, NIOSH will deploy a tube bundle system (TBS) at the mine site for a period of 2 to 5 months (usually not more than 3 months). A TBS is a mechanical system for collecting and analyzing atmospheric samples continuously from anywhere in a mine. The TBS that NIOSH plans to use is a system that is currently being successfully deployed in many Australian underground coal mines. NIOSH seeks three to four underground coal mines throughout the U.S. to cooperate in this study. Underground coal mines covering at least one square mile and producing a medium to high volume of methane are needed. Sampling will be conducted one mine at a time. Either longwall or room-and-pillar mines are acceptable. NIOSH wants to deploy the system in a variety of geological conditions. A soon-to-be-abandoned coal mine is another option for deployment of the TBS.

Prior to sealing, NIOSH will install plastic sample tubing throughout the mine and the future sealed area. This should require a few days to accomplish and will require minimal effort from the cooperating mine. NIOSH will need to be present during the sealing process to insure that the tubing is properly installed through the seals. After sealing, NIOSH will monitor the composition of the atmosphere throughout the sealed area during the initial methane-accumulation phase and for several months thereafter until stability of the sealed atmosphere develops. Collected data will not be analyzed on a real time basis other than to insure that the system is properly working.

NIOSH will require the following assistance from mining company personnel:

- Site-specific guidance concerning the area to be sealed and how to most efficiently run the sampling tube out of the mine to the sampling analysis location.
- Transportation to and from the sealed area during the installation phase of the TBS and to occasionally check the status of the TBS underground.
- A surface location to locate the sampling trailer.
- For a mine site to be acceptable to NIOSH for this testing, the cooperating mine must be installing 120 psi seals that meet the current design standard.
- After installation, NIOSH will require little assistance from mining company personnel until NIOSH is ready to remove the system from the mine when some transportation assistance will be needed.

After the data is analyzed, the cooperating mine will be provided the data pertaining to its mine. NIOSH will present and/or publish data in a manner that does not identify the cooperating mines. Cooperating mines will have the opportunity to review publications and presentations by NIOSH prior to their release. While NIOSH will not identify the mines in its publications, the identity of cooperating mines may be subject to release in response to a request for documents made under the Freedom of Information Act. This announcement does not obligate NIOSH to enter into an agreement with any respondent.

FOR FURTHER INFORMATION CONTACT: R. Güner Gürtunca, PhD, NIOSH Pittsburgh Research Laboratory (PRL), 626 Cochrans Mill Road, Post Office Box 18070, Pittsburgh PA, 15236, telephone (412) 386–6601, e-mail *GGurtunca@cdc.gov*.

Dated: April 6, 2009.

Christine M. Branche,

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

[FR Doc. E9–8462 Filed 4–13–09; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

The Best Pharmaceuticals for Children Act (BPCA) Priority List of Needs in Pediatric Therapeutics

ACTION: Notice.

SUMMARY: For many decades, the pediatric medical community, the public health community, and government agencies have recognized a range of questions regarding the use of therapeutics in children, including the shortage of clinical studies of drugs in children resulting in inadequate labeling for pediatric use. The lack of appropriate labeling results in off-label use of prescription drugs in many children and for many conditions. Contributing factors to this frequent off-label use of drugs in pediatrics include the rarity of some conditions in children with limited patient availability, the ethical concerns regarding the conduct of clinical trials in children, the lack of accurate information about which drugs are used by children, and the lack of long-term data on the medications that are frequently used.

Several steps have been taken in response to the growing awareness of the knowledge gaps that exist in pediatric therapeutics. The BPCA was originally enacted in January 2002 and reauthorized in September 2007, with the overall purpose of improving the level of information about pharmaceuticals used to treat children (*http://www.fda.gov/opacom/laws/pharmkids/contents.html*). The BPCA outlines a number of goals, including the identification and prioritization of therapeutic needs in pediatrics, especially drugs, biologics, or indications that require study. The legislation also calls for the conduct of pediatric research to learn more about the efficacy and safety of drugs in children as well as the training of experts needed to address the knowledge gaps in pediatric pharmacology. To identify drugs in need of further study, the BPCA mandates that the National Institutes of Health (NIH), in consultation with the U.S. Food and Drug Administration (FDA) and experts in pediatrics, develop

a process for prioritizing needs in pediatric therapeutics and publish a priority list at least every 3 years, starting in September 2008. In this notice, we will summarize past efforts to prioritize off-patent drugs that need further study as mandated by the BPCA 2002 and describe the plans for identifying needs in pediatric therapeutics as authorized by the BPCA 2007.

DATES: The list is effective upon publication.

FOR FURTHER INFORMATION CONTACT: Dr. Perdita Taylor-Zapata, *Eunice Kennedy Shriver* National Institute of Child Health and Human Development (NICHD), 6100 Executive Boulevard, Suite 4A–01, Bethesda, MD 20892–7510, e-mail *taylorpe@mail.nih.gov* or *BestPharmaceuticals@mail.nih.gov*, telephone 301–496–9584 (not a toll-free number).

SUPPLEMENTARY INFORMATION: In the **Federal Register** Notice of January 21, 2003 (Vol. 68, No. 13), the NICHD announced the first list of off-patent drugs to be considered for study and described the process used in developing this list. Prioritization of drugs on the list was based in general on three major factors: (1) Frequency of use in the pediatric population, (2) severity of the condition being treated, and (3) potential for providing a health benefit in the pediatric population. These factors follow from the original BPCA legislation, which required NIH to consider (among other criteria) for each drug ''*whether new pediatric studies concerning the drug may produce health benefits in the pediatric population.*''

During the initial years of the BPCA prioritization process (2003–2005), the NICHD identified many individual drugs and indications that required further dosing, efficacy, and safety information. In 2005, based on the input of pediatric experts, an alternative approach was proposed that included identifying and prioritizing pediatric conditions and therapeutic approaches for those conditions. This proposed condition-based approach would allow us to identify gaps in scientific knowledge, determine key research agendas in pediatric medicine, evaluate the treatments of these conditions, and compare the use of drugs within a therapeutic class (both on- and off-patent). This approach would also allow us to obtain focused expertise in specific therapeutic areas that would help elucidate the scientific gaps within the prioritized area.

Update on BPCA Conditions/ Therapeutic Areas

In 2006, the NICHD and the FDA, in collaboration with pediatric experts, considered an alternative approach for prioritization—from a drug/indication approach to a condition-based approach. Please refer to the **Federal Register** Notice of April 25, 2006 (Volume 71, No. 79), and the **Federal Register** Notice of March 28, 2007 (Volume 72, No. 59), for a complete review of the previous prioritization process and therapeutic categories considered under the 2002 BPCA legislation. In addition, an update on the status of all drugs previously listed under BPCA 2002 is provided at *http://bpca.nichd.nih.gov*. The following conditions have been listed to date, with brief updates on progress and/or current NICHD commitments.

- 2006

—*Oncology:* Four clinical trials are under way in collaboration with the National Cancer Institute (NCI) and the Children's Oncology Group (COG) to evaluate the pharmacokinetics (PK)/pharmacodynamics (PD), safety, and efficacy of chemotherapeutic agents used in children with cancer. The drugs under study are methotrexate, vincristine, daunomycin, and actinomycin-D.

—*Sickle Cell Disease (SCD):* A clinical trial of PK, efficacy, and safety of hydroxyurea to treat infants and young children with SCD is under way, with a planned safety follow-up.

—*Attention Deficit Hyperactivity Disorder:* The NICHD is funding basic and clinical research to evaluate the potential toxicity of methylphenidate.

—*Organophosphate poisonings:* Existing data on the use of pralidoxime for this indication is under review.

- 2007

—*Oncology:* The NICHD consulted with experts in pediatric oncology to discuss the use of 13-cis-retinoic acid for the indication of neuroblastoma and to develop a pediatric formulation for this indication.

—*Methicillin-resistant Staphylococcus aureus* (MRSA) infections: The NICHD consulted with experts in infectious disease to discuss the need for PK, safety, and efficacy studies of clindamycin, doxycycline, tetracycline, and trimethoprim-sulfamethoxazole for the treatment of MRSA infections.

—*Asthma:* The NICHD has pursued potential collaborations with research networks within the NIH that are conducting clinical trials and other research in pediatric asthma, specifically networks supported by the National Heart, Lung, and Blood Institute and the National Institute of Allergy and Infectious Diseases.

—*Hypertension:* A written request for the study of hydrochlorothiazide in hypertension has been received by the NICHD. The NICHD has conducted a third working group meeting with experts in the field of pediatric hypertension to discuss studies needed in this area. Future clinical trials are being considered.

- Other areas of continued or future consideration for study under the BPCA discussed in previous **Federal Register** Notices and/or BPCA scientific meetings include:

—*Obesity:* The NICHD is consulting with experts in the field on the treatment of the metabolic syndrome and obesity-related Type-2 diabetes and hypertension.

—*Counterterrorism research:* The NICHD has developed a working group to discuss the needs in pediatric therapeutics for the treatment of chemical, biologic, radiologic, nuclear, and explosive (CBRNE) exposure. The NICHD is collaborating with the National Institute of Neurological Disorders and Stroke on its Counter-Act initiative to develop new and improved medical counter-measures against chemical threats in children and adults.

—*Influenza and parasitic diseases:* The NICHD held preliminary discussions with international experts on global pediatric pharmacology issues. Influenza and parasitic diseases are potential prototypes for future collaborations.

—*Fragile X syndrome:* The NICHD continues to consult with experts in the field, including the National Institute of Mental Health, to consider selected drugs and clinical outcome measures for evaluation and/or study.

—*Depression:* The NICHD has consulted with experts in the field to consider the approaches and design of safety studies of psychotropic medications in children, including antidepressants and other psychotropic medications.

Throughout 2007 and 2008, the NICHD continued its outreach to pediatric organizations and other NIH Institutes and Centers. The goal of these discussions was specifically to identify current gaps in scientific knowledge regarding research and treatment of pediatric conditions with the ultimate goal of determining approved drugs for which future pediatric studies are needed. Minutes of all working group

meetings conducted under the BPCA can be found on the BPCA Web site listed above.

The "New" BPCA

Title V of Public Law 110–85, the Best Pharmaceuticals for Children Act of 2007, was enacted on September 27, 2007, as part of the Food and Drug Administration Amendments Act of 2007.

This legislation, which reauthorizes the BPCA (Section 409I of the Public Health Service Act), extends the provision of additional patent exclusivity for currently on-patent drugs that are being tested for pediatric use. This legislation also extends and expands the research program at the NIH established in the earlier law. The NICHD administers the research program through its Obstetric and Pediatric Pharmacology Branch, working in cooperation with the other NIH Institutes and Centers with significant pediatric research portfolios. Important changes to the 2002 BPCA legislation for the NIH include the following:

- Focus on condition-based approach.
- More flexible funding mechanisms.
- Development of Proposed Pediatric Study Requests (PPSR).
- Feasibility study for the development of a pediatric formulary.

The NICHD will prioritize all therapeutic areas over the upcoming years based on the following considerations:

- Building upon the current foundation established by the 2002 BPCA implementation;
- Evaluating all currently listed drugs and therapeutic areas for feasibility and identification of additional or new scientific and therapeutic gaps;
- Changing the listing process from an individual drug/indication approach to listing needs in pediatric therapeutic areas;
- Determining new areas of need based on consultation with other NIH Institutes and Centers, as well as experts in pediatric therapeutics and the pediatric medical community.

The overall goal of the NIH for implementing the provisions of the BPCA is to improve pediatric therapeutics through scientific advancements and labeling changes that will have an impact on the safe and effective use of drugs in children. This can be accomplished through the following:

- Data gathering

—Using the principles of pharmacoepidemiology research to quantify adverse drug reactions, drug efficacy, and patterns of drug use in large populations to elucidate health services utilization.

—Bringing together multidisciplinary teams to provide input on needs in pediatric therapeutics through outreach to experts in pediatric research in academic institutions; other NIH Institutes and Centers; and pediatric organizations, societies, advocacy groups, and industry.

- Clinical trials

—Phase 1, 2, and 3 clinical trials to increase the knowledge of PK, safety, and efficacy of medicines used in children.

- Basic and translational research

—To inform such areas as developmental pharmacology, pharmacogenomics, and pediatric clinical trial design.

There will be an open scientific meeting annually, starting in 2008, to review and discuss the proposed therapeutic areas, to present progress from ongoing research, and to provide an opportunity for the medical community to provide input into the future therapeutic areas to be studied under the BPCA. Stakeholders will include the NIH, the FDA, and members of the American Academy of Pediatrics, and other pediatric organizations and societies. There will be a report to Congress at least every 3 years starting in 2008. Throughout the year, there will also be smaller group meetings with expert panels within prioritized therapeutic areas under the BPCA. The goals of the working group meetings will be to evaluate and discuss the gaps in scientific knowledge (whether necessary data are available or unavailable) as well as to determine gaps in the treatments of these conditions; for example, to determine what may be needed to enhance the treatment of these conditions in children. These consultations will assist the NICHD in the development of future proposed areas of study encompassing multiple therapeutic categories and/or addressing multiple questions within a therapeutic category.

A scientific prioritization meeting was held in Rockville, Maryland, from June 30 to July 1, 2008, to determine needs in pediatric therapeutics as mandated by the BPCA 2007 legislation. The final BPCA List of Needs in Pediatric Therapeutics, and information on the prioritization process, will be posted on the BPCA Web site *http://bpca.nichd.nih.gov*.

Dated: April 7, 2009.

Raynard S. Kington,

Acting Director, National Institutes of Health.

[FR Doc. E9–8477 Filed 4–13–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2009–0008]

The National Infrastructure Advisory Council

AGENCY: Directorate for National Protection and Programs, Department of Homeland Security.

ACTION: Committee Management; Notice of cancellation for Federal Advisory Committee Meeting.

SUMMARY: The meeting of the National Infrastructure Advisory Council (NIAC) scheduled for Tuesday April 14, 2009 at the J.W. Marriott, 1331 Pennsylvania Avenue, Washington, DC announced in the **Federal Register** on February 17, 2009 (73 FR 7456), will not be held.

FOR FURTHER INFORMATION CONTACT: Contact Matthew Sickbert by phone at 703–235–2888 or by e-mail at *Matthew.Sickbert@associates.dhs.gov*.

Dated: April 9, 2009.

Nancy J. Wong,

Designated Federal Officer for the NIAC.

[FR Doc. E9–8541 Filed 4–10–09; 11:15 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

60-Day Notice of New Information Collection; Form 70–005, ICE Secure Communities Stakeholder ID Assessment Questionnaire; Agency Information Collection Activities: New Information Collection; Comment Request

ACTION: 60-Day Notice of New Information Collection; Form 70–005, ICE Secure Communities Stakeholder ID Assessment Questionnaire.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE), has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until June 15, 2009.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), Joseph M. Gerhart, Chief, Records Management Branch, U.S. Immigration and Customs Enforcement, 500 12th Street, SW., Room 3138, Washington, DC 20536; (202) 732–6337.

Comments are encouraged and will be accepted for sixty days until June 15, 2009. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection*: New information collection.

(2) *Title of the Form/Collection*: ICE Secure Communities Stakeholder ID Assessment Questionnaire.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form 70–005, U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract*: Primary: Individual or Households, Business or other non-profit. The information collected on the Form 70–005 is necessary for U.S. Immigration and Customs Enforcement (ICE) to provide immigration bond obligors a standardized method to notify ICE of address updates. Upon receipt of the formatted information records will then be updated to ensure accurate service of correspondence between ICE and the obligor.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,000 responses at 10 minutes (0.1667 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 166.7 annual burden hours.

Comments and/or questions; requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be directed to: Joseph M. Gerhart, Chief, Records Management Branch, U.S. Immigration and Customs Enforcement, 500 12th Street, SW., Room 3138, Washington, DC 20536; (202) 732–6337.

Dated: April 8, 2009.

Joseph M. Gerhart,

Chief, Records Management Branch, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. E9–8391 Filed 4–13–09; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Change of Use for the Oak Shores Recreation Area at Lake Berryessa, Napa County, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of change in use of public access.

SUMMARY: The Bureau of Reclamation's Central California Area Office (CCAO) at Lake Berryessa will temporarily change public use at Oak Shores Day Use Area. After 50 years, concession contracts have expired and recreational opportunities provided at four closed resorts are no longer available. Until such time as new contracts can be awarded, Reclamation will provide a change from day use to overnight camping at this area. The North End of Oak Shores will be converted from day use only to overnight camping with up to 100 sites. Camping will be considered semi-primitive and will provide potable water spigots, restroom facilities, fire rings, picnic tables and some shade shelters. This change in use will serve to enhance public safety, provide additional public recreational services while providing for and protection of cultural and natural resources.

DATES: *Effective Dates:* The change of use will become effective May 22, 2009 and continue indefinitely until new contracts can be awarded and the new concessioner can begin to provide recreational services.

ADDRESSES: A map is available for review at Reclamation's Lake Berryessa Visitor Center, located at 5520 Knoxville Rd, Napa, California 94558. The map may be viewed between the hours of 10 a.m. and 4 p.m. daily. A copy of the map may be requested from above address, attention: Lake Berryessa Change of Use Map Request.

FOR FURTHER INFORMATION CONTACT: Reclamation, Mid-Pacific Region Public Affairs Office, at 916–978–5100 or Reclamation, Lake Berryessa Recreation Resources Branch, 707–966–2111. Written comments will be accepted regarding this change of use through May 14, 2009. Please send written comments to: Bureau of Reclamation, Attn: Janet Rogers, 5520 Knoxville Rd., Napa, California; Fax: 707–966–0409, E-mail: *jrogers@.usbr.gov*.

SUPPLEMENTARY INFORMATION: This action is being taken under 43 CFR part 423 to provide recreational services to the public, provide public safety and prevent additional resource degradation. Reclamation will change public use of Oak Shores. Presently Oak Shores is being used for day use; picnics, fishing, wildlife viewing, and swimming. By not providing designated camping, additional resource degradation at non-designated sites would occur.

The south side of Oak Shores will remain open for day use and the north side will be sectioned off to provide for the campsites. Camping at Oak Shores will be available for up to fourteen days only during any period of 30 consecutive days, as required by 43 CFR part 423.33.

Reclamation will develop the campgrounds and offer an interim contract to a concessioner for operation of the campgrounds. Security will be provided by the concessioner. A reservation system will be required and fees will be charged based on comparable fees to other areas in a 100 mile radius of Lake Berryessa. The public will be notified of the changes through signage, newspaper press releases and Web site postings.

This order is posted in accordance with 43 CFR part 423.60. Violation of this prohibition or any prohibition listed in 43 CFR part 423 is punishable by fine or imprisonment for not more than six months or both.

Dated: April 7, 2009.

Michael R. Finnegan,

Area Manager, Central California Area Office.

[FR Doc. E9–8468 Filed 4–13–09; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2009–N0077; 81440–1112–0000–F2]

Endangered and Threatened Wildlife and Plants; Permits, Santa Cruz County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application for Incidental Take Permit (ITP); availability of proposed low-effect habitat conservation plan; request for comment.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of an Incidental Take Permit (ITP) application and proposed Habitat Conservation Plan (HCP) under the Endangered Species Act of 1973, as amended (Act). We have received these, along with other pertinent documents available for review, from the Salvation Army (applicant). The applicant anticipates removing an approximate total of 0.084 acre of Mount Hermon June beetle (*Polyphylla barbata*)—occupied habitat, which includes 0.011 acre occupied by the Ben Lomond spineflower (*Chorizanthe pungens* var. *hartwegiana*). Both of these species are listed as endangered under the Act. We request comments on the ITP application and on our preliminary determination that the proposed HCP qualifies as a ''low-effect'' HCP, eligible for a categorical exclusion under the National Environmental Policy Act of 1969 (NEPA), as amended.

DATES: We must receive any written comments on or before May 14, 2009.

ADDRESSES: Please address written comments to Diane Noda, Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003. You may alternatively send comments by facsimile to (805) 644–3958. To obtain copies of draft documents, see ''Availability of Documents'' under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Jen Lechuga, HCP Coordinator (see **ADDRESSES**), telephone: (805) 644–1766 extension 224.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You may obtain copies of the ITP application and HCP by contacting the HCP Coordinator (see **FOR FURTHER INFORMATION CONTACT**). Documents will also be available for review by appointment, during normal business hours, at the Ventura Fish and Wildlife Office (see **ADDRESSES**), or via the Internet at: *http://www.fws.gov/ventura*.

Background

Section 9 of the Act (16 U.S.C. 1531 *et seq.*) and Federal regulations prohibit the ''take'' of fish or wildlife species listed as endangered or threatened. Take of listed fish or wildlife is defined under the Act as ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct'' (16 U.S.C. 1532). However, under limited circumstances, we may issue permits to cover incidental take—i.e., take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are found at 50 CFR 17.32 and 17.22, respectively. The Act's take prohibitions do not apply to federally listed plants on private lands, unless such take would violate State law. In addition to meeting other criteria, actions to be performed under ITPs must not jeopardize the existence of federally listed fish, wildlife, or plants.

Proposed Project

We received an application from the Salvation Army for an incidental take permit (ITP), along with a proposed habitat conservation plan (HCP). The applicant requests a 3-year ITP under section 10(a)(1)(B) of the Act. If we approve the ITP, the applicant anticipates taking approximately 0.084 acre of Mount Hermon June beetle-occupied habitat, which includes 0.011 acre occupied by the Ben Lomond spineflower (*Chorizanthe pungens* var. *hartwegiana*), incidental to the construction of a suite of infrastructure improvements at Camp Redwood Glen, in Santa Cruz County, California (project). The planned infrastructure improvements include small building additions, retaining walls, parking areas, patios, and paths, all of which are being developed primarily to increase the accessibility of the camp facilities for disabled persons. The project would occur within parcel 094–011–20 near the City of Scotts Valley, in Santa Cruz County, California. The project area encompasses approximately 4.5 acres within the 207-acre parcel, and the footprints of the infrastructure improvements would permanently eliminate 0.084 acre of Mount Hermon June beetle habitat, while temporarily impacting an additional 0.017 acre of Mount Hermon June beetle habitat. Approximately 0.012 acre of Ben Lomond spineflower plants that co-occur within the Mount Hermon June beetle habitat would also be disturbed; 0.011 acre would be permanently removed, while less than 0.001 acre would be temporarily impacted.

The Salvation Army's proposed HCP describes the following mitigation and minimization measures to address the effects of the project on the Mount Hermon June beetle and Ben Lomond spineflower. To mitigate for incidental take of the Mount Hermon June beetle and impacts to the Ben Lomond spineflower at the project site, the applicant will purchase 0.101 acre of conservation credits at the recently approved Ben Lomond Sandhills Preserve of the Zayante Sandhills Conservation Bank, operated by PCO, LLC. In addition, the applicant will implement a number of minimization measures intended to reduce impacts from the proposed project on the Mount Hermon June beetle and Ben Lomond spineflower. A summary of the minimization measures proposed by the applicant follows: (1) If ground disturbing activities are conducted during the Mount Hermon June beetle flight season, black plastic will be used to cover exposed soil to prevent burrowing of dispersing male Mount Hermon June beetles; (2) larvae and adult Mount Hermon June beetles identified during project activities will be captured and relocated; (3) night lighting will be minimized to prevent disruption of dispersing Mount Hermon June beetles; (4) the use of landscaping elements that deter use by Mount Hermon June beetles will be minimized; (5) Ben Lomond spineflower seeds will be collected from areas that would be disturbed and distributed in appropriate habitat; and (6) non-native plants will be removed from the Ben Lomond spineflower population that would be disturbed.

The project is located on soils known as ''Zayante sands.'' These soils support the Zayante sandhills ecosystem, which occurs exclusively in the Santa Cruz Mountains near the city of Scotts Valley and the communities of Ben Lomond, Mount Hermon, Felton, Olympia, Corralitos, and Bonny Doon. The Mount Hermon June beetle is restricted to Zayante sands soils in the Scotts Valley-Mount Hermon-Felton-Ben Lomond area, and is found in association with Zayante sandhills vegetation, which is characterized by a mosaic of ponderosa pines (*Pinus ponderosa*) and silverleaf manzanita (*Arctostaphylos silvicola*), and areas that are sparsely vegetated with grasses and herbs.

National Environmental Policy Act

We are requesting comments on the permit application and on our preliminary determination that the proposed HCP qualifies as a ''low effect'' HCP, eligible for a categorical exclusion under the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 et seq.). We explain the basis for this possible determination in our draft Environmental Action Statement (EAS) and associated Low Effect Screening Form. The draft HCP, Low Effect Screening Form, and EAS are available for public review.

We have made a preliminary determination that the HCP qualifies as a ''low-effect'' plan as defined by our Habitat Conservation Planning Handbook (November 1996). Our determination that a HCP qualifies as a low-effect plan is based on the following criteria: (1) Implementation of the HCP would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the HCP would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the HCP, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in significant cumulative effects to the environmental values or resources that would be considered significant. As more fully explained in our EAS and associated Low Effect Screening Form, the applicant's proposal for the construction of infrastructure improvements qualifies as a ''low effect'' plan for the following reasons:

(1) Approval of the HCP would result in minor or negligible effects on the Mount Hermon June beetle and Ben Lomond spineflower and their habitat. We do not anticipate significant direct or cumulative effects to the Mount Hermon June beetle or Ben Lomond spineflower resulting from the proposed project.

(2) Approval of the HCP would not have adverse effects on unique geographic, historic, or cultural sites, or involve unique or unknown environmental risks.

(3) Approval of the HCP would not result in any growth-inducing impacts and would not result in significant cumulative impacts or adverse effects on public health or safety.

(4) The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate a Federal, State, local, or tribal law or requirement imposed for the protection of the environment.

(5) Approval of the HCP would not establish a precedent for future actions or represent a decision in principle about future actions with potentially significant environmental effects.

We, therefore, have made a preliminary determination that approval of the HCP qualifies as a categorical exclusion under NEPA, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). Based upon this preliminary determination, we do not intend to prepare further NEPA documentation. We will consider public comments in making our final determination on whether to prepare such additional documentation.

Public Review and Comment

If you wish to comment on the Low Effect Screening Form, draft EAS, or the proposed HCP, you may submit your comments to the address listed in the **ADDRESSES** section of this document.

We will evaluate the permit application, HCP, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. If we determine that the application meets those requirements, we will issue the ITP for the incidental take of the Mount Hermon June beetle. We will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in the final analysis to determine whether or not to issue the ITP.

Public Availability of Comments

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

Authority: We provide this notice pursuant to section 10(c) of the Act and pursuant to implementing regulations for NEPA (40 CFR 1506.6).

Dated: April 8, 2009.

Diane K. Noda,

Field Supervisor, Ventura Fish and Wildlife Office, Ventura, California.

[FR Doc. E9–8474 Filed 4–13–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Nottawaseppi Huron Band of the Potawatomi Indian Liquor Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Secretary's certification of the Nottawaseppi Huron Band of the Potawatomi Indian Liquor Ordinance. The Ordinance regulates and controls the possession, sale, and consumption of liquor within the tribal lands. The tribal lands are located in Indian Country and this Ordinance allows for possession and sale of alcoholic beverages within their boundaries. This Ordinance will increase the ability of the tribal government to control the tribe's liquor distribution and possession, and at the same time will provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of tribal services.

DATES: *Effective Date:* This Ordinance is effective April 14, 2009.

FOR FURTHER INFORMATION CONTACT: David Christensen, Tribal Operations Officer, Midwest Regional Office, One Federal Drive, Room 550, Ft. Snelling, MN 55111, Telephone (612) 725–4554; or Elizabeth Colliflower, Office of Tribal Services, 1849 C Street, NW., Mail Stop 4513–MIB, Washington, DC 20240; Telephone (202) 513–7640.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian Country. The Tribal Council of the Nottawaseppi Huron Band of the Potawatomi Indians initially adopted this Liquor Ordinance on February 14, 2008, and adopted a revised version on November 20, 2008. The purpose of this Ordinance is to govern the sale, possession and distribution of alcohol within the Nottawaseppi Huron Band of the Potawatomi Indian's tribal land.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary-Indian Affairs. I certify that this Liquor Ordinance of the Nottawaseppi Huron Band of the Potawatomi Indians was duly adopted by its Tribal Council by Resolution No. 11–20–08–03 on November 20, 2008.

Dated: March 26, 2009.

George T. Skibine,

Deputy Assistant Secretary for Policy and Economic Development.

The Liquor Ordinance of the Nottawaseppi Huron Band of the Potawatomi Indians reads as follows:

Liquor Ordinance

Section 101. Conformity With State Law and This Ordinance

The introduction, possession, transportation, and sale of intoxicating beverages shall be lawful within the Indian country under the jurisdiction of the Tribe, provided that such introduction, possession, transportation, and sale are in conformity with the laws of the State of Michigan and with the provisions of this Ordinance.

Section 102. Definitions

As used in this ordinance the following definitions apply:

(a) *Alcohol* means that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions and mixtures of this substance.

(b) *Alcoholic beverage* means a compound for human consumption as a drink that contains more than 0.5% of alcohol by volume.

(c) *Beer* means any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than four percent of alcohol by weight and not less than one-half of one percent of alcohol by volume. For the purposes of this Title, any such beverage, including ale, stout and porter, containing more than four percent of alcohol by weight shall be referred to as ''strong beer.''

(d) *Immediate family* means spouse, brother, sister, child or parent.

(e) *Intoxicated person* means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol.

(f) *Licensee* includes the licensee's employees and agents and means one who holds a valid license from the Tribe to sell alcoholic beverages at retail on the Reservation.

(g) *Liquor* means the four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented, spirituous, vinous or malt liquor, or combinations thereof and mixed liquor, a part of which is fermented, spirituous, vinous or malt liquor, or otherwise intoxicating. Every liquid or solid or semi-solid or other substance, patented or not, containing alcohol, spirits, wine or beer and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption and any liquid, semi-solid, solid or other substance which contains more than one percent of alcohol by weight shall be conclusively deemed to be liquor within the meaning of this Ordinance.

(h) *Minor* means a person under 21 years of age.

(i) *Ordinance* means the Ordinance for the authorization and regulation of alcoholic beverages adopted pursuant to 18 U.S.C. 1161.

(j) *Person* means any applicant for a liquor license.

(k) *Reservation* means the Nottawaseppi Huron Band of the Potawatomi Indians Reservation.

(l) *Spirits* means any beverage which contains alcohol by distillation, including wines exceeding seventeen percent of alcohol by weight.

(m) *Tribal Council* means the Nottawaseppi Huron Band of the Potawatomi Indians Tribal Council, the governing body of the Nottawaseppi Huron Band of the Potawatomi Indians.

(n) *Tribe* means Nottawaseppi Huron Band of the Potawatomi Indians

(o) *Wine* means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, etc.) or other agricultural products containing sugar, to which any saccharine substances may have been added before, during or after fermentation and containing not more than seventeen percent of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding seventeen percent of alcohol by weight.

Section 103. Tribal License or Permit Required

No person shall engage in the sale of intoxicating beverages within the Indian country under the jurisdiction of the Tribe, unless duly licensed, permitted or authorized to do so by the Tribe in accordance with the terms of this Ordinance and the State of Michigan, including Section 10 of the Tribal-State Class III Gaming Compact.

Section 104. Application for Tribal Liquor License; Requirements

No Tribal license shall issue under this Ordinance except upon a sworn application filed with the Tribal Council containing the following:

(a) Agreement by the applicant to accept and abide by all conditions of the Tribal license and federal law.

(b) Sworn statement that the applicant has not been convicted of a felony.

(c) In the case of the tribally operated casino the application shall be *in the name* of the FireKeepers Casino and shall be filed by the General Manager of the Casino.

(d) Satisfactory proof that notice of the application has been posted in a prominent, noticeable place on the premises where intoxicating beverages are to be sold for at least 10 days prior to consideration by the Tribal Council and has been published at least once in such local newspaper serving the community that may be affected by the license as the Huron Band of the Potawatomi Chairman or Secretary may authorize. The notice shall state the date, time and place when the application shall be considered by the Tribal Council pursuant to Section 105 of this Ordinance.

Section 105. Hearing on Application for Tribal Liquor License

All applications for a Tribal liquor license shall be considered by the Tribal Council in open session at which the applicant, his attorney and any person protesting the application shall have the right to be present, and to offer sworn oral or documentary evidence relevant to the application. After the hearing, the Tribal Council shall determine whether to grant or deny the application, based on:

(a) whether the requirements of Section 104 have been met, and

(b) whether the Tribal Council, in its discretion, determines that granting the license is in the best interests of the Tribe.

Section 106. Conditions of the Tribal License

Any Tribal license issued under this Ordinance shall be subject to such reasonable conditions as the Tribal Council shall fix, including, but not limited to the following:

(a) The license shall be for a term of one year.

(b) The licensee shall at all times maintain an orderly, clean, and neat establishment, both inside and outside the licensed premises.

(c) The licensed premises shall be subject to patrol by the Tribal Police

Department, and such other law enforcement officials as may be authorized under federal or Tribal law.

(d) The licensed premises shall be open to inspection by duly authorized Tribal officials at all times during the regular business hours.

(e) Subject to the provisions of subsection ''f'' of this section, no intoxicating beverages shall be sold, served, disposed of, delivered, or given to any person, or consumed on the licensed premises except in conformity with the hours and days prescribed by the laws of the State of Michigan, and in accordance with the hours fixed by the Tribal Council, provided that the licensed premises shall not operate or open earlier or operate or close later than is permitted by the laws of the State of Michigan.

(f) No liquor shall be sold within 200 feet of a polling place on Tribal election days, or when a referendum is held of the people of the Tribe, or on special days of observance as designated by the Tribal Council.

(g) Any spirits resold for consumption at a Class III gaming establishment shall be purchased from the Michigan Liquor Control Commission, and beer and wine from distributors licensed by the Michigan Liquor Control Commission.

(h) All acts and transactions under authority of the Tribal liquor license shall be in conformity with the laws of the State of Michigan, and shall be in accordance with this Ordinance and any Tribal license issued pursuant to this Ordinance.

(i) No person under the age permitted under the law of the State of Michigan shall be sold, served, delivered, given or allowed to consume alcoholic beverages in the licensed establishment and/or area.

(j) Alcoholic beverages shall not be given away in any facility licensed under this Ordinance.

(k) No person licensed under this Ordinance shall sell, deliver, give away, or cause to be sold, delivered, or given away any alcoholic beverage to any intoxicated person, or any person who appears to be intoxicated.

Section 107. License Not a Property Right

Notwithstanding any other provision of this Ordinance, a Tribal liquor license is a mere permit for a fixed duration of time. A Tribal liquor license shall not be deemed a property right or vested right of any kind, and the granting of a Tribal liquor license shall not give rise to a presumption or legal entitlement to the granting of such license for a subsequent time period.

Section 108. Assignment or Transfer

No Tribal license issued under this Ordinance shall be assigned or transferred without the written approval of the Tribal Council expressed by formal resolution.

Section 109. Cancellation and Suspension

Any license issued hereunder may be suspended or canceled by the Tribal Council for the breach of any of the provisions of this Ordinance, or of the Tribal license, upon hearing before the Tribal Council after 10 days notice to the licensee. The decision of the Tribal Council shall be final.

Section 110. Incorporation of Michigan Laws by Reference

(a) In accordance with 18 U.S.C. 1161, the Tribe hereby adopts and applies as tribal law those Michigan laws, as amended, relating to the sale and regulation of alcoholic beverages encompassing the following areas: sale to a minor; sale to a visibly intoxicated individual; sale of adulterated or misbranded liquor; hours of operation; and similar substantive provisions. The tribal laws that are defined by reference to the substantive areas of Michigan laws referred to in this section shall apply in the same manner and to the same extent as such laws apply elsewhere in Michigan to off-Reservation transactions unless otherwise agreed by the Tribe and State.

(b) Whenever such Michigan laws are incorporated by reference, amendments to those laws shall also be deemed to be incorporated upon their effective date in the State of Michigan, without further action by the Tribal Council.

(c) Nothing in this Ordinance shall be construed as a consent by the Tribe to the jurisdiction of the State of Michigan or any of its courts or subordinate political subdivisions or municipalities within the Reservation over any activity arising under or related to the subject of this Ordinance, nor shall anything in this Ordinance constitute an express or implied waiver of the sovereign immunity of the Tribe.

Section 111. General Penalties

Any person adjudged to be in violation of this Ordinance, including any lawful regulation under this Ordinance, shall be subject to a civil fine of not more than five hundred dollars ($500.00) for each such violation. The Tribal Council may adopt by resolution a separate schedule for fines for each type of violation, taking into account the seriousness and threat the violation may pose to the general health and welfare. Such schedule may also provide, in the case of repeated violations, for imposition of monetary penalties greater than the five hundred dollar ($500.00) limitation set forth above. The penalties provided for in this section shall be in addition to any criminal penalties that may be imposed under applicable law.

Section 112. Initiation of Action

Any violation of this Ordinance shall constitute a public nuisance. The Tribe may initiate and maintain an action in Tribal Court to abate and permanently enjoin any nuisance declared under this Ordinance. Any action taken under this section shall be in addition to any other penalties provided for in this Ordinance or elsewhere under Tribal or federal law. The Tribe shall not be required to give bond in an action under this section.

Section 113. Regulations

The Tribal Council is authorized to adopt such regulations as may be necessary to implement the provisions of this Ordinance.

NOTICE OF APPLICATION FOR RETAIL ALCOHOLIC BEVERAGES LICENSE [or other purpose]

The Tribal Council hereby gives notice that on the ____ day of ____, ____, [name of applicant] filed an application for a Tribe retail beverages license [or to transfer, or renew a license as the case may be] for [identify location of premises where beverages are to be sold]. Residents of ____ county [counties], or any person who has extended credit to the transferor, may protest against the issuance [or transfer or renewal] of the license. Protests may be mailed to the Tribe, Administration Building, ____, Michigan, ____, on or before the ____ day of ____, ____.

Dated ____ Signed_____

[FR Doc. E9–8449 Filed 4–13–09; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2009–N0078; 96300–1671–0000–P5]

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with

endangered species and/or marine mammals. Both the Endangered Species Act and the Marine Mammal Protection Act require that we invite public comment on these permit applications.

DATES: Written data, comments or requests must be received by May 14, 2009.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 212, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Richard E. McFalls, Alabaster, AL, PRT–209358.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Marine Mammals

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: U.S. Geological Survey, Alaska Science Center, Anchorage, AK, PRT–690038.

The applicant requests an amendment to the permit to take polar bears (*Ursus maritimus*) by using internal temperature data-loggers, collecting muscle biopsies, and using glue-on or ear tag radio transmitters for the purpose of scientific research. This notification covers activities to be conducted by the applicant over the remainder of the 5-year permit.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Dated: April 3, 2009.

Lisa J. Lierheimer,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E9–8390 Filed 4–13–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2008–N0224; 21450–1112–0000–F2]

Regional Habitat Conservation Plan, Williamson County, TX

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability of record of decision.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), make available a record of decision (ROD) under the National Environmental Policy Act of 1969 (NEPA). This ROD documents our decision to select an alternative including implementation of the Williamson County Regional Habitat Conservation Plan (RHCP). Our selected action (Alternative B, described below and in the ROD) entails the issuance of a 30-year incidental take permit (ITP) to Williamson County, Texas (the County), to incidentally take golden-cheeked warbler (*Dendroica chrysoparia*), black-capped vireo (*Vireo atricapilla*), Bone Cave harvestman (*Texella reyesi*), and Coffin Cave mold beetle (*Batrisodes texanus*). The RHCP will mitigate for take by purchasing mitigation credits in an existing conservation bank and by acquiring and managing replacement habitats and additional conservation measures as specifically described in the RHCP.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Seawell, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758; (512) 490–0057.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a ROD, which we developed in compliance with the agency decision-making requirements of the National Environmental Policy Act (NEPA) of 1969, as amended. The ROD documents our decision to select the alternative including implementation of the Williamson County Regional Habitat Conservation Plan (RHCP). We have described in detail all alternatives, and evaluated and analyzed them, in our August 2008 final environmental impact statement (FEIS) and also in our regional habitat conservation plan (RHCP). The ROD is designed to: (1) State our decision, present the rationale for its selection, and discuss its implementation; (2) identify the alternatives we considered in reaching the decision; and (3) state whether we have adopted all means to avoid or minimize environmental harm from implementation of the selected alternative in accordance with NEPA.

Based on our review of the alternatives and their environmental consequences described in our FEIS, we have decided to implement Alternative B, the Proposed RHCP (the proposed action). The selected action entails the issuance of a Section 10(a)(1)(B) incidental take permit (ITP) to Williamson County, Texas (the County), to incidentally take golden-cheeked warbler (*Dendroica chrysoparia*), black-capped vireo (*Vireo atricapilla*), Bone Cave harvestman (*Texella reyesi*), and Coffin Cave mold beetle (*Batrisodes texanus*). We refer to all four species collectively as ''the covered species.'' The RHCP will mitigate for take of these species by purchasing mitigation credits in an existing conservation bank and by acquiring and managing, in perpetuity, replacement habitats and additional conservation measures as described specifically in the RHCP. While the County will hold the Permit, the entity that will manage the Permit will be the Williamson County Conservation Foundation (Foundation).

The term of the permit is 30 years (2008–2038). The Foundation will implement mitigation and minimization measures according to the schedule in the RHCP. By year 4 of the RHCP, the Foundation will acquire 1,000 acres of mitigation credits for golden-cheeked warbler (GCWA) in an existing conservation bank. In addition, the County will purchase GCWA habitat

that will be an additional source of mitigation. The Foundation will mitigate take of black-capped vireo (BCVI) by restoring and enhancing BCVI habitat in perpetually preserved Service-approved conservation areas.

The Foundation will mitigate take of the Bone Cave harvestman and Coffin Cave mold beetle by acquiring and managing from 9 to as many as 15 protected karst faunal areas (KFAs) in the County. The County will acquire, through direct purchase or acquisition of perpetual conservation easements, a minimum of nine protected KFAs (totaling approximately 700 acres of cave preserves) by year 17 of the RHCP. In addition, the Foundation will consolidate the management of up to 10 of 22 existing conservation areas (totaling an estimated 400 to 800 acres) to enhance their viability as KFAs, control their availability for scientific research, and ensure their long-term contribution to recovery.

Background

The County applied to us for an ITP. As part of the permit application, the County developed and will implement the RHCP to meet the requirements of an ITP. Our issuance of an ITP allows the County to take the covered species that would result from proposed road construction, maintenance, and improvement projects; utility construction and maintenance; school development and construction; public or private construction and development; and land clearing within western Williamson County during the 30-year ITP period.

The Secretary of the Interior has delegated to us the authority to approve or deny an ITP in accordance with the ESA. To act on the County's permit application, we must determine that the RHCP meets the approval criteria specified in the ESA, including Federal regulations in the Code of Federal Regulations (CFR) at 50 CFR 17.22 and 17.32. The issuance of an ITP is a Federal action subject to NEPA compliance, including the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the NEPA (40 CFR 1500–1508).

On September 16, 2008, we issued a final environmental impact statement (FEIS) to evaluate the potential impacts associated with issuance of an ITP for implementation of the RHCP and to evaluate alternatives, along with the final RHCP (73 FR 53440). We included public comments and responses associated with the Draft EIS and Draft RHCP in an appendix to the FEIS.

Purpose and Need

The purpose of the Section 10(a)(l)(B) permit is to authorize incidental take associated with the activities listed in the background section.

We identified key issues and relevant factors through public scoping and also through working with a Citizens' Advisory Committee; a Scientific Advisory Team; other agencies and groups; and comments from the public. These issues included the needs for: (1) Development to continue in the County; (2) mitigation of impacts on covered species; and (3) mitigation of impacts on listed species. We thoroughly examined these issues in the draft and final EIS and RHCP. No new significant issues arose following publication of the draft documents.

Environmentally Preferable Alternative

Our selected alternative is the Proposed RHCP, the preferred alternative (Alternative B) as we described in the FEIS. This alternative provides for the issuance of an ITP to the County for take that would occur as a result of projects described above. This alternative includes implementation of RHCP measures to minimize and mitigate the potential take of Federally listed species to the maximum extent practicable. The intent of this alternative is to allow continued development in the County; to minimize the biological, environmental, and socioeconomic impacts; and to satisfy the habitat, species, and issuance criteria of section 10 of the ESA.

To mitigate for the loss of 6,000 acres of GCWA habitat, the County will purchase habitat at a 1:1 ratio. For the loss of 4,267 acres of BCVI, the Foundation will mitigate impacts primarily through habitat restoration, habitat management, enhancement of existing protected BCVI habitat, or an alternate, Service-approved mitigation program. For the impact of up to 210 caves occupied by the Bone Cave harvestman and Coffin Cave mold beetle, mitigation will be to acquire and manage 9 to 12 KFAs, a minimum of 3 KFAs in each of the karst faunal regions occupied by the covered species.

We considered two additional alternatives in the FEIS:

• *Alternative A (No Action)*: The No Action alternative assumed that we would not issue a regional permit for the County. Although development could occur on lands not occupied by endangered species, development activities that would cause take of listed species would require individual authorizations through section 7 or section 10(a)(1)(B) of the ESA. Individual entities could also elect to avoid take on properties containing endangered species by avoiding direct and indirect impacts on the species (*i.e.*, take-avoidance). Processing individual section 7 consultations and section 10(a) permits could cause delays in permit issuance by the agency or approval of a proposed project, because we often take 1 to 2 years to process an individual permit.

• *Alternative C (Modified (Reduced Take and Mitigation) Williamson County RHCP)*: Alternative C would be similar to our Selected Alternative, except:

1. The ITP would cover fewer species;
2. The amount of permitted take, and the mitigation required for the take, would be smaller;
3. Section 6 funds would not be sought to acquire additional KFAs over and above mitigation efforts; and
4. The anticipated participation rate would be lower because fewer species would be covered, less take would be authorized, and less mitigation provided.

Compared with that under Alternative B, allowable take for the GCWA would be reduced from 6,000 acres to 1,000 acres. Under Alternative C, mitigation for impacts to GCWA habitat would be limited to the 1,000 acres of credits from the Hickory Pass Ranch Conservation Bank and 115.52 acres of credits from the Whitney Tract. Once those credits were exhausted, no additional take or mitigation would be authorized for the GCWA under the plan without an amendment; thus, no efforts would be made to establish additional preserves for GCWA in the County or to seek additional mitigation credits outside of the County. No take or mitigation would be authorized under the plan for BCVI. However, the conservation measures for the Georgetown salamander and the public outreach and research program identified in the Proposed Action would remain the same, with less allotted funding.

Decision

Our decision is to issue an ITP allowing the County to implement the preferred alternative (Alternative B), as it is described in the Final EIS. Our decision is based on a thorough review of the alternatives and their environmental consequences. Implementation of this decision entails the issuance of the ITP, including all terms and conditions governing the permit. Implementation of this decision requires adherence to all of the minimization and mitigation measures specified in the RHCP, as well as

monitoring and adaptive management measures.

Rationale for Decision

We have selected the preferred alternative (Alternative B) for implementation based on multiple environmental and social factors, including potential impacts and benefits to covered species and their habitat, the extent and effectiveness of minimization and mitigation measures, and social and economic considerations.

In order for us to be able to issue an ITP, we must ascertain that the RHCP meets the criteria set forth in 16 U.S.C. 1539(a)(2)(A) and (B). We have made that determination. These criteria, and how the RHCP satisfies these criteria, are summarized below:

1. The taking will be incidental. We find that the take will be incidental to otherwise lawful activities, including the proposed road construction, maintenance, and improvement projects; utility construction and maintenance; school development and construction; public or private construction and development; and land clearing. The take of individuals of covered species will be primarily due to habitat destruction and/or alteration.

2. The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such takings. The County has committed to a wide variety of conservation measures, land acquisition, management activities, monitoring, adaptive management, and other strategies designed to avoid and minimize harm to the covered species and mitigate for any unavoidable loss. Impacts to the covered species will be minimized and mitigated as described in the selected alternative section above.

3. The applicant will develop an HCP and ensure that adequate funding for the HCP will be provided. The County has developed the RHCP and committed to fully funding all of the obligations necessary for its implementation. These obligations include the cost for purchase of GCWA, BCVI, Bone Cave harvestman, and Coffin Cave mold beetle habitat, management of mitigation lands in perpetuity, enforcement of conservation easements, and monitoring of species populations and habitat. In addition, the County has committed to adaptive management measures that identify areas of uncertainty and questions that need to be addressed to resolve this uncertainty; developed alternative management strategies and determine which experimental strategies to implement; integrate a monitoring program that is able to acquire the necessary information for effective strategy evaluation; and incorporate feedback loops that link implementation and monitoring to the decision-making process that result in appropriate changes in management. To accomplish RHCP implementation, the County estimated that costs could total up to $80.8 million. The County will fund the actual costs of implementing the RHCP by advance funding from participation fees, endowment investment income, road improvement mitigation funds, and tax benefit financing.

The Service's No Surprises Assurances are discussed in the RHCP, and measures to address changed and unforeseen circumstances have been identified. Adaptive management in the form of conservation, mitigation, or management measures and monitoring will be implemented to address changed circumstances over the life of the permit that were able to be anticipated at the time of RHCP development. Unforeseen circumstances would be addressed through the Service's close coordination with the County in the implementation of the RHCP. The County has committed to a coordination process to address such circumstances.

We have, therefore, determined that the County's financial commitment and plan, along with the County's willingness to address changed and unforeseen circumstances in a cooperative fashion, is sufficient to meet this criterion.

4. The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. As the Federal action agency considering whether to issue an ITP to the County, we have reviewed the issuance of the ITP under section 7 of the ESA. Our biological opinion concluded that issuance of the ITP will not jeopardize the continued existence of the GCWA, BCVI, Bone Cave harvestman, and Coffin Cave mold beetle in the wild. No critical habitat has been designated for any of the covered species in the action area, and thus none will be affected.

5. The applicant agrees to implement other measures that the Service requires as being necessary or appropriate for the purposes of the HCP. We have cooperated with the County in the development of the RHCP. We commented on draft documents, participated in advisory group meetings, and worked closely with the County in every step of plan and document preparation, so that conservation of the covered species would be assured and recovery would not be jeopardized. The RHCP incorporates our recommendations for minimization and mitigation of impacts, as well as steps to monitor the effects of the RHCP and ensure success. Annual monitoring, as well as coordination and reporting mechanisms, have been designed to ensure that changes in conservation measures can be implemented if measures prove ineffective or impacts exceed estimates. It is our position that no additional measures are required to implement the intent and purpose of the RHCP to those detailed in the RHCP and its associated ITP.

We determine that the preferred alternative best balances the protection and management of suitable habitat for covered species, while allowing and providing a streamlined process for ESA compliance for continued development in the County. Considerations used in this decision include: (1) Mitigation will benefit GCWA, BCVI, Bone Cave harvestman, and Coffin Cave mold beetle, managed for the species in perpetuity, as well as other conservation measures to protect and enhance habitat; (2) mitigation measures species will fully offset anticipated impacts of development to the species and provide recovery opportunities; and (3) the RHCP is consistent with the GCWA, BCVI, Bone Cave harvestman, and Coffin Cave mold beetle recovery plans.

Thomas L. Bauer,

Acting Regional Director, Region 2.

[FR Doc. E9–8388 Filed 4–13–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–ET; NVN–83210; 9–08807; TAS:14x1109]

Public Land Order No. 7731; Withdrawal of Public Lands for Gold Point and Ione Townsites; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order No. 7731, Withdrawal of Public Lands for Gold Point and Ione Townsites; Nevada.

SUMMARY: This order withdraws approximately 672 acres of public lands from location and entry under the United States mining laws for a period of 5 years to protect historic and cultural resources within the Gold Point and Ione Townsites pending special legislation that would resolve land ownership conflicts.

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

FOR FURTHER INFORMATION CONTACT: Jacqueline Gratton, Bureau of Land Management, Nevada State Office, P.O. Box 12000, 1340 Financial Boulevard, Reno, Nevada 89520, 775–861–6532.

SUPPLEMENTARY INFORMATION: The withdrawal will preserve the historic and cultural resources within the towns of Gold Point and Ione in aid of legislation.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), *it is ordered* as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the United States mining laws:

Mount Diablo Meridian

T. 7 S., R. 41½ E.,
Sec. 3, SE¼NW¼, N½NE¼SW¼, SW¼NE¼SW¼, W½SW¼, W½SE¼SW¼, SE¼SE¼SW¼, and SW¼SW¼SE¼;
Sec. 10, N½NW¼NW¼NE¼, N½NE¼NE¼NW¼, NW¼NE¼NW¼, and N½NW¼NW¼.

The area described contains 230 acres in Esmeralda County.

T. 13 N., R. 39 E.,
Sec. 32, E½SE¼SE¼;
Sec. 33, NE¼SE¼ and S½;
Sec. 34, lots 9 to 26, inclusive, and S½NW¼.

The area described contains 442.02 acres in Nye County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of lands under lease, license, or permit or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 5 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (2000), the Secretary determines that the withdrawal shall be extended.

Dated: April 10, 2009.

Ken Salazar,

Secretary of the Interior.

[FR Doc. E9–8604 Filed 4–10–09; 4:15 pm]

BILLING CODE 4310–HC–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement—Evidence Based Strategic Planning in Southern California

AGENCY: National Institute of Corrections, Department of Justice.

ACTION: Solicitation for a cooperative agreement.

SUMMARY: The National Institute of Corrections (NIC), Community Corrections Division, is seeking applications for the development of evidence based strategic plans in four Southern California County Probation Departments. Efforts to develop initial plans in county probation departments will happen over a 9-month period, and will be carried out in conjunction with the NIC Community Corrections Division. NIC Community Corrections staff will direct and participate in the planning efforts to ensure consistency with other evidence based planning and implementation work coordinated through NIC. Note that this particular Cooperative Agreement is intended to cover only the initial strategic planning phase for each site, as described below in the section entitled **SUPPLEMENTARY INFORMATION.**

DATES: Applications must be received by 4 p.m. EDT on Tuesday, June 2, 2009.

ADDRESSES: Mailed applications must be sent to: Director, National Institute of Corrections, 320 First Street, NW., Room 5007, Washington, DC 20534. Applicants are encouraged to use Federal Express, UPS, or a similar service to ensure delivery by the due date, as mail at NIC is sometimes delayed due to security screening.

Applicants who wish to hand-deliver their applications should bring them to 500 First Street, NW., Washington, DC 20534, and dial 202–307–3106, ext. 0, at the front desk for pickup.

Faxed or e-mailed applications will not be accepted.

FOR FURTHER INFORMATION CONTACT: A copy of this announcement and the required application forms can be downloaded from the NIC Web page at *http://www.nicic.gov/cooperativeagreements*.

All technical questions concerning this announcement should be directed to Pam Davison at 202–353–0484 or at *pdavison@bop.gov*.

SUPPLEMENTARY INFORMATION:

Background: Since 2002, NIC has been involved in evidence based planning and implementation initiatives in several State and local court and community corrections agencies. The importance of up front organizational development work, encompassed within the strategic planning process, has been critical to those agencies that have desired to maintain continuing service enhancements over time.

Strategic Planning: For purposes of this Cooperative Agreement, strategic planning includes the following activities: 1. On site orientation to evidence based information pertaining to behavior change, recidivism reduction, and organizational development processes. 2. Up front organizational assessment of each participating Probation Department, related at a minimum to: (a) Readiness for change; (b) Knowledge of evidence based principles; (c) Leadership prowess; (d) Operational and project management skills; and (e) Collaborative partnerships. 3. Inventory of risk tools, performance evaluation processes and data reports. 4. Investigation of each agency's access to data and capability for reporting and data analysis. 5. Establishment of a planning process and documentation framework. 6. Creation of adjunct sub-plans as needed that roll up to the umbrella plan; such as plans specifically aimed at data and outcomes, communication, and quality assurance.

Physical Documentation: Simple matrix planning formats and GANTT charts with annotations are preferred.

Scope of Work/Products: At the end of the nine-month period, each of the participating county probation departments should have established a strategic planning process that can be engaged to support the continuing progress of evidence based implementation. Tangible products of the awardee's involvement with the county and with NIC should at a minimum include: (a) Gap analysis results for the organization, its leadership and management, and its offender services; (b) Matrix Planning format; (c) Timelines documented on a changeable GANTT chart; (d) Measureable objectives and goals, related ultimately to recidivism reduction.

Budget and Strategy Narratives: The applicant's submission narratives should include suggested on-site protocols for training, assessing and facilitating group planning processes. Include costs associated with assessment tools, analysis and travel.

Please also note suggested budget adjustments for contingencies, such as the possibility that only three counties participate; or that an additional fifth county participates.

Application Requirements: An application package must include OMB Standard Form 425, Application for Federal Assistance; a cover letter that identifies the audit agency responsible for the applicant's financial accounts as well as the audit period or fiscal year that the applicant operates under (*e.g.*, July 1 through June 30); and an outline of projected costs with the budget and strategy narratives described in this announcement. The following

additional forms must also be included: OMB Standard Form 424A, Budget Information—Non-construction Programs; OMB Standard Form 424B, Assurances—Non-construction Programs (both available at *http://www.grants.gov*); DOJ/FBOP/NIC Certification Regarding Lobbying, Debarment, Suspension and Other Responsibility Matters; and the Drug-Free Workplace Requirements (available at *http://www.nicic.org/Downloads/PDF/certif-frm.pdf*.)

Applications should be concisely written, typed double-spaced and reference the NIC Application Number and Title provided in this announcement.

If you are hand delivering or submitting via Fed-Ex, please include an original and three copies of your full proposal (program and budget narrative, application forms, assurances and other descriptions). The original should have the applicant's signature in blue ink. Electronic submissions will only be accepted via *http://www.grants.gov.*

The narrative portion of the application should include, at a minimum: brief paragraph indicating the applicant's understanding of the project's purpose; brief paragraph that summarizes the project goals and objectives; clear description of the methodology that will be used to complete the project and achieve its goals; statement or chart of measureable project milestones and time lines for the completion of each milestone, description of the qualifications of the applicant organization and a resume for the principle and each staff member assigned to the project that documents relevant knowledge, skills and ability to carry out the project; budget that details all costs for the project, shows consideration for all contingencies for this project, and notes a commitment to work within the proposed budget.

The total narrative portion of the application should not exceed ten double-spaced type written pages, excluding attachments related to credentials and relevant experience of staff.

Authority: Pub. L. 93–415.

Funds Available: NIC is seeking applicants' best ideas regarding accomplishments of the scope of work and the related costs for achieving the goals and objectives of this solicitation. Funds may only be used for the activities that are linked to the desired outcomes of the project.

Eligibility of Applicants: An eligible applicant is any State or general unit of local government, private agency, educational institution, organization, individual or team with expertise in the described areas. Applicants must have demonstrated ability to implement a project of this size and scope.

Review Considerations: Applications will be subject to the NIC Review Process. The criteria for the evaluation of each application will be as follows: 1. Organizational/Staff Background (30%). NIC will review the background, experience and expertise of the proposed project staff, including subcontractors. Do staff have previous experience, working with community corrections organizations? What expertise and experience does the project team have with organizational development issues, including organizational and staff assessment? Does the staff have experience and expertise in strategic planning, and specifically, in strategic planning toward evidence-based implementation in probation and the court? Is the number of staff involved realistic and appropriate for the scope of the work, and does the applicant have the capacity to deliver all aspects of this project on time? Is there a reason that each member of the proposed team has been included? 2. Project Design/Content (50%). Does the applicant clearly understand the goals of this project? Is the practical application of research-based principles evident in the project design? Are project tasks, timelines, benchmarks and expected objectives evident? How sound are the technical strategies proposed? Have the strategies proved to be fruitful in other projects? Will the applicant be able to deliver matrix-style formats and gantt charts as requested? Are these applications transferable to the field? Are the final work products identified, and do the proposed strategies lead to their completion within the time frame? How will the applicant measure its own performance and the performance of adjunct team members? Is the applicant willing to meet with NIC staff as needed? 3. Budget (20%). Does the budget narrative clearly tie to the numbers; and, can the products be delivered on the desired timeline, within the proposed budget? Are the contingencies, including the addition or subtraction of a county department, addressed? Are the final work products clearly defined and identified on the work plan? Is a gantt chart provided that aligns budget with objectives along a timeline that shows, at a minimum, quarterly benchmarks?

Note: NIC will NOT award a cooperative agreement to an applicant who does not have a Dun and Bradstreet Database Universal Number (DUNS) and is not registered in the Central Contractor Registry (CCR).

Applicants can receive a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at 800–333–0505 (if you are a sole proprietor, dial 866–705–5711 and select option 1.)

Applicants may register in the CCR Online at the CCR Web site: *http://www.ccr.gov.* A CCR handbook and worksheet can also be reviewed at the Web site.

Number of Awards: One.

Applicant's Conference: An applicant's telephone conference will be held on Wednesday, May 6, between noon and 1:30 p.m. EDT. Applicants who are interested in participating in this applicants' conference call should indicate their expectation to participate by e-mailing Pam Davison at *pdavison@bop.gov* no later than Monday, May 4, at noon EDT. This telephone conference will give applicants the opportunity to ask questions about the project and the application procedures. Participation in the telephone conference for applicants is optional.

Note that interested applicants need to provide complete contact information, including e-mail address and phone number, to Pam Davison when they indicate their expectation to participate.

NIC Opportunity Number: 09C81. This number should appear as a reference line in the cover letter, where the opportunity number is requested on the Standard Form 424, and outside of the envelope in which the application is sent.

Catalog of Federal Domestic Assistance Number: 16.602 Executive Order 12372: This project is not subject to the provision of Executive Order 12372.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. E9–8467 Filed 4–13–09; 8:45 am]

BILLING CODE 4410–36–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on 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. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed reinstatement of the ''National Longitudinal Survey of Youth 1979.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed 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 June 15, 2009.

ADDRESSES: Send comments to Carol Rowan, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, 202–691–7628. (This is not a toll free number.)

FOR FURTHER INFORMATION CONTACT: Carol Rowan, BLS Clearance Officer, 202–691–7628. (*See* **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The National Longitudinal Survey of Youth 1979 (NLSY79) is a representative national sample of persons who were born in the years 1957 to 1964 and lived in the U.S. in 1978. These respondents were ages 14 to 22 when the first round of interviews began in 1979; they will be ages 45 to 54 when the planned twenty-fourth round of interviews is conducted from December 2009 to March 2011. The NLSY79 was conducted annually from 1979 to 1994 and has been conducted biennially since 1994. The longitudinal focus of this survey requires information to be collected from the same individuals over many years in order to trace their education, training, work experience, fertility, income, and program participation.

In addition to the main NLSY79, the biological children of female NLSY79 respondents have been surveyed since 1986, when the National Institute of Child Health and Human Development began providing funding to the BLS to gather a large amount of information about the lives of these children. A battery of child cognitive, socio-emotional, and physiological assessments has been administered biennially since 1986 to NLSY79 mothers and their children. Starting in 1994, children who had reached age 15 by December 31 of the survey year (the Young Adults) were interviewed about their work experiences, training, schooling, health, fertility, self-esteem, and other topics. The BLS contracts with the National Opinion Research Center (NORC) at the University of Chicago to conduct the NLSY79 and associated Child and Young Adult surveys.

One of the goals of the Department of Labor (DOL) is to produce and disseminate timely, accurate, and relevant information about the U.S. labor force. The BLS contributes to this goal by gathering information about the labor force and labor market and disseminating it to policymakers and the public so that participants in those markets can make more informed, and thus more efficient, choices. Research based on the NLSY79 contributes to the formation of national policy in the areas of education, training, employment programs, and school-to-work transitions. In addition to the reports that the BLS produces based on data from the NLSY79, members of the academic community publish articles and reports based on NLSY79 data for the DOL and other funding agencies. To date, more than 1,500 articles examining NLSY79 data have been published in scholarly journals. The survey design provides data gathered from the same respondents over time to form the only data set that contains this type of information for this important population group. Without the collection of these data, an accurate longitudinal data set could not be provided to researchers and policymakers, thus adversely affecting the DOL's ability to perform its policy- and report-making activities.

II. Current Action

The BLS seeks approval to conduct the round 24 interviews of the NLSY79 and the associated surveys of biological children of female NLSY79 respondents. The NLSY79 Child Survey involves three components:

- The Mother Supplement is administered to female NLSY79 respondents who live with biological children under age 15. This questionnaire will be administered to about 635 women, who will be asked a series of questions about each child under age 15. On average, these women each have about 1.26 children under age 15, for a total of approximately 800 children.
- The Child Supplement involves aptitude testing of about 720 children under age 15.
- The Child Self-Administered Questionnaire is administered to approximately 540 children ages 10 to 14.

In addition to the main NLSY79 and Child Survey, the Young Adult Survey will be administered to approximately 6,140 youths ages 15 and older who are the biological children of female NLSY79 respondents. These youths will be contacted for an interview regardless of whether they reside with their mothers. The NLSY79 Young Adult Survey involves two components:

- The Young Adult Survey involves interviewing about 1,775 youths ages 15 to 20.
- The Young Adult Survey, grant component, is administered to approximately 4,365 youths age 21 and older.

During the field period, about 400 main NLSY79 interviews are validated to ascertain whether the interview took place as the interviewer reported and whether the interview was done in a polite and professional manner.

The round 24 questionnaire reflects a number of content changes recommended by experts in various social science fields. The round 24 main NLSY79 questionnaire includes a more extensive set of questions about volunteer activity and monetary donations to charitable organizations. The round 24 survey also will include retrospective questions on business ownership. This new section augments information previously collected in the survey by asking how many businesses respondents have owned since age 18 and collecting detailed information on the characteristics of up to ten businesses. Questions on estate planning and wills will be asked in round 24 to augment information previously obtained on health, asset accumulation, and retirement plans. Round 24 includes a series of questions on mortgage delinquencies and foreclosures. The questions cover the period since January 2007 and ask respondents whether they had been more than two months behind on mortgage payments, received a foreclosure notice, or lost property due to foreclosure. Round 24 includes a short series of questions on whether respondents were offered stock options by their employer, whether the option was offered before the respondent accepted the job, whether the option affected the respondent's decision to take the job, whether the option is tied to work performance, and whether the respondent has exercised or plans to exercise the option. Questions on assets will not be asked in this round. It was determined after Round 19 that an

extended series of questions on assets is not necessary every survey round. The questions on political involvement included in Round 23 are not included for Round 24.

III. Desired Focus of Comments

The BLS is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• 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.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Bureau of Labor Statistics.

Title: National Longitudinal Survey of Youth 1979.

OMB Number: 1220–0109.

Affected Public: Individuals or households.

Form	Total respondents	Frequency	Total responses	Average time per response (minutes)	Estimated total burden (hours)
NLSY79 round 24 pretest	100	Biennially	100	60	100
NLSY79 round 24 main survey	7,600	Biennially	7,600	60	7,600
Round 24 validation interviews	400	Biennially	400	6	40
Mother supplement (mothers of children under age 15)	[1] 635	Biennially	800	20	267
Child supplement (under age 15)	720	Biennially	720	31	372
Child self-administered questionnaire (ages 10 to 14)	540	Biennially	540	30	270
Young adult survey (ages 15 to 20)	1,775	Biennially	1,775	45	1,331
Young adult survey, grant component (age 21 and older)	4,365	Biennially	4,365	52	3,783
TOTALS [2]	14,560		16,100		13,763

[1] The number of respondents for the Mother Supplement (635) is less than the number of responses (800) because mothers are asked to provide separate responses for each of the biological children with whom they reside. The total number of responses for the Mother Supplement (800) is more than the number for the Child Supplement (720) because the number of children completing the Child Supplement is lower due to age restrictions and nonresponse.

[2] The total number of 14,560 respondents across all the survey instruments is a mutually exclusive count that does not include: (1) The 400 re-interview respondents, who were previously counted among the 7,600 main survey respondents, (2) the 635 Mother Supplement respondents, who were previously counted among the main survey respondents, and (3) the 540 Child SAQ respondents, who were previously counted among the 720 Child Supplement respondents.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

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 also will become a matter of public record.

Signed at Washington, DC, this 8th day of April 2009.

Cathy Kazanowski,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. E9–8414 Filed 4–13–09; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,801; TA–W–64,801A]

Cequent Electrical Products, Inc., Formerly Known as Tekonsha Towing, Currently Known as Cequent Performance Products, Angolia, IN; Cequent Electrical Products, Inc., Formerly Known as Tekonsha Towing, Currently Known as Cequent Performance Products, McAllen, TX; 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 January 15, 2009, applicable to workers of Cequent Electrical Products, Inc., Angolia, Indiana and Cequent Electrical Products, Inc., McAllen, Texas. The notice was published in the **Federal Register** on February 2, 2009 (74 FR 5870). The certification was amended on February 18, 2009 to that the subject firm was formerly known as Tekonsha Towing. The notice was published in the **Federal Register** on March 3, 2009 (74 FR 9289).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to warehousing and distribution supporting Cequent Electrical Products, Inc., Tekonsha, Michigan, a currently TAA-certified worker group.

Information also shows that following a corporate decision, Cequent Electrical Products, Inc. is currently known as Cequent Performance Products as of January 1, 2009.

Accordingly, the Department is amending this certification to show that Cequent Electrical Products, Inc. is currently known as Cequent Performance Products.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports of brake controls, breakaway kits and lights

produced at the Tekonsha, Michigan location of the subject firm.

The amended notice applicable to TA–W–64,801 and TA–W–64,801A are hereby issued as follows:

All workers of Cequent Electrical Products, Inc., formerly known as Tekonsha Towing, currently known as Cequent Performance Products, Angola, Indiana (TA–W–64,801) and Cequent Electrical Products, Inc., formerly known as Tekonsha Towing, currently known as Cequent Performance Products, McAllen, Texas (TA–W–64,801A), who became totally or partially separated from employment on or after December 30, 2007 through January 15, 2011, 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 3rd day of April 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–8413 Filed 4–13–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,269]

Daimler Trucks North America, LLC a Subsidiary of Daimler A.G. Freightliner Trucks Division Including On-Site Leased Workers From Aerotek, Cleveland, NC; 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 May 12, 2008, applicable to workers of Daimler Trucks North America, LLC, a subsidiary of Daimler A.G., Freightliner Trucks Division, Cleveland, North Carolina. The notice was published in the **Federal Register** on May 29, 2008 (73 FR 30977).

At the request of the petitioner, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of class 8 heavy duty trucks.

New information shows that workers leased from Aerotek were employed on-site at the Cleveland, North Carolina location of Daimler Trucks North America, LLC, a subsidiary of Daimler A.G., Freightliner Trucks Division. The Department has determined that these workers were sufficiently under the control of Daimler Trucks North America, LLC, a subsidiary of Daimler A.G., Freightliner Trucks Division to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Aerotek working on-site at the Cleveland, North Carolina location of the subject firm.

The amended notice applicable to TA–W–63,269 is hereby issued as follows:

All workers of Daimler Trucks North America, LLC, a subsidiary of Daimler A.G., Freightliner Trucks Division, including on-site leased workers from Aerotek, Cleveland, North Carolina, who became totally or partially separated from employment on or after April 22, 2007, through May 12, 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 3rd day of April 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–8408 Filed 4–13–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,971]

Trim Masters, Inc. Automotive Technology Systems Division Including On-Site Leased Workers From Employment Plus, Modern Personnel and Westaff Lawrenceville, IL; 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 September 22, 2008, applicable to workers of Trim Masters, Inc., Automotive Technology Systems Division Lawrenceville, Illinois. The notice was published in the **Federal Register** on October 8, 2008 (73 FR 58981). The notice was amended on February 18, 2009 to include on-site leased workers from Employment Plus and Modern Personnel. The notice was published in the **Federal Register** on March 3, 2009 (74 FR 9285).

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 automotive interior door panels and seats.

New information shows that workers leased from Westaff were employed on-site at the Lawrenceville, Illinois location of Trim Masters, Inc., Automotive Technology Systems Division. The Department has determined that these workers were sufficiently under the control of Trim Masters, Inc., Automotive Technology Systems Division to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Westaff working on-site at the Lawrenceville, Illinois location of the subject firm.

The intent of the Department's certification is to include all workers employed at Trim Masters, Inc., Automotive Technology Systems Division, Lawrenceville, Illinois who were secondarily affected by increased imports of automotive interior door panels and seats.

The amended notice applicable to TA–W–63,971 is hereby issued as follows:

All workers of Trim Masters, Inc., Automotive Technology Systems Division, including on-site leased workers from Employment Plus, Modern Personnel, and Westaff, Lawrenceville, Illinois, who became totally or partially separated from employment on or after September 2, 2007 through September 22, 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 2nd day of April 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–8410 Filed 4–13–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,880, et al.]

Cequent Electrical Products, Inc. Formerly Known as Tekonsha Towing, Currently Known as Cequent Performance Products, Tekonsha, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Including Employees in Support of Cequent Electrical Products, Inc., Formerly Known as Tekonsha Towing, Currently Known as Cequent Performance Products, Tekonsha, Michigan Working in the Following Locations:

[TA–W–63,880A], Washougal, Washington
[TA–W–63,880B], West Linn, Oregon
[TA–W–63,880C], Temecula, California
[TA–W–63,880D], Urbandale, Iowa
[TA–W–63,880E], Weston, Wisconsin

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 November 26, 2008, applicable to workers of Cequent Electrical Products, Inc., Tekonsha, Michigan. The notice was published in the **Federal Register** on December 10, 2008 (73 FR 75137). The certification was amended on December 24, 2008 to include employees in support of the subject firm working in Washougal, Washington, West Linn, Oregon, Temecula, California, Urbandale, Iowa and Weston, Wisconsin. The notice was published in the **Federal Register** on January 2, 2009 (74 FR 465–466). The certification was again amended on February 18, 2009 to show that the subject firm was formerly known as Tekonsha Towing. The notice was published in the **Federal Register** on March 3, 2009 (74 FR 9285).

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 brake controls, breakaway kits and lights for the automotive and trailer industries.

New information also shows that following a corporate decision, Cequent Electrical Products, Inc. is currently known as Cequent Performance Products as of January 1, 2009.

Accordingly, the Department is amending this certification to show that Cequent Electrical Products, Inc. is currently known as Cequent Performance Products.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports of brake controls, breakaway knits and lights.

The amended notice applicable to TA–W–63,880, TA–W–63,880A, TA–W–63,880B, TA–W–63,880C, TA–W–63,880D and TA–W–63,880E are hereby issued as follows:

All workers of Cequent Electrical Products, Inc., formerly known as Tekonsha Towing, currently known as Cequent Performance Products, Tekonsha, Michigan, including employees in support of Cequent Electrical Products, Inc., formerly known as Tekonsha Towing, currently known as Cequent Performance Products, Tekonsha, Michigan working out of Washougal, Washington (TA–W–63,880A), West Linn, Oregon (TA–W–63,880B), Temecula, California (TA–W–63,880C), Urbandale, Iowa (TA–W–63,880D), and Weston, Wisconsin (TA–W–63,880E), who became totally or partially separated from employment on or after August 6, 2007, through November 26, 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 3rd day of April 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–8409 Filed 4–13–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,019]

Delphi Corporation Corporate Headquarters and Product & Service Solutions Division Including On-Site Leased Workers From Aerotek, Bartech and Securitas Security, Troy, 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 of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on January 30, 2009, applicable to workers of Delphi Corporation, Corporate Headquarters and Product & Service Solutions Division, Troy, Michigan. The notice was published in the **Federal Register** on February 23, 2009 (74 FR 8115).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers perform administrative and support functions for prototype automotive parts.

The intent of the Department's certification is to include all workers of the subject firm adversely affected by the shift in production of prototype automotive parts the Mexico.

New information shows that workers leased from Aerotek, Bartech and Securitas Security were employed on-site at the Troy, Michigan location of Delphi Corporation, Corporate Headquarters and Product & Service Solutions Division. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Aerotek, Bartech and Securitas Security working on-site at the Troy, Michigan location of the subject firm.

The amended notice applicable to TA–W–65,019 is hereby issued as follows:

All workers of Delphi Corporation, Corporate Headquarters and Product & Service Solutions Division, including on-site leased workers from Aerotek, Bartech and Securitas Security, Troy, Michigan, who became totally or partially separated from employment on or after January 27, 2008, through January 30, 2011, 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 3rd day of April 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–8407 Filed 4–13–09; 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 *March 30 through April 3, 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.

None.

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.

None.

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–65,245; Pacific Veneer, Ilevel Division, A Subsidiary of Weyerhaeuser, Aberdeen, WA: February 9, 2008

TA–W–65,272; The Timken Company, Cairo, GA: February 12, 2008

TA–W–65,314; Kennametal, Inc., Greenfield TAP Plant, MSSG Division, Greenfield, MA: January 26, 2008

TA–W–65,393; Pieco, Inc. dba Superior Trim, Findlay, OH: February 13, 2008

TA–W–65,655; Weyerhaeuser Company, Weyerhaeuser NR Company, Level Division, Chavies, KY: March 19, 2008

TA–W–65,310; Micro Tool and Manufacturing, Inc., Meadville, PA: February 18, 2008

TA–W–65,382; Bahari Group Limited, New York, NY: February 17, 2008

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–64,499A; Whirlpool Corporation, St. Joseph, MI: November 3, 2007

TA–W–64,499; Whirlpool Corporation, Benton Harbor, MI: November 3, 2007

TA–W–65,001; Brunswick Corporation, U.S. Marine Division, Navassa, NC: January 27, 2008

TA–W–65,230; Vishay Vitramon, Inc., Monroe, CT: March 20, 2009

TA–W–65,236; Hanesbrands, Inc., On-Site Worker from Kelly Service Temps, Barnwell, SC: February 9, 2008

TA–W–65,327; Mississippi Packaging, LLC, d/b/a Shamrock Specialty, Speecer Reed Group, El Paso, TX: February 20, 2008
TA–W–65,330; KX Technology, LLC, A Subsidiary of Marmon Waters, West Haven, CT: February 20, 2008
TA–W–65,363; Nobel Automotive Tennessee, LLC, Orhan North America, Formerly Dana Corp, Paris, TN: February 23, 2008
TA–W–65,414; Toyoda Gosei Automotive Sealing Kentucky, LLC, Toyoda Gosei North America Division, Hopkinsville, KY: February 2, 2008
TA–W–65,271; ACS Cumberland Engineering, South Attleboro, MA: January 27, 2008
TA–W–65,309; ITW Paslode, Terrell, TX: February 18, 2008
TA–W–65,371; Finisar Corporation, Formerly Optium Corp., Horsham, PA: February 19, 2008
TA–W–65,381; JV China Ting, LLC, New York, NY: February 24, 2008
TA–W–65,415A; Champion Laboratories, Inc., A Subsidiary of United Components, West Salem, IL: February 26, 2008
TA–W–65,415; Champion Laboratories, Inc., A Subsidiary of United Components, Albion, IL: February 26, 2008
TA–W–65,083; HDM Furniture Industries, Inc., Furniture Offices and Design Showroom Operations, High Point, NC: February 2, 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–65,240; St. Marys Carbon Company, St. Marys, PA: February 11, 2008
TA–W–65,279; Lenoir Mirror Company, Lenoir, NC: February 12, 2008
TA–W–65,423; Metaldyne, Litchfield, MI: January 18, 2008
TA–W–65,448; K and K Screw Products, LLC, East China, MI: February 27, 2008
TA–W–65,528; The Warren Company, Advanced Placement, Erie, PA: March 6, 2008
TA–W–65,589; AZ Automotive, Roseville, MI: March 6, 2008

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.

None.

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.

TA–W–64,499B; Whirlpool Corporation, Benton Harbor, MI.
TA–W–65,335; Engineering Design and Sales, Inc., Danville, VA.
TA–W–65,367; Kern Liebers Textile USA, Charlotte, NC.

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–64,765; Sealing Products Manufacturing, LLC, Div of Dana Holding Corp., Danville, KY.
TA–W–64,775; National Semiconductor, Interface and Hi-Rel Design, South Portland, ME.
TA–W–64,963; DME Manufacturing, Inc., Youngwood, PA.
TA–W–65,008; Modern Industries, Inc., Machining Division, Erie, PA.
TA–W–65,094; Plastic Packaging, Inc., Aberdeen, NC.
TA–W–65,224; Panel Products, LLC, Rogue River, OR.
TA–W–65,261; Dunbar Enterprises, Inc., Snohomish, WA.
TA–W–65,509; Moose River Lumber Company, Inc., Moose River, ME.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–65,241; Chase Home Finance LLC, A Division of JP Morgan Chase and Company, Lexington, KY.
TA–W–65,288; Caliber Auto Transfer of Detroit, Wayne, MI.
TA–W–65,412; Bestway Express, Inc., Vincennes, IN.

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 *March 30 through April 3, 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: April 8, 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance

[FR Doc. E9–8404 Filed 4–13–09; 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 April 24, 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 April 24, 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 6th day of April 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 3/16/09 and 3/20/09]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
65592	Tyco Electronics (Wkrs)	Greensboro, NC	03/16/09	03/11/09
65593	OFS Brands, Inc. Plant #8 (Wkrs)	Huntingburg, IN	03/16/09	03/07/09
65594	Brunswick Bowling and Billiard Corporation (State)	Muskegon, MI	03/16/09	03/13/09
65595	FMI Copper and Gold (Wkrs)	Safford, AZ	03/16/09	02/23/09
65596	Nortech Systems (State)	Bemidji, MN	03/16/09	03/13/09
65597	Eclipse Manufacturing Company (Comp)	Pikeville, TN	03/16/09	03/11/09
65598	Lincoln Electric/Harris Products Group (Wkrs)	Mason, OH	03/16/09	03/13/09
65599	Century Mold Company, Inc. (Comp)	Shelbyville, TN	03/16/09	03/13/09
65600	Isonics Vancouver, Inc. (Wkrs)	Vancouver, WA	03/16/09	03/11/09
65601	GMVM Orion Assembly (UAW)	Orion, MI	03/16/09	02/16/09
65602	Lee Mah Electronics (Wkrs)	San Francisco, CA	03/16/09	02/27/09
65603	CMI Equipment and Engineering (Wkrs)	AuGres, MI	03/16/09	03/12/09
65604	Salmon River Wood, Inc. (Comp)	Missoula, MT	03/16/09	03/07/09
65605	Weyerhaeuser Level (State)	Grayling, MI	03/16/09	02/20/09
65606	Sumco USA (Wkrs)	Maineville, OH	03/16/09	03/11/09
65607	The Mazer Corporation/Printing Services (Wkrs)	Johnson City, TN	03/17/09	03/13/09
65608	WestPoint Home Bed Products Division—Abbeville (Comp)	Abbeville, AL	03/17/09	03/16/09
65609	Columbia Forest Products (State)	Trumann, AR	03/17/09	02/23/09
65610	True Textiles, Inc. (Comp)	Lancaster, SC	03/17/09	03/16/09
65611	Kreber (Comp)	High Point, NC	03/17/09	03/16/09
65612	Signature Aluminum (Wkrs)	Greenville, PA	03/17/09	03/09/09
65613	Thermo-Electric Company (Whitehall) (Comp)	Imperial, PA	03/17/09	03/16/09
65614	Auto Truck Transportation (Wkrs)	Cleveland, NC	03/17/09	03/16/09
65615	Temic Automotive of North America, Inc. (Comp)	Northbrook, IL	03/17/09	03/16/09
65616	Tensolite—A Carlisle Company (Wkrs)	Vancouver, WA	03/17/09	02/27/09
65617	EconQuest Holding Corporation (Rep)	Greeneville, TN	03/17/09	03/16/09
65618	First American (Wkrs)	San Diego, CA	03/17/09	03/13/09
65619	National Mills, Inc. (Comp)	Pittsburg, KS	03/17/09	03/16/09
65620	Foamade Industries, Inc. (Wkrs)	Auburn Hills, MI	03/17/09	03/13/09
65621	Mississippi Polymers, Inc. (Comp)	Corinth, MS	03/18/09	03/17/09
65622	Groat Bros, Inc. (Wkrs)	Woodland, WA	03/18/09	03/17/09
65623	Leviton Manufacturing Company, Inc. (Comp)	Warwick, RI	03/18/09	03/17/09
65624	SpringBoard Technology Corporation (Comp)	Springfield, MA	03/18/09	03/09/09
65625	Delphi Thermal Systems (Comp)	Auburn Hills, MI	03/18/09	02/26/09
65626	Russell Brands, LLC (Comp)	Wetumpka, AL	03/18/09	03/17/09
65627	Steelscape (Comp)	Rancho Cucamonga, CA	03/18/09	03/13/09
65628	St. Mary's Tool and Die (Wkrs)	St. Mary's, PA	03/18/09	03/11/09
65629	CoAdna Photonics (Wkrs)	Sunnyvale, CA	03/18/09	02/13/09
65630	National Envelope Corporation (USWA)	Scottdale, PA	03/18/09	03/10/09
65631	MetoKote Corporation (Comp)	LaPeer, MI	03/18/09	03/12/09
65632	Rite Hite Duct Sox (Wkrs)	Dubuque, IA	03/18/09	03/13/09
65633	Plexus Corp (Wkrs)	Nampa, ID	03/19/09	03/12/09
65634	Northern Engraving (State)	Spring Grove, MN	03/19/09	03/18/09
65635	Astellas Pharma Manufacturing, Inc. (Wkrs)	Grand Island, NY	03/19/09	03/18/09
65636	A.R.E. Manufacturing, Inc. (Comp)	Newberg, OR	03/19/09	03/16/09
65637	Continental Sprayers (Wkrs)	St. Peters, MO	03/19/09	03/18/09
65638	Greenfield Research, Inc. (Comp)	Greenfield, OH	03/19/09	03/18/09
65639	Tyco Safety Products (Comp)	Westminster, MA	03/20/09	01/30/09
65640	Gaston County Dyeing Machine Company (State)	Mount Holly, NC	03/20/09	03/11/09
65641	United Airlines, Inc. (IBT)	San Francisco, CA	03/20/09	03/10/09
65642	Hella Corporate Center USA (62839)	Flora, IL	03/20/09	03/18/09
65643	Martin Aborn, Inc. (Wkrs)	Hingham, MA	03/20/09	03/10/09
65644	Rowe International Corporation (Comp)	Grand Rapids, MI	03/20/09	03/18/09
65645	Ultimizers, Inc. (Comp)	Boring, OR	03/20/09	03/12/09
65646	Honeywell International (Comp)	Olathe, KS	03/20/09	03/19/09
65647	Manitowoc Cranes (Wkrs)	Shady Grove, PA	03/20/09	03/18/09

APPENDIX—Continued

[TAA petitions instituted between 3/16/09 and 3/20/09]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
65648	Aleris International (USW)	Lewisport, KY	03/20/09	03/18/09

[FR Doc. E9–8405 Filed 4–13–09; 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 April 24, 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 April 24, 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 6th day of April 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 3/23/09 and 3/27/09]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
65649	Victoria and Company (Comp)	East Providence, RI	03/23/09	03/20/09
65650	Aero-Metric, Inc. (State)	Sheboygan, WI	03/23/09	03/20/09
65651	Unifi Manufacturing, Inc. (Comp)	Madison, NC	03/23/09	03/18/09
65652	Aida America Corporation (Comp)	Dayton, OH	03/23/09	03/20/09
65653	Munson Machinery (Wkrs)	Utica, NY	03/23/09	03/11/09
65654	Lear Corporation (State)	Southfield, MI	03/23/09	02/24/09
65655	Weyerhaeuser Company (Comp)	Chavies, KY	03/23/09	03/19/09
65656	Commercial Vehicle Group (Comp)	Vancouver, WA	03/23/09	03/20/09
65657	Prescotech Industries, Inc. (Wkrs)	Fort Smith, AR	03/23/09	03/20/09
65658	Semitool Southwest Regional Office (Wkrs)	Phoenix, AZ	03/23/09	03/16/09
65659	Eagle Sewing Company (Wkrs)	San Francisco, CA	03/23/09	03/13/09
65660	Muth Mirror Systems (Comp)	Sheboygan, WI	03/23/09	03/20/09
65661	Zurn Industries (Union)	Erie, PA	03/23/09	03/20/09
65662	Leeds (Wkrs)	Warren, OH	03/23/09	03/20/09
65663	Philips Oral Health Care (Comp)	Snoqualmie, WA	03/23/09	03/02/09
65664	Doran Company	Mansfield, MA	03/23/09	03/20/09
65665	Conmed Corporation (Comp)	Utica, NY	03/24/09	03/23/09
65666	Neocork Technologies (Wkrs)	Conover, NC	03/24/09	03/23/09
65667	Tekni-Plex, Inc. (Comp)	Troy, OH	03/24/09	03/23/09
65668	Blount, Inc. (Comp)	Milwaukie, OR	03/24/09	03/23/09
65669	Anixter, Inc. (Comp)	Danville, IL	03/24/09	03/20/09
65670	Dalure Fashions, Inc. (Wkrs)	Gatesville, NC	03/25/09	03/16/09
65671	Flextronics International (Wkrs)	Elk Grove Village, IL	03/25/09	03/23/09
65672	Chrysler, LLC (UAW)	Sterling Heights, MI	03/25/09	03/06/09
65673	APAC Customer Services (Wkrs)	Cedar Rapids, IA	03/25/09	03/17/09
65674	Halliburton Energy Services (Wkrs)	Duncan, OK	03/25/09	03/24/09
65675	Carrick Turning Works, Inc. (Comp)	High Point, NC	03/25/09	03/24/09
65676	DRS Laurel Technologies (Wkrs)	Johnstown, PA	03/25/09	03/23/09
65677	Jeld-Wen (Wkrs)	Klamath Falls, OR	03/25/09	03/24/09
65678	Bihler of America, Inc. (Wkrs)	Phillipsburg, NJ	03/25/09	03/12/09
65679	Metal Powder Products/Ridgeway Division (Comp)	Ridgway, PA	03/26/09	03/24/09
65680	SMTC Enclosure Systems Div. (Comp)	Franklin, MA	03/26/09	03/19/09
65681	Callaway Golf Ball Operations, Inc. (Comp)	Chicopee, MA	03/26/09	03/25/09
65682	Penn-Union Corporation (union)	Edinboro, PA	03/26/09	03/20/09
65683	Freeport—McMoran Americas (Wkrs)	Morenci, AZ	03/26/09	03/23/09
65684	Convergys (Wkrs)	Cincinnati, OH	03/26/09	03/23/09

APPENDIX—Continued

[TAA petitions instituted between 3/23/09 and 3/27/09]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
65685	Burke Industrial Supply, Inc. (Comp)	Morganton, NC	03/26/09	03/25/09
65686	Pandora Manufacturing (UAW)	Pandora, OH	03/26/09	03/19/09
65687	Star Cutter Company/Tawas Tool (Comp)	East Tawas, MI	03/27/09	03/26/09
65688	Star Cutter Company/HB Carbide (Comp)	Lewiston, MI	03/27/09	03/26/09
65689	Star Cutter Company/Ossineke Industries (Comp)	Ossineke, MI	03/27/09	03/26/09
65690	Tube Fabrication Industries, Inc. (Comp)	Logansport, IN	03/27/09	03/25/09
65691	Group Dekko, Inc. (Comp)	Murray, IA	03/27/09	03/10/09
65692	Tricon Timber Post and Pole (Comp)	Superior, MT	03/27/09	03/26/09
65693	Bergstrom Saturn of Eau Claire (Wkrs)	Eau Claire, WI	03/27/09	03/26/09
65694	Indiana Tube Corporation (Comp)	Evansville, IN	03/27/09	03/25/09
65695	Hitachi Cable Indiana, Inc. (Comp)	Russell Springs, KY	03/27/09	03/26/09

[FR Doc. E9–8406 Filed 4–13–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,452]

Kensington Windows, Inc., a Subsidiary of Jancor Companies, Inc., Vandergrift, PA; Notice of Negative Determination Regarding Application for Reconsideration

By application dated February 27, 2009, the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers (IUE), Local 188643 requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of Kensington Windows, Inc., a subsidiary of Jancor Companies, Inc., Vandergrift, Pennsylvania (subject firm) to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA). The Department's Notice of Affirmative Determination Regarding Application for Reconsideration was signed on March 12, 2009, and published in the **Federal Register** on March 23, 2009 (74 FR 12151).

The initial determination was based on the Department's findings that imports of vinyl replacement windows and doors did not contribute importantly to worker separations at the subject firm and that no shift of production to a foreign country occurred.

In the request for reconsideration, the petitioner alleges that the workers of the subject firm were negatively impacted by foreign imports and requested the Department of Labor conduct an in depth analysis of the customer surveys.

In order to apply for TAA based on increased imports, the subject worker group must meet the group eligibility requirements under Section 222(a) of the Trade Act of 1974, as amended. Under Section 222(a)(2)(A), the following criteria must be met:

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; *and*

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.

During the reconsideration investigation, the Department conducted a more detailed survey of additional customers regarding their purchases of vinyl replacement windows and doors (including like or directly competitive articles) during 2006, 2007, January through November 2007 and January through November 2008. Based on the information provided by the major declining customers, the Department determined that none of the customers imported vinyl replacement windows and doors while decreasing their purchases from the subject firm during the relevant period.

Based on the information above, the Department determines that the group eligibility requirements under Section 222(a) of the Trade Act of 1974, as amended, were not met.

In order for the Department to issue a certification of eligibility to apply for ATAA, the subject worker group must be certified eligible to apply for TAA. Since the subject workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

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 Kensington Windows, Inc., a subsidiary of Jancor Companies, Inc., Vandergrift, Pennsylvania.

Signed at Washington, DC, this 3rd day of April 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–8412 Filed 4–13–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,389]

A. Schulman, Inc.; Polybatch Color Center Sharon Center, Ohio; Notice of Revised Determination on Reconsideration

On February 24, 2009, the Department issued an Affirmative Determination Regarding Application for Reconsideration applicable to workers and former workers of the subject firm. The notice was published in the **Federal Register** on March 4, 2009 (74 FR 9430).

The previous investigation initiated on November 10, 2008, resulted in a negative determination issued on December 22, 2008, was based on the finding that imports of color concentrates did not contribute importantly to worker separations at the subject firm and no shift of production to a foreign source occurred. The denial notice was published in the **Federal Register** on January 14, 2009 (74 FR 2139).

To support the request for reconsideration, the petitioner supplied additional information to supplement that which was gathered during the initial investigation. Upon further review of the information and contact with the company official, it was revealed that the subject firm shifted a portion of plant production to Mexico and that shift contributed to the layoffs at the subject firm during the relevant 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 facts obtained in the investigation, I determine that there was a shift in production from the workers' firm or subdivision to Mexico of articles that are like or directly competitive with those produced by the subject firm or subdivision. In accordance with the provisions of the Act, I make the following certification:

All workers of A. Schulman, Inc., Polybatch Color Center, Sharon Center, Ohio, who became totally or partially separated from employment on or after October 17, 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 2nd day of April 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–8411 Filed 4–13–09; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (09–036)]

Aerospace Safety Advisory Panel; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the Aerospace Safety Advisory Panel.

DATES: Thursday, April 30, 2009, 2 p.m. to 4 p.m. Central Standard Time.

ADDRESSES: Johnson Space Center, NASA Road 1, Building 1, Room 966, Houston, TX 77058.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Dakon, Aerospace Safety Advisory Panel Executive Director, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–0732.

SUPPLEMENTARY INFORMATION: The Aerospace Safety Advisory Panel will hold its second Quarterly Meeting for 2009. This discussion is pursuant to carrying out its statutory duties for which the Panel reviews, identifies, evaluates, and advises on those program activities, systems, procedures, and management activities that can contribute to program risk. Priority is given to those programs that involve the safety of human flight. The agenda will include Safety and Mission Assurance Issues, Constellation Program/Projects Status, Orion Requirements Management, Ares 1 Top Risks and Mitigation Plan, and Knowledge Management. The meeting will be open to the public up to the seating capacity of the room. Seating will be on a first-come basis. Attendees will be required to sign a visitor's register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign National attending the meeting will be required to provide the following information no less than 7 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); and title/position of attendee. Additional information may be requested. This would also include Legal Permanent Resident information: Green card number and expiration date. To expedite admittance, attendees with U.S. citizenship can provide identifying information 2 working days in advance. Persons with disabilities who require assistance should indicate this. Photographs will only be permitted during the first 10 minutes of the meeting. During the first 30 minutes of the meeting, members of the public may make a 5-minute verbal presentation to the Panel on the subject of safety in NASA. Any member of the public is permitted to file a written statement with the Panel at the time of the meeting. Verbal presentations and written comments should be limited to the subject of safety in NASA and should be received 2 working days in advance. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. To reserve a seat, file a written statement, or make a verbal presentation, please contact Ms. Susan Burch via e-mail at *Susan.Burch@nasa.gov* or by telephone at (202) 358–0550.

Dated: April 7, 2009.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. E9–8441 Filed 4–13–09; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on the Records of Congress; Meeting

AGENCY: National Archives and Records Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Archives and Records Administration (NARA) announces a meeting of the Advisory Committee on the Records of Congress. The committee advises NARA on the full range of programs, policies, and plans for the Center for Legislative Archives in the Office of Records Services.

DATES: April 27, 2009 from 10 a.m. to 11 a.m.

ADDRESSES: Congressional Meeting Room South, Capitol Visitor Center.

FOR FURTHER INFORMATION CONTACT: Richard H. Hunt, Director; Center for Legislative Archives; (202) 357–5350.

SUPPLEMENTARY INFORMATION:

Agenda

(1) Chair's opening remarks—Clerk of the House.

(2) Recognition of Co-chair—Secretary of the Senate

(3) Recognition of the Acting Archivist of the United States.

(4) Approval of the minutes of the last meeting.

(5) Discussion of on-going projects and activities.

(6) Activities Report of the Center for Legislative Archives.

(7) Other current issues and new business.

The meeting is open to the public.

Dated: April 8, 2009.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. E9–8506 Filed 4–13–09; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2009–0150]

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:* 10 CFR Part 60—''Disposal of High-Level Radioactive Wastes in Geologic Repositories.''

2. *Current OMB Approval Number:* 3150–0127.

3. *How Often the Collection is Required:* The information need only be submitted one time.

4. *Who is Required or Asked to Report:* State or Indian Tribes, or their representatives, requesting consultation with the NRC staff regarding review of a potential high-level radioactive waste geologic repository site, or wishing to participate in a license application review for a potential geologic repository (other than a potential geologic repository site at Yucca Mountain, Nevada, currently under investigation by the U.S. Department of Energy, which is now regulated under 10 CFR Part 63).

5. *The Number of Annual Respondents:* 1; however none are expected in the next three years.

6. *The Number of Hours Needed Annually to Complete the Requirement or Request:* 1; however, none are expected in the next three years.

7. *Abstract:* Part 60 requires States and Indian Tribes to submit certain information to the NRC if they request consultation with the NRC staff concerning the review of a potential repository site, or wish to participate in a license application review for a potential repository (other than the Yucca Mountain, Nevada site proposed by the U.S. Department of Energy). Representatives of States or Indian Tribes must submit a statement of their authority to act in such a representative capacity. The information submitted by the States and Indian Tribes is used by the Director of the Office of Nuclear Material Safety and Safeguards as a basis for decisions about the commitment of NRC staff resources to the consultation and participation efforts. As provided in § 60.1, the regulations in 10 CFR Part 60 no longer apply to the licensing of a geologic repository at Yucca Mountain. All of the information collection requirements pertaining to Yucca Mountain were included in 10 CFR Part 63, and were approved by the Office of Management and Budget under control number 3150–0199. The Yucca Mountain site is regulated under 10 CFR Part 63 (66 FR 55792, November 2, 2001).

Submit, by June 15, 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–2009–0150. 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–2009–0150. 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 2nd day of April 2009.

For the Nuclear Regulatory Commission.

Gregory Trussell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E9–8447 Filed 4–13–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0160]

Notice; Applications and Amendments to Facility Operating Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information or Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information or Safeguards Information

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 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 notice includes notices of amendments containing sensitive unclassified non-safeguards information (SUNSI) or safeguards information (SGI).

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 and Directives 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. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for a hearing and petitions for leave to intervene is discussed below.

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 subject amendment to the facility operating license. Such request(s) and petition(s) should be filed via electronic submission through the NRC E-Filing system. Request(s) for a hearing and petition(s) 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, or at *http://www.nrc.gov/reading-rm/doc-collections/cfr/part002/part002-0309.html*. 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.html*. 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) ten (10) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *hearing.docket@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, excluding government holidays. 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 or the presiding officer of 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, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

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.resource@nrc.gov*.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of Amendment Request: September 17, 2008, as supplemented by letter dated February 26, 2009. The revised proposed no significant hazards consideration (NSHC) included in the February 26, 2009, letter replaces the NSHC in the letter dated September 17, 2008, in its entirety.

Description of Amendment Request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The Waterford Steam Electric Station, Unit 3 Technical Specification (TS) 5.6, ''Fuel Storage,'' is being revised to take credit for soluble boron in Region 1 (cask storage pit) and Region 2 (spent fuel pool and refueling canal) fuel storage racks for the storage of both Standard and Next Generation

Fuel (NGF) assemblies. Two new TS Limiting Conditions for Operation and associated Surveillance Requirements, 3/4 9.12, ''Spent Fuel Pool (SFP) Boron Concentration,'' and 3/4 9.13, ''Spent Fuel Pool,'' have been added to ensure the required boron concentration is maintained in the spent fuel storage racks and that spent fuel storage racks are within the design parameters, respectively. The proposed change is evaluated for both normal operation and accident conditions and is intended to provide more flexibility in storing the more reactive NGF assemblies in the spent fuel storage racks.

Basis for Proposed No Significant Hazards Consideration Determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The purpose of the spent fuel storage racks is to maintain fresh and irradiated fuel in a safe storage condition. The proposed changes for the Region 1 (spent fuel cask storage area) and Region 2 (spent fuel pool and, after permanent plant shutdown, refueling canal) fuel storage racks, which involve taking credit for soluble boron, revising the burnup-enrichment limits and loading restrictions for the storage of fuel assemblies, and increasing the k_{eff} [effective (neutron) multiplication factor] limit for the flooding of the fuel storage racks with unborated water will not affect any accident initiator or mitigator. The proposed changes will provide more flexibility in storing the more reactive NGF assemblies in the spent fuel pool storage racks. The effects of the new fuel parameters of NGF assemblies on radiation shielding, thermal-hydraulics, seismic/structural, and mechanical drop analyses have been separately reviewed and were found to be acceptable.

The proposed changes will not alter the configuration of the storage racks or their environment. The fuel racks will not be operated outside of their design limits, and no additional loads will be imposed on them. Therefore, these changes will not affect fuel storage rack performance or reliability. No new equipment will be introduced into the plant. The accuracies and response characteristics of existing instrumentation will not be modified. The proposed changes will not require, or result in, a change in safety system operation, and will not affect any system interface with the fuel storage racks. Fuel assembly placement will continue to be controlled in accordance with approved fuel handling procedures. The proposed changes in the Technical Specifications, including surveillance requirements, will not add any significant complexities or increase the possibility of operator error.

The proposed changes will not affect any barrier that mitigates dose to the public, and will not result in a new release pathway being created. The functions of equipment designed to control the release of radioactive material will not be impacted, and no mitigating actions described or assumed for an accident in the UFSAR [Updated Final Safety Analyses Report] will be altered or prevented. No assumptions previously made in evaluating the consequences of an accident will need to be modified. Onsite dose will not be increased, so the access of plant personnel to vital areas of the plant will not be restricted and mitigating actions will not be impeded.

Therefore, it is concluded that the proposed changes do not significantly increase either 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 for the Region 1 (spent fuel cask storage area) and Region 2 (spent fuel pool and, after permanent plant shutdown, refueling canal) fuel storage racks, which involve taking credit for soluble boron, revising the burnup-enrichment limits and loading restrictions for the storage of fuel assemblies, and increasing the k_{eff} limit for the flooding of the fuel storage racks with unborated water will not increase the probability of an accident which was previously considered to be incredible nor create the possibility of a new or different kind of accident from any accident initiator previously evaluated in the UFSAR.

The proposed changes do not involve changes to the configuration of plant systems, or the manner in which they are operated. Crediting soluble boron in the spent fuel pool storage rack criticality analysis will have no effect on normal pool operation and maintenance since soluble boron in Region 1 and Region 2 is currently required by procedure. The crediting of soluble boron will only result in increased sampling to verify compliance with the minimum boron concentration required by the new TS 3/4.9.12. The increased sampling ensures that a new kind of accident, boron dilution in the spent fuel pool, will not be created.

The addition of large amounts of unborated water would be necessary to reduce the boron concentration in the spent fuel pool from the normal level of ≥ 1,900 ppm [parts per million] specified in new TS 3/4.9.12 to either 838 ppm (needed to accommodate the most limiting fuel loading accident) or 447 ppm (required for normal conditions). A small dilution flow might result from a leak from the cooling system into the spent fuel pool. Routine surveillance measurements of the soluble boron concentration conducted every 7 days per the new TS 3/4.9.12 would readily detect the reduction in concentration and provide sufficient time for corrective action prior to exceeding the regulatory limits.

A high flow rate dilution accident involving continuous operation of the Condensate Storage Pool pump could add a large amount of unborated water to the spent fuel pool. However, multiple alarms would alert the Control Room to the situation, including the fuel pool high-level alarm, Fuel Handling Building sump high-level alarm, and the Liquid Waste Management Trouble alarm. It is not considered credible that either multiple alarms would fail or be ignored by Operators, or that the spilling of large volumes of water from the spent fuel pool would be observed by plant personnel who would not take corrective actions. Moreover, if the soluble boron in the spent fuel storage racks would be completely diluted, the fuel in the racks will remain subcritical by a design margin of at least 0.005 Δk, and so the k_{eff} of the fuel in the racks will remain below 1.00.

Therefore, it is concluded that the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes for the Region 1 (spent fuel cask storage area) and Region 2 (spent fuel pool and, after permanent plant shutdown, refueling canal) fuel storage racks, which involve taking credit for soluble boron, revising the burnup-enrichment limits and loading restrictions for the storage of fuel assemblies, and increasing the k_{eff} limit for the flooding of the fuel storage racks with unborated water, will not result in a significant reduction in a margin of safety.

Detailed analysis with approved and benchmarked methods has shown, with a 95% probability at a 95% confidence level, that the neutron multiplication factor, k_{eff}, of the Region 1 and Region 2 high-density spent fuel pool storage racks, loaded with either Standard or NGF assemblies, and including biases, tolerances, and uncertainties, is less than 1.00 with unborated water, and less than 0.95 with 447 ppm of soluble boron credited. In addition, the effects of abnormal and accident conditions have been evaluated to demonstrate that under credible conditions the k_{eff} will not exceed 0.95 with soluble boron credited. To ensure that the margin of safety for subcriticality is maintained, and that k_{eff} will be below 0.95, a new TS 3/4.9.12 will require a soluble boron level of ≥ 1,900 ppm in the spent fuel pool. This is much greater than the required soluble boron concentration of 447 ppm under normal conditions, and 838 ppm for all credible accident conditions.

Therefore, it is concluded that the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 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: Terence A. Burke, Associate General Counsel—Nuclear Entergy Services, Inc., 1340 Echelon Parkway, Jackson, Mississippi 39213.

NRC Branch Chief: Michael T. Markley.

FPL Energy, Point Beach, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of Amendment Request: December 8, 2008, as supplemented by letters dated January 16 and 27, 2009, and February 20, 2009.

Description of Amendment Request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed amendment would revise the Point Beach Nuclear Plant Units 1 and 2 current licensing basis to implement the alternate source term (AST) through reanalysis of the radiological consequences of the Final Safety Analysis Report (FSAR) Chapter 14 accidents. The following technical specifications (TS) are requested to be modified:

TS 1.1 is reduced from 0.4 percent of containment air weight per day to 0.2 percent of containment air weight per day at peak design containment pressure.

Surveillance Requirement (SR) 3.4.16.2 is revised to change the specific activity of the reactor coolant from dose equivalent (DE) I–131 less than or equal to 0.8 uCi/gm to less than or equal to 0.5 uCi/gm.

SR 3.7.9.3 and SR 3.7.9.6 are revised to delete the word ''makeup.''

TS 3.7.13 is revised to change the specific activity of the secondary coolant from less than or equal to 1.00 uCi/gm to less than or equal to 0.1 uCi/gm DE I–131.

TS 5.5.15c is revised to change the maximum allowable containment leakage rate, from 0.4 percent to 0.2 percent of containment air weight per day.

TS 5.6.4 adds WCAP–16259–P–A ''Westinghouse Methodology for Application of 3–D Transient Neutronics to Non-LOCA Analyses'' to the list of approved analytical methods.

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 results of the applicable radiological [design basis accident] DBA re-evaluation demonstrated that, with the requested changes, the dose consequences of these limiting events are within the regulatory limits and guidance provided by the NRC in 10 CFR 50.67 and [Regulatory Guide] RG 1.183 [''Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Plants,'' July 2000] for the AST methodology. The AST is an input to calculations used to evaluate the consequences of an accident and does not by itself affect the plant response or the actual pathway of the activity released from the fuel. It does, however, better represent the physical characteristics of the release, such that appropriate mitigation techniques may be applied.

The change from the original source term to the new proposed AST is a change in the analysis method and assumptions and has no effect on the probability of occurrence of previously analyzed accidents. Use of an AST to analyze the dose effect of DBAs shows that regulatory acceptance criteria for the new methodology continues to be met. The dose consequences in the [control room] CR, the exclusion area boundary, and the low population zone [LPZ] do not exceed the regulatory limits provided by the NRC in 10 CFR 50.67 and Regulatory Guide 1.183 for the AST methodology.

For the locked rotor [LR] event, an NRC approved methodology RAVE (Westinghouse WCAP–16259–P–A, ''Westinghouse Methodology for Application of 3–D Transient Neutronics to Non-LOCA Accident Analysis,'') is used to determine rods in [departure from nucleate boiling] DNB. The use of an NRC approved methodology provides an input assumption to the radiological dose consequences calculations. The use of the new methodology does not change the sequence or progression of the accident scenario.

The proposed TS changes reflect the plant configuration that is required to implement the AST analyses. The equipment affected by the proposed changes is mitigating in nature and relied upon after an accident has been initiated. The operation of various filtration systems, the [residual heat removal] RHR and the [containment spray] CS systems, including associated support systems, has been considered in the evaluations of these proposed changes. The operation of this equipment has been evaluated for emergency diesel generator loading and fuel consumption. The evaluation demonstrated that the diesel generator loading and fuel consumption do not exceed the diesel generator criteria. While the operation of these systems does change with the implementation of an AST, the affected systems are not accident initiators, and application of the AST methodology itself is not an initiator of a DBA.

The operation of containment spray on sump recirculation has been evaluated for increased strainer blockage or reduction in flow from the sump. The evaluation demonstrated that the increase in containment spray will not adversely affect the operation of the emergency core cooling systems during the sump recirculation phase of a DBA.

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 changes proposed in this [license amendment request] LAR involve the use of a new analysis methodology and related regulatory acceptance criteria. The proposed TS changes reflect the plant configuration that is required to implement the AST analyses. No new or different accidents result from utilizing the proposed changes. Although the proposed changes require modifications to the [control room ventilation system] VNCR system, as well as modifications to the RHR system and CS system, these changes will not create a new or different kind of accident since they are related to system capabilities that provide protection from accidents that have already occurred. The operation of this equipment has been evaluated for emergency diesel generator loading and fuel consumption. The evaluation demonstrated that the diesel generator loading and fuel consumption do not exceed the diesel generator criteria.

The operation of containment spray on sump recirculation has been evaluated for increased strainer blockage or reduction in flow from the sump. The evaluation demonstrated that the increase in containment spray will not adversely affect the operation of the emergency core cooling systems during the sump recirculation phase of a DBA.

As a result, no new failure modes are being introduced that could lead to different accidents. These changes do not alter the nature of events postulated in the FSAR nor do they introduce any unique precursor mechanisms.

For the LR event, an NRC approved methodology RAVE (Westinghouse WCAP–16259–P–A, ''Westinghouse Methodology for Application of 3-D Transient Neutronics to Non-LOCA Accident Analysis,'') is used to determine rods in DNB. The use of an NRC approved methodology provides an input assumption to the radiological dose consequences calculations. The use of the new methodology does not alter the nature of events postulated in the FSAR nor do they introduce any unique precursor mechanisms.

Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The changes proposed in this license amendment involve the use of a new analysis methodology and related regulatory acceptance criteria. The proposed TS changes reflect the plant configuration that is required to implement the AST analyses. Safety margins and analytical conservatisms have been evaluated and have been found to be acceptable. The analyzed events have been carefully selected and, with plant modifications, no significant reduction of margin has occurred and analyses adequately bound postulated event scenarios. The proposed changes continue to ensure that the dose consequences of DBAs at the exclusion

area and LPZ boundaries and in the CR are within the corresponding acceptance criteria presented in RG 1.183 and 10 CFR 50.67. The margin of safety for the radiological consequences of these accidents is provided by meeting the applicable regulatory limits, which are set at or below the 10 CFR 50.67 limits. An acceptable margin of safety is inherent in these limits.

For the LR event, an NRC approved methodology RAVE (Westinghouse WCAP–16259–P–A, ''Westinghouse Methodology for Application of 3-D Transient Neutronics to Non-LOCA Accident Analysis,'') is used to determine rods in DNB. The use of an NRC approved methodology provides an input assumption to the radiological dose consequences calculations. The use of the new methodology does not reduce any margins of safety for the LR event; 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: Antonio Fernandez, Senior Attorney, FPL Energy Point Beach, LLC, P.O. Box 14000, Juno Beach, FL 33408–0420.

NRC Branch Chief: Lois M. James.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) and Safeguards Information (SGI) for Contention Preparation

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

FPL Energy Point Beach, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

1. This order contains instructions regarding how potential parties to the proceedings listed above may request access to documents containing sensitive unclassified information (SUNSI and SGI).

2. Within ten (10) days after publication of this notice of opportunity for hearing, any potential party as defined in 10 CFR 2.4 who believes access to SUNSI or SGI is necessary for a response to the notice may request access to SUNSI or SGI. A ''potential party'' is any person who intends or may intend to participate as a party by demonstrating standing and the filing of an admissible contention under 10 CFR 2.309. Requests submitted later than ten (10) days will not be considered, absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

3. The requester shall submit a letter requesting permission to access SUNSI and/or SGI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, MD 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are *hearing.docket@nrc.gov* and *ogcmailcenter.resource@nrc.gov*, respectively.[1] The request must include the following information:

a. A description of the licensing action with a citation to this **Federal Register** notice of opportunity for hearing;

b. The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in (a);

c. If the request is for SUNSI, the identity of the individual requesting access to SUNSI and the requester's need for the information in order to meaningfully participate in this adjudicatory proceeding, particularly why publicly available versions of the application would not be sufficient to provide the basis and specificity for a proffered contention;

d. If the request is for SGI, the identity of the individual requesting access to SGI and the identity of any expert, consultant or assistant who will aid the requester in evaluating the SGI, and information that shows:

(i) Why the information is indispensable to meaningful participation in this licensing proceeding; and

(ii) The technical competence (demonstrable knowledge, skill, experience, training or education) of the requester to understand and use (or evaluate) the requested information to provide the basis and specificity for a proffered contention. The technical competence of a potential party or its counsel may be shown by reliance on a qualified expert, consultant or assistant who demonstrates technical competence as well as trustworthiness and reliability, and who agrees to sign a non-disclosure affidavit and be bound by the terms of a protective order; and

e. If the request is for SGI, Form SF–85, ''Questionnaire for Non-Sensitive Positions,'' Form FD–258 (fingerprint card), and a credit check release form completed by the individual who seeks access to SGI and each individual who will aid the requester in evaluating the SGI. For security reasons, Form SF–85 can only be submitted electronically, through a restricted-access database. To obtain online access to the form, the requester should contact the NRC's Office of Administration at 301–492–3524.[2] The other completed forms must be signed in original ink, accompanied by a check or money order payable in the amount of $191.00 to the U.S. Nuclear Regulatory Commission for each individual, and mailed to the: Office of Administration, Security Processing Unit, Mail Stop TWB–05 B32M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0012.

These forms will be used to initiate the background check, which includes fingerprinting as part of a criminal history records check. *Note:* Copies of these forms do *not* need to be included with the request letter to the Office of the Secretary, but the request letter should state that the forms and fees have been submitted as described above.

4. To avoid delays in processing requests for access to SGI, all forms should be reviewed for completeness and accuracy (including legibility) before submitting them to the NRC. Incomplete packages will be returned to the sender and will not be processed.

5. Based on an evaluation of the information submitted under items 2 and 3.a through 3.d, above, the NRC staff will determine within ten days of receipt of the written access request whether (1) there is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding, and (2) there is a legitimate need for access to SUNSI or need to know the SGI requested. For SGI, the need to know determination is made based on whether the information requested is necessary (*i.e.*, indispensable) for the proposed recipient to proffer and litigate a specific contention in this NRC

[1] See footnote 6. While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI and/or SGI under these procedures should be submitted as described in this paragraph.

[2] The requester will be asked to provide his or her full name, Social Security number, date and place of birth, telephone number, and e-mail address. After providing this information, the requester usually should be able to obtain access to the online form within one business day.

proceeding[3] and whether the proposed recipient has the technical competence (demonstrable knowledge, skill, training, education, or experience) to evaluate and use the specific SGI requested in this proceeding.

6. If standing and need to know SGI are shown, the NRC staff will further determine based upon completion of the background check whether the proposed recipient is trustworthy and reliable. The NRC staff will conduct (as necessary) an inspection to confirm that the recipient's information protection systems are sufficient to protect SGI from inadvertent release or disclosure. Recipients may opt to view SGI at the NRC's facility rather than establish their own SGI protection program to meet SGI protection requirements.

7. A request for access to SUNSI or SGI will be granted if:

a. The request has demonstrated that there is a reasonable basis to believe that a potential party is likely to establish standing to intervene or to otherwise participate as a party in this proceeding;

b. The proposed recipient of the information has demonstrated a need for SUNSI or a need to know for SGI, and that the proposed recipient of SGI is trustworthy and reliable;

c. The proposed recipient of the information has executed a Non-Disclosure Agreement or Affidavit and agrees to be bound by the terms of a Protective Order setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI and/or SGI; and

d. The presiding officer has issued a protective order concerning the information or documents requested.[4] Any protective order issued shall provide that the petitioner must file SUNSI or SGI contentions 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.

8. If the request for access to SUNSI or SGI is granted, the terms and conditions for access to sensitive unclassified information will be set forth in a draft protective order and affidavit of non-disclosure appended to a joint motion by the NRC staff, any other affected parties to this proceeding,[5] and the petitioner(s). If the diligent efforts by the relevant parties or petitioner(s) fail to result in an agreement on the terms and conditions for a draft protective order or non-disclosure affidavit, the relevant parties to the proceeding or the petitioner(s) should notify the presiding officer within ten (10) days, describing the obstacles to the agreement.

9. If the request for access to SUNSI is denied by the NRC staff or a request for access to SGI is denied by NRC staff either after a determination on standing and need to know or, later, after a determination on trustworthiness and reliability, the NRC staff shall briefly state the reasons for the denial. Before the Office of Administration makes an adverse determination regarding access, the proposed recipient must be provided an opportunity to correct or explain information. The requester may challenge the NRC staff's adverse determination with respect to access to SUNSI or with respect to standing or need to know for SGI by filing a challenge within ten (10) days of receipt of that determination with (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to § 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer. In the same manner, an SGI requester may challenge an adverse determination on trustworthiness and reliability by filing a challenge within fifteen (15) days of receipt of that determination.

In the same manner, a party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within ten (10) days of the notification by the NRC staff of its grant of such a request.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[6]

10. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI and/or SGI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

Dated at Rockville, Maryland, this 7th day of April 2009.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Acting Secretary of the Commission.

Attachment 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) and Safeguards Information (SGI) in This Proceeding

Day	Event/activity
0	Publication of **Federal Register** notice of proposed action and opportunity for hearing, including order with instructions for access requests.

[3] Broad SGI requests under these procedures are thus highly unlikely to meet the standard for need to know; furthermore, staff redaction of information from requested documents before their release may be appropriate to comport with this requirement. These procedures do not authorize unrestricted disclosure or less scrutiny of a requester's need to know than ordinarily would be applied in connection with an already-admitted contention.

[4] If a presiding officer has not yet been designated, the Chief Administrative Judge will issue such orders, or will appoint a presiding officer to do so.

[5] Parties/persons other than the requester and the NRC staff will be notified by the NRC staff of a favorable access determination (and may participate in the development of such a motion and protective order) if it concerns SUNSI and if the party/person's interest independent of the proceeding would be harmed by the release of the information (*e.g.*, as with proprietary information).

[6] As of October 15, 2007, the NRC's final ''E-Filing Rule'' became effective. *See* Use of Electronic Submissions in Agency Hearings (72 FR 49139; Aug. 28, 2007). Requesters should note that the filing requirements of that rule apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI/SGI requests submitted to the NRC staff under these procedures.

Day	Event/activity
10	Deadline for submitting requests for access to SUNSI and/or SGI with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding; demonstrating that access should be granted (*e.g.,* showing technical competence for access to SGI); and, for SGI, including application fee for fingerprint/background check.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI and/or SGI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	NRC staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows (1) need for SUNSI or (2) need to know for SGI. (For SUNSI, NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents). If NRC staff makes the finding of need to know for SGI and likelihood of standing, NRC staff begins background check (including fingerprinting for a criminal history records check), information processing (preparation of redactions or review of redacted documents), and readiness inspections.
25	If NRC staff finds no ''need,'' ''need to know,'' or likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
190	(Receipt +180) If NRC staff finds standing, need to know for SGI, and trustworthiness and reliability, deadline for NRC staff to file motion for Protective Order and draft Non-disclosure Affidavit (or to make a determination that the proposed recipient of SGI is not trustworthy or reliable). *Note:* Before the Office of Administration makes an adverse determination regarding access, the proposed recipient must be provided an opportunity to correct or explain information.
205	Deadline for petitioner to seek reversal of a final adverse NRC staff determination either before the presiding officer or another designated officer.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI and/or SGI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI and/or SGI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI and/or SGI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
B	Decision on contention admission.

[FR Doc. E9–8455 Filed 4–13–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Subcommittee Meeting on Regulatory Policies and Practices; Notice of Meeting

The ACRS Subcommittee on Regulatory Policies and Practices will hold a meeting on May 6, 2009, in Room T–2B3, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, May 6, 2009—1:30 p.m. until the conclusion of business.

The Subcommittee will discuss the proposed rule on a voluntary, risk-informed alternative to the current requirements for analyzing the performance of emergency core cooling systems (ECCS) during loss-of-coolant accidents (LOCAs). The proposed rule would also establish procedures and acceptance criteria for evaluating certain changes in plant design and operation, based upon the results of the new analyses of ECCS performance. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, consultants to the staff, and other interested persons regarding this matter. 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, Dr. Hossein Nourbakhsh (telephone 301–415–5622), five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted. 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 Officers between 7:45 a.m. and 4:30 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: April 8, 2009.

Antonio Dias,

Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. E9–8466 Filed 4–13–09; 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 May 6, 2009, Room T2–B3, 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, May 6, 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: April 8, 2009.

Antonio Dias,

Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. E9–8465 Filed 4–13–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee; Notice of Meeting

The ACRS Subcommittee on Radiation Protection and Nuclear Materials will hold a meeting on May 5, 2009, Room T2–B3, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, May 5, 2009—1 p.m.–5 p.m.

The Subcommittee will review two Regulatory Guides, RG 1.21, ''Measuring, Evaluating, and Reporting Radioactive Material in Liquid and Gaseous Effluents, and Solid Waste,'' and RG 4.1, ''Radiological Environmental Monitoring for Nuclear Power Plants,'' which are now in the process of being finalized. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this matter. 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 Official, Mr. Neil Coleman, (Telephone: 301–415–7656) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted. 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 8 a.m. and 4:15 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: April 8, 2009.

Antonio Dias,

Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. E9–8464 Filed 4–13–09; 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 April 13, 20, 27, May 4, 11, 18, 2009.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

Week of April 13, 2009

Wednesday, April 15, 2009

9:30 a.m.
Briefing on NRC Corporate Support (Public Meeting). (Contact: Karen Olive, 301–415–2276).

This meeting will be webcast live at the Web address—*http://www.nrc.gov*.

Thursday, April 16, 2009

1:30 p.m.
Briefing on Human Capital and EEO (Public Meeting). (Contact: Kristin Davis, 301–492–2266).

This meeting will be webcast live at the Web address—*http://www.nrc.gov*.

Friday, April 17, 2009

9:30 a.m.
Briefing on Low Level Radioactive Waste—Part 1 (Public Meeting). (Contact: Patricia Swain, 301–415–5405).

This meeting will be webcast live at the Web address—*http://www.nrc.gov*.

Friday, April 17, 2009

1:30 p.m.
Briefing on Low Level Radioactive Waste—Part 2 (Public Meeting). (Contact: Patricia Swain, 301–415–5405).

This meeting will be webcast live at the Web address—*http://www.nrc.gov*.

Week of April 20, 2009—Tentative

Thursday, April 23, 2009

2 p.m.
Briefing on Radioactive Source Security (Public Meeting). (Contact: Kim Lukes, 301–415–6701).

This meeting will be webcast live at the Web address—*http://www.nrc.gov*.

Week of April 27, 2009—Tentative

There are no meetings scheduled for the week of April 27, 2009.

Week of May 4, 2009—Tentative

There are no meetings scheduled for the week of May 4, 2009.

Week of May 11, 2009—Tentative

Thursday, May 14, 2009

9 a.m.

Briefing on the Results of the Agency Action Review Meeting (Public Meeting). (Contact: Shaun Anderson, 301–415–2039).

This meeting will be webcast live at the Web address—*http://www.nrc.gov*.

Week of May 18, 2009—Tentative

There are no meetings scheduled for the week of May 18, 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.

* * * * *

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 electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov.*

Dated: April 9, 2009.

Rochelle C. Bavol,

Office of the Secretary.

[FR Doc. E9–8575 Filed 4–10–09; 11:15 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

[OMB NO. 3206–0150]

Submission for OMB Review; Comment Request for Revised Information Collection: Fingerprint Charts: Standard Form (SF) 87 AND SF 87A

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) this notice announces that the U.S. Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review and clearance of the revised collection of information collection (Fingerprint Charts SF 87 and SF 87A; OMB No. 3206–0150). The Fingerprint Charts are used in processing fingerprint checks submitted to the Federal Bureau of Investigation (FBI) to assist in determining whether an applicant is suitable for Federal employment or should be granted a security clearance.

The SF 87 and SF 87A are completed by respondents for, or incumbents of, Government positions or by military personnel. The SF 87 and SF 87A are used to conduct a criminal history check in connection with background investigations to establish that such persons are:

- Suitable for employment or retention in the position;
- Suitable for employment or retention in a public trust position;
- Suitable for employment or retention in a national security position; or
- Eligible for access to classified national security information.

We received one comment as a result of the 60-day **Federal Register** Notice, published in the **Federal Register** on June 23, 2008. The comment was received from the Internal Revenue Service regarding contractor use of the SF 87 and SF 87A. Contractors do not use the SF 87 and 87A—they use the FD 258. The **Federal Register** notice was updated to reflect this fact. We did not receive any other comments. Therefore, we determined that this collection of information continues to be necessary for the proper performance of functions of the OPM and the Federal Investigative Services Division, which administers background investigations. Further, we believe that our estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology.

It is estimated that 196,540 SF 87 or SF 87A inquiries are sent to individuals annually. Each form takes approximately five minutes to complete. The estimated annual burden is approximately 16,380 hours.

For copies of this proposal, contact Mary-Kay Brewer at (703) 305–1002, FAX (703) 603–0576 or via e-mail at *marykay.brewer@opm.gov*. Please include contact information with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to:

Kathy Dillaman, Associate Director, Federal Investigative Services Division, U.S. Office of Personnel Management, 1900 E. Street, Room 2H31, Washington, DC 20415; and

John W. Barkhamer, OMB Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Mary-Kay Brewer, Program Analyst, Operational Policy Group, Federal Investigative Services Division, U.S. Office of Personnel Management, 703–305–1002.

Kathie Ann Whipple,

Acting Director, U.S. Office of Personnel Management.

[FR Doc. E9–8523 Filed 4–13–09; 8:45 am]

BILLING CODE 6325–53–P

POSTAL REGULATORY COMMISSION

[Docket No. MT2009–1; Order No. 199]

Market Test

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service notice announcing its intent to initiate a market test. This notice addresses procedural steps associated with this filing.

DATES: Postal Service responses to questions identified in this notice are due April 20, 2009. Comments are due April 27, 2009.

ADDRESSES: Submit filings electronically via the Commission's Filing Online system at *http://www.prc.gov*.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

On April 1, 2009, the Postal Service filed a formal notice, pursuant to 39 U.S.C. 3641(c)(1), announcing its intent to initiate a market test beginning May 6, 2009, of an experimental product, Collaborative Logistics.[1] The Postal Service asserts that the Collaborative Logistics product is a competitive product. Notice at 1. The Notice recites the statutory authority for offering Collaborative Logistics as an experimental product and provides a general description of it. This experiment represents the initial market test conducted by the Postal Service under the Postal Accountability and Enhancement Act (PAEA).

Statutory authority. The Postal Service indicates that it plans to conduct a market test of the proposed Collaborative Logistics product. Section 3641 imposes certain conditions on experimental products which the Notice purports to address. Specifically, the Postal Service asserts that Collaborative Logistics is significantly different from all products within the meaning of 39 U.S.C. 3641(b)(1).

In addition, it contends that ''the introduction or continued offering of the product will not create an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer, particularly in regard to small business concerns.'' *Id*. at 2; *see also* 39 U.S.C. 3641(b)(2). Also, it submits that Collaborative Logistics is correctly classified as a competitive product. *Id*.; *see also* 39 U.S.C. 3641(b)(3).

Product description. Pursuant to 39 U.S.C.3641(c)(1)(B), the Postal Service provides a brief description of the nature and scope of the market test. The Postal Service explains that, in view of its large and complex transportation network, ''the natural imbalance of mail volume between cities and the need to meet operating plans to support service standards makes some underutilized space on some highway transportation predictable.'' *Id*. at 2–3. Under this market test, ''the Postal Service would sell that available space.'' *Id*. at 3. Thus, it defines the experimental product as ''transportation of an article or multiple articles on a pallet or other unit load, on a space-available basis, in postal transportation.'' *Id*. at 3.

Under the market test, ''unit loads will be picked up and delivered to firms, stores, hospitals, warehouses, other large customer and/or postal facilities.'' *Id*. For instance, the Postal Service specifies that the ''maximum pallet weight will be 2200 pounds, with articles secured to the pallet using shrink-wrapping and banding.'' *Id*. at 3. These unit loads are to be shipped or carried like those loads provided under similar offerings, often called LTL (less-than-truckload) shipping services. The Postal Service notes that terms are to be governed under negotiated contracts. *Id*. at 3–4.

The Postal Service indicates that total revenues from the market test are not anticipated to exceed $10 million. *Id*. at 2. In addition, it confirms that the market test shall not exceed two years. *Id*.

II. Notice of Filing

The Commission establishes Docket No. MT2009–1 for consideration of matters raised by the Notice. Interested persons may submit comments on whether the Postal Service's filing in the captioned docket is consistent with the policies of 39 U.S.C. 3641. Comments are due no later than April 27, 2009. The filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Michael J. Ravnitzky to serve as Public Representative in this docket.

III. Supplemental Information

This is the first time the Postal Service has noticed an experimental product under the PAEA. The Commission requests the Postal Service to provide the following supplemental information regarding the market test by April 20, 2009:

1. Please provide the Governors' decision, if any, authorizing initiation of the experimental product.

2. Please describe: (a) The geographic market where the market test will be conducted; (b) the plan for monitoring the performance of the market test, including specific data items to be collected periodically; (c) the parameters of the market test; and (d) the criteria to be used to assess the success of the test.

3. Please describe how the product, Collaborative Logistics, will be made available to the public.

4. The Notice describes the product, but does not explicitly indicate whether the product is to be classified as a postal service. Please elaborate.

5. *Please identify*: (a) When the ''similar product,'' referred to at footnote 1 of the Notice, was terminated; and (b) explain how the Collaborative Logistics experimental product is significantly different from the similar product offered previously.

6. (a) Please provide the basis upon which the Postal Service concludes that offering the product will not create an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer.

(b) Please discuss the Postal Service's efforts to determine the impact on small businesses.

7. Please identify all applicable federal and state laws and regulations that apply to the transportation offerings of the experimental product.

8. Please explain if Collaborative Logistics will use Purchased Transportation (Cost Segment 14) or Vehicle Service Drivers (Cost Segment 8).

IV. Ordering Paragraphs

It is Ordered:

1. The Commission establishes Docket No. MT2009–1 for consideration of the matters raised by the Notice.

2. Pursuant to 39 U.S.C. 505, Michael J. Ravnitzky is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Answers to the questions set forth in the body of this Order are due April 20, 2009.

4. Comments by interested persons are due no later than April 27, 2009.

5. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Steven W. Williams,

Secretary.

[FR Doc. E9–8401 Filed 4–13–09; 8:45 am]

BILLING CODE

[1] Notice of the United States Postal Service of Market Test of Experimental Product—Collaborative Logistics, April 1, 2009 (Notice).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11701 and #11702]

Pennsylvania Disaster #PA–00022

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Pennsylvania.

DATES: 04/07/2009.

Incident: Millcreek Township Fire.

Incident Period: 03/28/2009.

Effective Date: 04/07/2009.

Physical Loan Application Deadline Date: 06/08/2009.

Economic Injury (Eidl) Loan Application Deadline Date: 01/07/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Erie.

Contiguous Counties:

New York: Chautauqua.

Ohio: Ashtabula.

Pennsylvania: Crawford, Warren.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	4.375
Homeowners Without Credit Available Elsewhere	2.187
Businesses With Credit Available Elsewhere	6.000
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	4.500
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11701 5 and for economic injury is 11702 0.

The States which received an EIDL Declaration # are Pennsylvania, New York, and Ohio

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: April 7, 2009.

Karen G. Mills,

Administrator.

[FR Doc. E9–8520 Filed 4–13–09; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28690; 812–13235–55]

Blackrock International Growth and Income Trust, et al.; Notice of Application

April 7, 2009.

AGENCY: Securities and Exchange Commission.

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 19(b) of the Act and rule 19b–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain closed-end investment companies to make periodic distributions of long-term capital gains with respect to their outstanding common stock as frequently as twelve times each year, and as frequently as distributions are specified by or in accordance with the terms of any outstanding preferred stock that such investment companies may issue.

APPLICANTS: BlackRock International Growth and Income Trust; BlackRock Global Equity Income Trust; BlackRock Preferred and Equity Advantage Trust; BlackRock Real Asset Equity Trust; BlackRock World Investment Trust; BlackRock Enhanced Dividend Achievers™ Trust; BlackRock Global Opportunities Equity Trust; BlackRock Health Sciences Trust; BlackRock Global Energy and Resources Trust; BlackRock S&P Quality Rankings Global Equity Managed Trust; BlackRock Strategic Dividend Achievers™ Trust; BlackRock Dividend Achievers™ Trust; BlackRock EcoSolutions Investment Trust; BlackRock Enhanced Government Fund, Inc.; BlackRock Enhanced Capital and Income Fund, Inc. (the ''Funds'') and BlackRock Advisors, LLC. (the ''Adviser'').

FILING DATES: June 21, 2007, July 23, 2008, August 18, 2008, September 22, 2008 and January 27, 2009.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 4, 2009, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants, c/o BlackRock Advisors, LLC, 100 Bellevue Parkway, Wilmington, Delaware 19809.

FOR FURTHER INFORMATION CONTACT: Wendy Friedlander, Senior Counsel, at (202) 551–6837, or James M. Curtis, Branch Chief, at (202) 551–6825 (Division of Investment Management, Office of Chief Counsel).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549–1520 (telephone (202) 551–5850).

Applicants' Representations

1. Each of the Funds is a closed-end management investment company registered under the Act.[1] The common stock issued by each Fund is traded on either the New York Stock Exchange or NYSE Alternext US. Currently, only the BlackRock Preferred and Equity Advantage Trust has preferred stock outstanding, which stock is not traded on any exchange. Applicants believe that, in general, the common stockholders of the Funds are conservative, dividend-sensitive investors who desire current income periodically.

2. The Adviser is registered under the Investment Advisers Act of 1940. Each Fund and the Adviser have entered into an investment advisory agreement pursuant to which the Adviser provides investment advisory and portfolio management services to such Fund. The Adviser is a wholly-owned subsidiary of BlackRock, Inc.

3. Applicants represent that on September 25, 2008, the Board of Directors or Board of Trustees (''Board'') of each of the Funds, including a majority of the members of each Board who are not ''interested persons'' of such Fund, as defined in section 2(a)(19) of the Act (''Independent Members''), met and considered the adoption of a periodic pay-out policy (''Plan'') with respect to the Fund's common stock. Applicants represent that each Plan would provide for periodic level distributions to the Fund's common stockholders based upon a fixed amount per share, a fixed percentage of market price or a fixed percentage of net asset value (''NAV'') per share of common stock.

4. Applicants represent that each Board requested and evaluated, and the Adviser furnished, such information as

[1] Applicants request that any order issued granting the relief requested in the application also apply to any closed-end investment company (''fund'') that in the future: (a) Is advised by the Adviser (including any successor in interest) or by any entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with the Adviser; and (b) complies with the terms and conditions of the requested order. A successor in interest is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

the Board believed was reasonably necessary to make an informed determination of whether the Fund should adopt and implement a Plan. Applicants represent that at the meeting, each Board, including a majority of the Independent Members of the Board, determined that adoption and implementation of the Plan was consistent with the Fund's investment objectives and policies and in the best interest of the Fund and its stockholders, after considering information such as the purpose(s) of the Plan, any potential or actual conflicts of interest that the Adviser or any affiliated person of the Adviser may have relating to the adoption or implementation of the Plan, whether the rate of distribution under the Plan would exceed the Fund's expected total return (in relation to NAV per share of common stock) and the reasonably foreseeable material effects of such Plan on the Fund's long-term total return (in relation to market price and NAV).

5. Applicants represent that at the September 25, 2008 meeting, each Board, including a majority of Independent Members of the Board, adopted compliance policies and procedures in accordance with rule 38a–1 under the Act that are reasonably designed to ensure that all notices required to be sent to Fund stockholders pursuant to section 19(a) of the Act and rule 19a–1 thereunder (''Notices'') comply with Condition II below, and that all other written communications by a Fund or its agents regarding distributions under a Fund's Plan comply with condition III below. Applicants represent that each Board also adopted policies and procedures at that meeting that require the Fund to keep records that demonstrate the Fund's compliance with all of the conditions of the requested Order and that are necessary for the Fund to form the basis for, or demonstrate the calculation of, the amounts disclosed in its Notices.

6. Applicants represent that each Board recorded the information in its meeting minutes that it considered and that formed the basis for the Board's approval of each Fund's Plan. Applicants represent that such minutes will be preserved for a period of not less than six years from the date of such meeting, the first two years in an easily accessible place, or for such longer period as may otherwise be required by law.

Applicants' Legal Analysis

1. Section 19(b) generally makes it unlawful for any registered investment company to make long-term capital gains distributions more than once each year. Rule 19b–1 limits the number of capital gains dividends, as defined in section 852(b)(3)(C) of the Internal Revenue Code (''Code'') (''distributions''), that a fund may make with respect to any one taxable year to one, plus a supplemental ''clean up'' distribution made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year, plus one additional capital gain dividend made in whole or in part to avoid the excise tax under section 4982 of the Code.

2. Section 6(c) provides that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicants state that the one of the concerns underlying section 19(b) and rule 19b–1 is that shareholders might be unable to differentiate between regular distributions of capital gains and distributions of investment income. Applicants argue that by providing the information required by section 19(a) and rule 19a–1, and by complying with the procedures adopted under the Plans and the conditions listed below, each Fund will ensure that its stockholders are provided sufficient information to understand that their periodic distributions are not tied to the Fund's net investment income (which for this purpose is the Fund's taxable income other than from capital gains) and realized capital gains to date, and may not represent yield or investment return. Accordingly, applicants assert that continuing to subject the Funds to section 19(b) and rule 19b–1 would afford shareholders no extra protection.

4. Applicants note that section 19(b) and rule 19b–1 also were intended to prevent certain improper sales practices, including, in particular, the practice of urging an investor to purchase shares of a fund on the basis of an upcoming capital gains dividend (''selling the dividend''), where the dividend would result in an immediate corresponding reduction in NAV and would be in effect a taxable return of the investor's capital. Applicants assert that the ''selling the dividend'' concern should not apply to closed-end investment companies, such as the Funds, which do not continuously distribute shares. According to applicants, if the underlying concern extends to secondary market purchases of shares of closed-end funds that are subject to a large upcoming capital gains dividend, adoption of a Plan actually helps minimize the concern by avoiding, through periodic distributions, any buildup of large end-of-the-year distributions.

5. Applicants also note that the common stock of closed-end funds that invest primarily in equity securities often trade in the marketplace at a discount to their NAV. Applicants believe that this discount may be reduced for closed-end funds that pay relatively frequent dividends on their common stock at a consistent rate, whether or not those dividends contain an element of long-term capital gain.

6. Applicants assert that the application of rule 19b–1 to a Plan actually could have an undesirable influence on portfolio management decisions. Applicants state that, in the absence of an exemption from rule 19b–1, the implementation of a Plan imposes pressure on management (i) not to realize any net long-term capital gains until the point in the year that the fund can pay all of its remaining distributions in accordance with rule 19b–1, and (ii) not to realize any long-term capital gains during any particular year in excess of the amount of the aggregate pay-out for the year (since as a practical matter excess gains must be distributed and accordingly would not be available to satisfy pay-out requirements in following years), notwithstanding that purely investment considerations might favor realization of long-term gains at different times or in different amounts. Applicants thus assert that the limitation on the number of capital gain distributions that a fund may make with respect to any one year imposed by rule 19b–1 may prevent the efficient operation of a Plan whenever that fund's realized net long-term capital gains in any year exceed the total of the periodic distributions that may include such capital gains under the rule. Applicants assert that the requested order would minimize these effects of rule 19b–1 by enabling the Funds to realize long-term capital gains as often as investment considerations dictate without fear of violating rule 19b–1.

7. Applicants state that *Revenue Ruling 89–81* under the Code requires that a fund that has both common stock and preferred stock outstanding designate the types of income, *e.g.*, investment income and capital gains, in the same proportion as the total distributions distributed to each class for the tax year. To satisfy the proportionate designation requirements

of *Revenue Ruling 89–81*, whenever a fund has realized a long-term capital gain with respect to a given tax year, the fund must designate the required proportionate share of such capital gain to be included in common and preferred stock dividends. Applicants state that although rule 19b–1 allows a fund some flexibility with respect to the frequency of capital gains distributions, a fund might use all of the exceptions available under the rule for a tax year and still need to distribute additional capital gains allocated to the preferred stock to comply with *Revenue Ruling 89–81*.

8. Applicants assert that the potential abuses addressed by section 19(b) and rule 19b–1 do not arise with respect to preferred stock issued by a closed-end fund. Applicants assert that such distributions are fixed or determined in periodic auctions by reference to short-term interest rates rather than by reference to performance of the issuer and *Revenue Ruling 89–81* determines the proportion of such distributions that are comprised of the long-term capital gains.

9. Applicants also submit that the ''selling the dividend'' concern is not applicable to preferred stock, which entitles a holder to no more than a periodic dividend at a fixed rate or the rate determined by the market, and, like a debt security, is priced based upon its liquidation value, credit quality, and frequency of payment. Applicants state that investors buy preferred shares for the purpose of receiving payments at the frequency bargained for, and do not expect the liquidation value of their stock to change.

10. Applicants request an order under section 6(c) granting an exemption from the provisions of section 19(b) and rule 19b–1 to permit each Fund to distribute periodic capital gains dividends (as defined in section 852(b)(3)(C) of the Code) as often as monthly in any one taxable year in respect of its common stock and as often as specified by or determined in accordance with the terms thereof in respect of its preferred stock.[2]

Applicants' Conditions

Applicants agree that, with respect to each fund seeking to rely on the order, the order will be subject to the following conditions:

I. Compliance Review and Reporting

The fund's chief compliance officer will: (a) report to the fund Board, no less frequently than once every three months or at the next regularly scheduled quarterly board meeting, whether (i) the fund and the Adviser have complied with the conditions to the requested order, and (ii) a Material Compliance Matter, as defined in rule 38a–1(e)(2), has occurred with respect to compliance with such conditions; and (b) review the adequacy of the policies and procedures adopted by the fund no less frequently than annually.

II. Disclosures to Fund Shareholders

A. Each Notice to the holders of the fund's common shares, in addition to the information required by section 19(a) and rule 19a–1:

1. Will provide, in a tabular or graphical format:

(a) The amount of the distribution, on a per common share basis, together with the amounts of such distribution amount, on a per common share basis and as a percentage of such distribution amount, from estimated: (A) Net investment income; (B) net realized short-term capital gains; (C) net realized long-term capital gains; and (D) return of capital or other capital source;

(b) The fiscal year-to-date cumulative amount of distributions, on a per common share basis, together with the amounts of such cumulative amount, on a per common share basis and as a percentage of such cumulative amount of distributions, from estimated: (A) Net investment income; (B) net realized short-term capital gains; (C) net realized long-term capital gains; and (D) return of capital or other capital source;

(c) The average annual total return in relation to the change in NAV for the 5-year period (or, if the fund's history of operations is less than five years, the time period commencing immediately following the fund's first public offering) ending on the last day of the month prior to the most recent distribution declaration date compared to the current fiscal period's annualized distribution rate expressed as a percentage of NAV as of the last day of the month prior to the most recent distribution declaration date; and

(d) The cumulative total return in relation to the change in NAV from the last completed fiscal year to the last day of the month prior to the most recent distribution declaration date compared to the fiscal year-to-date cumulative distribution rate expressed as a percentage of NAV as of the last day of the month prior to the most recent distribution declaration date.

Such disclosure shall be made in a type size at least as large and as prominent as the estimate of the sources of the current distribution; and

2. Will include the following disclosure:

(a) ''You should not draw any conclusions about the fund's investment performance from the amount of this distribution or from the terms of the fund's Plan'';

(b) ''The fund estimates that it has distributed more than its income and net realized capital gains; therefore, a portion of your distribution may be a return of capital. A return of capital may occur, for example, when some or all of the money that you invested in the fund is paid back to you. A return of capital distribution does not necessarily reflect the fund's investment performance and should not be confused with 'yield' or 'income' ''; [3] and

(c) ''The amounts and sources of distributions reported in this Notice are only estimates and are not being provided for tax reporting purposes. The actual amounts and sources of the amounts for tax reporting purposes will depend upon the fund's investment experience during the remainder of its fiscal year and may be subject to changes based on tax regulations. The fund will send you a Form 1099–DIV for the calendar year that will tell you how to report these distributions for Federal income tax purposes.''

Such disclosure shall be made in a type size at least as large as and as prominent as any other information in the Notice and placed on the same page in close proximity to the amount and the sources of the distribution.

B. On the inside front cover of each report to shareholders under rule 30e–1 under the Act, the fund will:

1. Describe the terms of the Plan (including the fixed amount or fixed percentage of the distributions and the frequency of the distributions);

2. Include the disclosure required by condition II.A.2.a above;

3. State, if applicable, that the Plan provides that the Board may amend or terminate the Plan at any time without prior notice to fund shareholders; and

4. Describe any reasonably foreseeable circumstances that might cause the fund to terminate the Plan and any reasonably foreseeable consequences of such termination.

C. Each report provided to shareholders under rule 30e–1 and each prospectus filed with the Commission

[2] Applicants state that a future fund that relies on the requested order will satisfy each of the representations in the application except that such representations will be made in respect of actions by the board of directors or board of trustees of such future fund and will be made at a future time.

[3] This disclosure will be included only if the current distribution or the fiscal year-to-date cumulative distributions are estimated to include a return of capital.

on Form N–2 under the Act will provide the fund's total return in relation to changes in NAV in the financial highlights table and in any discussion about the fund's total return.

III. Disclosure to Stockholders, Prospective Stockholders and Third Parties

A. The fund will include the information contained in the relevant Notice, including the disclosure required by condition II.A.2 above, in any written communication (other than a Form 1099) about the Plan or distributions under the Plan by the fund, or agents that the fund has authorized to make such communication on the fund's behalf, to any fund common stockholder, prospective common stockholder or third-party information provider;

B. The fund will issue, contemporaneously with the issuance of any Notice, a press release containing the information in the Notice and will file with the Commission the information contained in such Notice, including the disclosure required by condition II.A.2 above, as an exhibit to its next filed Form N–CSR; and

C. The fund will post prominently a statement on its (or its adviser's) Web site containing the information in each Notice, including the disclosure required by condition II.A.2 above, and will maintain such information on such Web site for at least 24 months.

IV. Delivery of 19(a) Notices to Beneficial Owners

If a broker, dealer, bank or other person (''financial intermediary'') holds common stock issued by the fund in nominee name, or otherwise, on behalf of a beneficial owner, the fund: (a) Will request that the financial intermediary, or its agent, forward the Notice to all beneficial owners of the fund's stock held through such financial intermediary; (b) will provide, in a timely manner, to the financial intermediary, or its agent, enough copies of the Notice assembled in the form and at the place that the financial intermediary, or its agent, reasonably requests to facilitate the financial intermediary's sending of the Notice to each beneficial owner of the fund's stock; and (c) upon the request of any financial intermediary, or its agent, that receives copies of the Notice, will pay the financial intermediary, or its agent, the reasonable expenses of sending the Notice to such beneficial owners.

V. Additional Board Determinations for Funds Whose Common Stock Trades at a Premium If

A. The fund's common stock has traded on the exchange that it primarily trades on at the time in question at an average premium to NAV equal to or greater than 10%, as determined on the basis of the average of the discount or premium to NAV of the fund's common stock as of the close of each trading day over a 12-week rolling period (each such 12-week rolling period ending on the last trading day of each week); and

B. The fund's annualized distribution rate for such 12-week rolling period, expressed as a percentage of NAV as of the ending date of such 12-week rolling period, is greater than the fund's average annual total return in relation to the change in NAV over the 2-year period ending on the last day of such 12-week rolling period; then:

1. At the earlier of the next regularly scheduled meeting or within four months of the last day of such 12-week rolling period, the Board including a majority of the Independent Members of the Board:

(a) Will request and evaluate, and the Adviser will furnish, such information as may be reasonably necessary to make an informed determination of whether the Plan should be continued or continued after amendment;

(b) Will determine whether continuation, or continuation after amendment, of the Plan is consistent with the fund's investment objective(s) and policies and in the best interests of the fund and its stockholders, after considering the information in condition V.B.1.a above; including, without limitation:

(1) Whether the Plan is accomplishing its purpose(s);

(2) The reasonably foreseeable effects of the Plan on the fund's long-term total return in relation to the market price and NAV of the fund's common stock; and

(3) The fund's current distribution rate, as described in condition V.B above, compared to with the fund's average annual total return over the 2-year period, as described in condition V.B, or such longer period as the Board deems appropriate; and

(c) Based upon that determination, will approve or disapprove the continuation, or continuation after amendment, of the Plan; and

2. The Board will record the information considered by it and the basis for its approval or disapproval of the continuation, or continuation after amendment, of the Plan in its meeting minutes, which must be made and preserved for a period of not less than six years from the date of such meeting, the first two years in an easily accessible place.

VI. Public Offerings

The fund will not make a public offering of the fund's common stock other than:

A. A rights offering below net asset value to holders of the fund's common stock;

B. An offering in connection with a dividend reinvestment plan, merger, consolidation, acquisition, spin-off or reorganization of the fund; or

C. An offering other than an offering described in conditions VI.A and VI.B above, unless, with respect to such other offering:

1. The fund's annualized distribution rate for the six months ending on the last day of the month ended immediately prior to the most recent distribution declaration date,[4] expressed as a percentage of NAV per share as of such date, is no more than 1 percentage point greater than the fund's average annual total return for the 5-year period ending on such date;[5] and

2. The transmittal letter accompanying any registration statement filed with the Commission in connection with such offering discloses that the fund has received an order under section 19(b) to permit it to make periodic distributions of long-term capital gains with respect to its common stock as frequently as twelve times each year, and as frequently as distributions are specified in accordance with the terms of any outstanding preferred stock that such fund may issue.

VII. Amendments to Rule 19b–1

The requested relief will expire on the effective date of any amendment to rule 19b–1 that provides relief permitting certain closed-end investment companies to make periodic distributions of long-term capital gains with respect to their outstanding common stock as frequently as twelve times each year.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–8428 Filed 4–13–09; 8:45 am]

BILLING CODE 8010–01–P

[4] If the fund has been in operation fewer than six months, the measured period will begin immediately following the fund's first public offering.

[5] If the fund has been in operation fewer than five years, the measured period will begin immediately following the fund's first public offering.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28650A; 812–13538]

ING Investments, LLC, et al.; Notice of Application; Correction

Correction

In the **Federal Register** of March 24, 2009, in FR Doc. E9–6391, on page 12407 of volume 74, in the second column, the date should read March 17, 2009.

Dated: April 8, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–8427 Filed 4–13–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a closed meeting on Thursday, April 16, 2009 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Walter, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Thursday, April 16, 2009 will be:

Consideration of amicus participation; institution and settlement of injunctive actions; institution and settlement of administrative proceedings of an enforcement nature; an adjudicatory matter; and other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: April 9, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–8480 Filed 4–13–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59710; File No. SR–NYSE–2009–39]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Implementing Revised Liquidity Credits for Supplemental Liquidity Providers

April 6, 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 March 31, 2009, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to implement revised liquidity credits for Supplemental Liquidity Providers (''SLPs''). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify the credits received by supplemental liquidity providers (''SLPs'') when adding liquidity to the Exchange, with effect from April 1, 2009. Currently, SLPs receive a credit of $0.0015 per share when adding liquidity to the NYSE if the SLP meets the 3% average or more quoting requirement in an assigned security pursuant to Rule 107B. With effect from April 1, 2009, there will be three separate tiers of credits for SLPs that meet the 3% average or more quoting requirement in an assigned security pursuant to Rule 107B:

- SLPs that add liquidity of an average daily volume (''ADV'')[3] of 100 million shares or less in the applicable month will continue to receive a credit of $0.0015 per share when adding liquidity to the NYSE.
- SLPs that add liquidity of an ADV of between 100 million shares and 250 million shares in the applicable month will receive a credit of $0.0016 per share when adding liquidity to the NYSE.
- SLPs that add liquidity of an ADV of more than 250 million shares in the applicable month will receive a credit of $0.0017 per share when adding liquidity to the NYSE.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and Section 6(b)(4) of the Act,[5] 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.

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.

[3] Qualification for the different tiers of liquidity credits will be based on the SLP's aggregate average daily trading volume in the applicable month in all NYSE listed securities. *See* e-mail from John Carey, Chief Counsel—U.S. Equities, NYSE Euronext, to Nathan Saunders, Special Counsel, and Brian O'Neill, Attorney, Division of Trading and Markets, Commission, dated April 2, 2009.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

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 proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[6] and Rule 19b–4(f)(2) 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2009–39 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2009–39. 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSE–2009–39 and should be submitted on or before May 5, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–8415 Filed 4–13–09; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59715; File No. SR–NYSEAmex–2009–08]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Implementing a New Transaction Fee for Floor Brokers

April 6, 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 March 30, 2009, NYSE Amex LLC (''NYSE Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish a separate transaction fee for floor brokers and to eliminate the transaction fee for agency cross trades of less than 10,000. The revised transaction fee for floor brokers will take effect on April 1, 2009. The text of the proposed rule change is available at the Exchange's principal office, the Commission's Public Reference Room, and *http://www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt a transaction fee of $0.0020 per share applicable to floor brokers when taking liquidity from the Exchange, effective April 1, 2009. Floor brokers currently pay the $0.0025 per share fee applicable to all customers when taking liquidity from the Exchange. The Exchange believes that the reduced take fee will encourage floor brokers to participate more in the market, helping to make the Exchange a more attractive market in which to post liquidity in NYSE Amex listed securities.

Agency cross trades (i.e., a trade where a Member Organization has customer orders to buy and sell an equivalent amount of the same security) of less than 10,000 shares are currently subject to a $0.0005 per share charge. The Exchange is modifying the 2009 NYSE Amex Price List to eliminate this fee with immediate effect. Agency cross trades of less than 10,000 shares will now be free of charge, as is the case with agency cross trades of 10,000 shares or more.[3]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and Section 6(b)(4) of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* e-mail from John Carey, Chief Counsel—U.S. Equities, NYSE Euronext, to Nathan Saunders, Special Counsel, and Brian O'Neill, Attorney, Division of Trading and Markets, Commission, dated April 6, 2009 (revising the language of this paragraph).

[4] 15 U.S.C. 78f(b).

Act,[5] 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[6] and Rule 19b–4(f)(2) 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.

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–NYSEAmex–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–NYSEAmex-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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEAmex–2009–08 and should be submitted on or before May 5, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–8418 Filed 4–13–09; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59717; File No. SR–FINRA–2009–021]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Codify the Extended Hours Trading Risk Disclosure Obligation as New FINRA Rule 2265

April 7, 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 March 27, 2009, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II [sic], which Items have been prepared by FINRA. FINRA has designated the proposed rule change as ''constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule'' under Section 19(b)(3)(A)(i) of the Act[3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt new FINRA Rule 2265 (Extended Hours Trading Risk Disclosure) to codify the existing obligation to disclose to customers the risks of extended hours trading. The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org*, at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 10, 2000, FINRA, then NASD, filed with the SEC a *Notice to Members* reminding members of their obligation under just and equitable principles of trade[5] and the advertising rule[6] to disclose to all customers the material risks of extended hours trading (*i.e.*, trading outside regular trading

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] Rule 2010 (Standards of Commercial Honor and Principles of Trade).

[6] NASD Rule 2210 (Communications with the Public).

hours of 9:30 a.m. to 4 p.m. Eastern Standard Time).[7] In its filing with the Commission, FINRA noted that, while the growth of extended hours trading provides customers with greater opportunities to trade securities and manage their portfolios, it also involves material risks that are specific to extended hours trading.

NTM 00–07 provided a model extended hours risk disclosure statement for retail and institutional customers that addressed six primary trading risks: (1) Lower liquidity; (2) higher volatility; (3) changing prices; (4) unlinked markets; (5) an exaggerated effect from news announcements; and (6) wider spreads. This disclosure statement defined certain essential terminology (*e.g.*, ''liquidity,'' ''volatility,'' and ''spread'') and explained the risks that are present during extended hours trading, specifically:

• Risk of Lower Liquidity. Liquidity refers to the ability of market participants to buy and sell securities. Generally, the more orders that are available in a market, the greater the liquidity. Liquidity is important because with greater liquidity it is easier for investors to buy or sell securities, and as a result, investors are more likely to pay or receive a competitive price for securities purchased or sold. There may be lower liquidity in extended hours trading as compared to regular market hours. As a result, your order may only be partially executed, or not at all.

• Risk of Higher Volatility. Volatility refers to the changes in price that securities undergo when trading. Generally, the higher the volatility of a security, the greater its price swings. There may be greater volatility in extended hours trading than in regular market hours. As a result, your order may only be partially executed, or not at all, or you may receive an inferior price in extended hours trading than you would during regular market hours.

• Risk of Changing Prices. The prices of securities traded in extended hours trading may not reflect the prices either at the end of regular market hours, or upon the opening the next morning. As a result, you may receive an inferior price in extended hours trading than you would during regular market hours.

• Risk of Unlinked Markets. Depending on the extended hours trading system or the time of day, the prices displayed on a particular extended hours trading system may not reflect the prices in other concurrently operating extended hours trading systems dealing in the same securities. Accordingly, you may receive an inferior price in one extended hours trading system than you would in another extended hours trading system.

• Risk of News Announcements. Normally, issuers make news announcements that may affect the price of their securities after regular market hours. Similarly, important financial information is frequently announced outside of regular market hours. In extended hours trading, these announcements may occur during trading, and if combined with lower liquidity and higher volatility, may cause an exaggerated and unsustainable effect on the price of a security.

• Risk of Wider Spreads. The spread refers to the difference in price between what you can buy a security for and what you can sell it for. Lower liquidity and higher volatility in extended hours trading may result in wider than normal spreads for a particular security.

In addition, FINRA notes that certain regulatory protections are not in effect after the end of ''regular trading hours'' on any trading day. For example, the SEC's Regulation NMS's ''trade-through'' rules do not apply to executions after 4 p.m. EST.[8]

FINRA is proposing to transfer this existing disclosure obligation into new FINRA Rule 2265 (Extended Hours Trading Risk Disclosure) for administrative and ease of reference purposes. As is currently the case, members would retain a measure of flexibility in the wording of the risk disclosure (so long as, at a minimum, the above six areas are addressed). In addition to the above specific disclosures, members must include any additional disclosures as are relevant and appropriate to the member's business consistent with their obligations under just and equitable principles of trade.

As noted in Item 2 of this filing, FINRA has filed the proposed rule change for immediate effectiveness. The effective date and the implementation date will be the date of filing, March 27, 2009.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[9] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

FINRA continues to believe that members that permit customers to engage in extended hours trading have an obligation to disclose to such customers the risks specific to extended hours trading. Similarly, members that advertise the opportunities and benefits of extended hours trading must also disclose the material risks. FINRA believes that this disclosure requirement is an important element in protecting investors and informing investors of the risks specific to extended hours trading.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and paragraph (f)(1) of Rule 19b–4 thereunder.[11] 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–FINRA–2009–021 on the subject line.

[7] *See* Securities Exchange Act Release No. 42363 (January 28, 2000), 65 FR 5715 (February 4, 2000) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Notice to Members on Extended Hours Trading) (SR–NASD 00–01) (''*NTM* 00–07'').

[8] A trade-through occurs when one trading center executes an order at a price that is inferior to the price of a protected quotation. *See* 17 CFR 242.600(77).

[9] 15 U.S.C. 78o–3(b)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(x).

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2009–021. 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 FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2009–021 and should be submitted on or before May 5, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–8420 Filed 4–13–09; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Release No. 34–59721; File No. SR–Phlx–2009–32

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing of Proposed Rule Change Relating to the Exchange's Enhanced Electronic Trading Platform for Options, Phlx XL II

April 7, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on April 3, 2009, NASDAQ OMX PHLX, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to implement several enhancements to its electronic options trading system, Phlx XL. The enhanced system will be known as Phlx XL II and will reflect enhancements to the opening, linkage and routing, quoting, and order management processes.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/*, 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to implement several enhancements to the Phlx electronic options trading platform, Phlx XL.[3] The system that includes these enhancements will be referred to as Phlx XL II. These enhancements should improve the execution quality for its Phlx users by improving a number of processes, including the opening process, the order handling process and the execution of orders process. The changes to the opening process should provide better executions to users, more consistent prices on executions and a smoother transition from the opening to the regular trading day. The changes to the order handling process will improve routing to liquidity available at other exchanges while preventing non-exempt trade-throughs of other markets, and will provide users with increased flexibility and control in how their orders are handled. Execution of order processing will become more consistent, with greater continuity in prices as a result of these changes, because several of the changes are intended to introduce a price check to limit executions at far away prices (which are known as outliers). The Exchange believes that these changes benefit investors and users through better and more consistent system behavior and resulting prices. These modifications and enhancements are outlined below.[4]

New Opening Process

The Exchange proposes to improve its opening process for options in several ways. Currently, Exchange Rule 1017 provides that the system will open an option series for trading once certain conditions have been met. Specifically, Rule 1017(a) currently states that the system will automatically open a series in equity options when a quote or trade has been disseminated by the market for the underlying security, and there is a specialist quote or a defined number of Phlx XL participants [5] quoting after a certain time period has elapsed. Provided there is no order imbalance,

[3] *See* Securities Exchange Act Release No. 50100 (July 27, 2004), 69 FR 44612 [sic] (August 3, 2004) (SR–Phlx–2003–59).

[4] The Exchange acknowledges that the proposed Options Order Protection and Locked/Crossed Market Plan may necessitate modifications.

[5] Phlx XL and Phlx XL II participants are specialists, Streaming Quote Traders (''SQTs'') and Remote Streaming Quote Traders (''RSQTs''), as defined in Phlx Rule 1014(b), assigned to an option.

the system will automatically open an option series under these conditions.

As outlined in more detail below, Phlx proposes to introduce opening process enhancements under Phlx XL II that will: (1) Ensure that an option will open within a reasonable period of time after the underlying security is open and do so within an appropriate Phlx opening price range; (2) allow Phlx to now route,[6] if necessary, to other same or better-priced markets contemporaneously with its opening of an option series so as to maximize the number of contracts executing at the open; and (3) allow quoting market participants to enter trading interest at multiple price levels.

Beginning of Opening Process

In order to ensure that there will be liquidity on the Exchange at the beginning of the trading day, the proposal will require the specialist assigned in a particular equity option to enter opening quotes not later than one minute following the dissemination of a quote or trade by the market for the underlying security or, in the case of index options, following the receipt of the opening price in the underlying index. The specialist assigned in a particular U.S. dollar-settled Foreign Currency Option (''FCO'') must enter opening quotes not later than 30 seconds after the announced market opening.[7]

Under the proposal, the Phlx XL II system will begin the opening process only when certain conditions are present. Specifically, the automated opening process can only begin when either (A) the specialist's quote has been submitted; (B) the quotes of at least two Phlx XL II participants have been submitted within two minutes (or such shorter time established by the Exchange)[8] of the opening trade or quote on the market for the underlying security in the case of equity options;[9] or (C) if neither the specialist's quote[10] nor the quotes of two Phlx XL II participants have been submitted within two minutes of the opening trade or quote on the market for the underlying security in the case of equity options, one Phlx XL II participant has submitted their quote. This is consistent with the current opening process on Phlx XL, which is described in Phlx Rule 1017.

Furthermore, a Phlx XL II participant that submits a quote in any series when the specialist's quote has not been submitted will be required to submit continuous, two-sided quotes in such series until such time as the specialist submits his/her quote, after which the Phlx XL II participant that submitted such quote shall be obligated to submit quotations pursuant to Rule 1014(b)(ii)(D).

Opening Process

Proposed Rule 1017(l)(i) would state that, if there are no opening quotes or orders that lock or cross each other, the system will open by disseminating the Exchange's best bid and offer among quotes and orders that exist in the Phlx XL II system at that time (because if no quotes or orders lock/cross each other, nothing matches and there is no trade).

Under proposed Rule 1017(l)(ii), if there are opening quotes or orders that lock or cross each other, the Phlx XL II system will take the lowest bid and the highest offer among quotations received that have a bid/ask differential that is compliant with Rule 1014(c)(i)(A)(1)(a)[11] to determine the lowest quote bid and highest quote offer.[12] To calculate the opening price, the Phlx XL II system will take into consideration all valid Phlx quotes, sweeps (as defined more fully below)[13] and orders, together with other exchanges' markets for the series and identify the price at which the maximum number of contracts can trade. If that price is within the lowest quote bid and highest quote offer and leaves no imbalance,[14] the Exchange will open at that price, executing marketable trading interest, as long as the opening price includes only Phlx interest. Proposed Rule 1017(l)(ii)(A) provides that an ''imbalance'' occurs where there is unexecutable trading interest at a certain price.

Under proposed Rule 1017(l)(ii)(B), when two or more prices within the range of the lowest quote bid and highest quote offer for the affected series would satisfy the maximum quantity criterion, the Phlx XL II system takes the highest and lowest of those prices and takes the mid-point for the opening price; if such mid-point is not expressed as a permitted minimum price variation, it will be rounded to the minimum price variation that is closest to the closing price for the affected series from the immediately prior trading session to determine the opening price. If there is no closing price from the immediately prior trading session, the Phlx XL II system will round up to the minimum price variation to determine the opening price.

Route Timer

Generally, the automated opening process logic seeks to first route away all contracts executable at a better price than the Exchange's opening price, then executes all contracts available on the Exchange at the opening price and, lastly, routes away all contracts available at other exchanges at the Exchange's opening price. The foregoing processes occur contemporaneously.

Specifically, under proposed Rules 1017(l)(ii)(C) and (D), if the opening price included interest other than solely Phlx interest, the system will initiate a ''Route Timer,''[15] not to exceed one second.[16] If no new interest is received during the Route Timer, the Phlx XL II system will route to other markets disseminating prices better than Phlx's

[6] Similar to the Exchange's current routing methodology under the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (the ''Linkage Plan''), the Exchange will only route customer, non-contingency orders.

[7] *See* Exchange Rule 1017(b)(ii) and proposed Rule 1017(k).

[8] Such time will be published in an Options Trader Alert, which will be available on the Exchange's Web site.

[9] In the case of index options, the quotes must be submitted within two minutes of the receipt of the opening price in the underlying index or within two minutes of market opening in the case of U.S. dollar-settled foreign currency options.

[10] The specialist is required under current Rule 1017(b), and would be required under proposed Rule 1017(k), to enter opening quotes not later than one minute following the dissemination of a quote or trade by the market for the underlying security or, in the case of index options, following the receipt of the opening price in the underlying index. There may be circumstances where the specialist is unable to disseminate an opening quote due to, for example, a system malfunction. In such a circumstance, these current and proposed rules provide for the Exchange to open upon the receipt of quotes from participants other than the specialist.

[11] Rule 1014(c)(i)(A)(1)(a) requires that quotes in equities and index options create differences of no more than $.25 between the bid and the offer for each option contract for which the prevailing bid is less than $2; no more than $.40 where the prevailing bid is $2 or more but less than $5; no more than $.50 where the prevailing bid is $5 or more but less than $10; no more than $.80 where the prevailing bid is $10 or more but less than $20; and no more than $1 where the prevailing bid is $20 or more, provided that, in the case of equity options, the bid/ask differentials stated above shall not apply to in-the-money series where the market for the underlying security is wider than the differentials set forth above. For such series, the bid/ask differentials may be as wide as the quotation for the underlying security on the primary market, or its decimal equivalent rounded up to the nearest minimum increment. The Exchange may establish differences other than the above for one or more series or classes of options.

[12] The Phlx XL II system will not consider orders, nor will it consider quotations that do not comply with such bid/ask differential (quotations that are too ''wide''), in its calculation of the lowest quote bid and the highest quote offer.

[13] *See* proposed Rule 1017(l)(vi)(A).

[14] An ''imbalance'' occurs when there is unexecutable trading interest at a certain price. *See* proposed Rule 1017(l)(ii)(A).

[15] All references to a ''Route Timer'' in the Phlx XL II system and in the proposed rules mean a system pause for a brief period. Phlx XL II participants will not receive any notification that a Route Timer has been initiated.

[16] The duration of the Route Timer will be published in an Options Trader Alert, which will be available on the Exchange's Web site.

opening price, execute marketable interest at the opening price on Phlx, and route to other markets disseminating prices equal to the Phlx opening price if necessary. Orders that are routed and executed may receive executions at multiple prices. Orders will be routed as Immediate or Cancel (''IOC'') orders with a limit price equal to the Exchange's opening price. If interest is received during the Route Timer, the Phlx XL II system will recalculate the opening price taking such new interest into account.[17] Then, if there is no imbalance, the system will execute marketable interest at the opening price on the Phlx and route the remainder to other markets.

Opening Quote Range

Where there is an imbalance at the price at which the maximum number of contracts can trade that is also at or within the lowest quote bid and highest quote offer, the Phlx XL II system will calculate an Opening Quote Range (''OQR'') for a particular series.[18] To determine the minimum value for the OQR, an amount, as defined in a table to be determined by the Exchange, will be subtracted from the lowest quote bid. To determine the maximum value for the OQR, an amount, as defined in a table to be determined by the Exchange,[19] will be added to the highest quote offer.

If there is sufficient size on the Exchange and on away markets on the opposite side of the market from the imbalance to execute all opening marketable interest at a price that is at or within the established OQR and the Away Best Bid/Offer (''ABBO'') without leaving an imbalance, the Phlx XL II system will open the affected series for trading at that price by executing opening marketable interest on the Phlx XL II system, as long as the system does not trade through the ABBO.[20] If it would trade through the ABBO, the Phlx XL II system will initiate a ''Route Timer,'' not to exceed one second.[21] If no new interest is received during the Route Timer, the Phlx XL II system will then route to other markets disseminating prices better than Phlx's opening price, execute marketable interest at the opening price on Phlx and, route to other markets disseminating prices equal to the Phlx opening price if necessary. If there is an imbalance, the Phlx XL II system will begin the imbalance process.

Imbalance Process

If all opening marketable size cannot be completely executed at or within the OQR without trading through the ABBO, the Phlx XL II system will automatically institute an imbalance process.[22]

Phlx XL II will broadcast an Imbalance Message[23] to Phlx XL II participants,[24] and begin an ''Imbalance Timer,'' not to exceed three seconds,[25] as determined by the Exchange.[26] Phlx XL II participants may enter opening quotes, Opening Sweeps and orders during the Imbalance Timer. If such opening quotes, Opening Sweeps (as defined below) and orders, or other changes to the ABBO, would allow the entire imbalance amount to trade at the Exchange at or within the OQR without trading through the ABBO, the Imbalance Timer will end and the Phlx XL II system will execute at the appropriate opening price.

If opening quotes, Opening Sweeps and orders submitted during the Imbalance Timer, or other changes to the ABBO, would not allow the entire imbalance amount to trade at the Exchange at or within the OQR without trading through the ABBO, the Phlx XL II system will send a new Imbalance Message to Phlx XL II participants, indicating that marketable trading interest may be routed to markets disseminating a price better than or equal to the Exchange opening price and the Phlx XL II system will initiate a Route Timer, not to exceed one second.[27] If during the Route Timer, interest is received by the Phlx XL II system which would allow all interest to trade on the Phlx XL II system (*i.e.*, there is no longer an imbalance) at the opening price without trading through other markets, the Phlx XL II system will trade and the Route Timer will end. The Phlx XL II system will monitor quotes received during the Route Timer period and make ongoing corresponding changes to the permitted OQR to reflect them.[28]

Under proposed Rule 1017(l)(iv)(C)(3), if the Route Timer expires, the End of Route Timer Process will ensue, as follows. The Phlx XL II system will determine if the total number of contracts displayed at better prices than the Exchange's potential opening price[29] on away markets (''better priced away contracts'') would satisfy the number of marketable contracts available on the Exchange. If it does, the Phlx XL II system will route a number of contracts with a size equal to the size of the interest at other markets at prices better than interest on the Exchange, and determine an opening Phlx Best Bid/Offer (''PBBO'') that reflects the interest remaining on the Exchange. In this situation, the Phlx XL II system will price any contracts routed to other markets at the better away market price(s).

Under proposed Rule 1017(l)(iv)(C)(4), if the total number of better priced away contracts would not satisfy the number of marketable contracts the Exchange has, the Phlx XL II system will determine how many contracts it has available at the Exchange opening price. If the total number of better priced away contracts plus the number of contracts available at the Exchange opening price would satisfy the number of marketable contracts the Exchange has, the Phlx XL II system will contemporaneously route a number of contracts that will satisfy interest at other markets at prices better than the Phlx opening price, and trade available contracts on the Exchange at the Exchange opening price.[30] In this situation, the Phlx XL II system will price any contracts routed to other markets at the Exchange opening price.

Under proposed Rule 1017(l)(iv)(C)(5), if the total number of better priced away contracts plus the number of contracts available at the Exchange opening price would not satisfy the number of marketable contracts the Exchange has, the Phlx XL II system will determine how many contracts are available at other markets at the Exchange opening price. If the

[17] The Phlx XL II system continuously recalculates the opening price during the opening process. At this point in the process, the opening price may be different from the original opening price calculated by the Phlx XL II system. A different opening price will not require the Phlx XL II system to repeat the entire opening process.

[18] *See* proposed Rule 1017(l)(iii).

[19] The initial table, and any subsequent modifications thereto, will be published in an Options Trader Alert, which will be available on the Exchange's Web site.

[20] If the ABBO is crossed, it will not be taken into consideration by the system and the system will immediately execute.

[21] The duration of the Route Timer will be published in an Options Trader Alert, which will be available on the Exchange's Web site.

[22] *See* proposed Rule 1017(l)(iv).

[23] The Imbalance Message will contain the option symbol, buy/sell, size of matched contracts, the size of the imbalance, and price, such as ''ABC Jan 50 calls, match 0, 10 to buy at 2.40.''

[24] Phlx XL II participants may disclose the contents of the Imbalance Message to their customers.

[25] Currently, the Exchange intends to set the number of seconds system-wide, rather than option-by-option.

[26] The number of seconds will be published in an Options Trader Alert, which will be available on the Exchange's Web site.

[27] The duration of the Route Timer will be published in an Options Trader Alert, which will be available on the Exchange's Web site.

[28] *See* proposed Rules 1017(l)(v)(C)(1) and (2).

[29] The Phlx XL II system will continually recalculate the opening price based on interest received during the Route Timer and changes to the ABBO.

[30] *See* proposed Rule 1017(l)(v)(C)(5).

total number of better priced away contracts plus the number of contracts available on the Exchange at the Exchange opening price plus the contracts available at other markets at the Exchange opening price would satisfy the number of marketable contracts the Exchange has, the Phlx XL II system will contemporaneously route a number of contracts that will satisfy interest at other markets at prices better than the Phlx opening price, trade available contracts on the Exchange at the Exchange opening price, and route a number of contracts that will satisfy interest at other markets at prices equal to the Phlx opening price. In this situation, the Phlx XL II system will price any contracts routed to other markets at the Exchange opening price.

This is illustrated in the following example:

Example I

Assume the Following Facts

The initiating order is a market order to buy 150 contracts;

The specialist submits a quote of 2.20 bid, 2.40 offer, with a size of 10x10;

Market Maker 1 submits a quote of 2.15 bid, 2.45 offer, with a size of 10x10;

Market Maker 2 submits a quote of 2.00 bid, 2.50 offer, with a size of 25x25. The Phlx XL II system will not consider this quote because it is wider than the permitted bid/ask differential set forth in Rule 1014(c)(i)(A)(1)(a).

The away market is 2.20 bid, 2.40 offer, with a size of 20x10.

The Following Events Will Occur Concurrently

An Imbalance timer will be initiated;

The Phlx XL II system will send an Imbalance Message, indicating 20 matched contracts 130 contracts to buy at 2.45.

Assume During the Imbalance Timer

Market Maker 1 sends two sweeps; sell 30 at 2.50 and sell 50 at 3.00;

The specialist sends two sweeps; sell 50 at 2.50 and sell 50 at 2.60.

After the Imbalance Timer

The Phlx XL II system will initiate a Route Timer and send a new Imbalance Message, match 150, 00 to buy at 2.60.

After the Route Timer

The Phlx XL II system will open 140 contracts at 2.60. The initiating order buys 100 contracts from the Specialist and 40 from Market Maker 1, and will route 10 to the away market to buy at 2.60 (the Phlx Opening Price). The away market should execute the 10 contracts at its 2.40 offer.

Under proposed Rule 1017(l)(iv)(C)(6), if the total number of better priced away contracts plus the number of contracts available at the Exchange opening price plus the contracts available at other markets at the Exchange opening price would not satisfy the number of marketable contracts the Exchange has, the Phlx XL II system will repeat the Imbalance Process. The Phlx XL II system may repeat the Imbalance Process up to three times (as established by the Exchange).[31]

Under proposed Rule 1017(l)(iv)(C)(7), if after that number of times, the Phlx XL II system still cannot route and/or trade the entire imbalance amount, the Phlx XL II system will conduct a Provisional Opening by routing to other markets at prices better than the Exchange opening price for their disseminated size, trading available contracts on the Exchange at the Exchange opening price, and routing contracts to other markets at prices equal to the Phlx opening price at their disseminated size. In this situation, the Phlx XL II system will price any contracts routed to other markets at the Exchange opening price. The Exchange opening price will always be equal to or better than the OQR.

The opening process is now complete. Accordingly, unexecuted Opening Sweeps (as defined below) will be cancelled. Any unexecuted contracts from the imbalance not traded or routed will be displayed in the Exchange quote at the opening price for a period not to exceed ten seconds[32] and subsequently cancelled back to the entering participant if they remain unexecuted and priced through the opening price. During this display time period, the Phlx XL II system will disseminate a bid and offer that is equal to the opening price, with a size of zero on the opposite side of the market from remaining unexecuted contracts.

Under proposed Rule 1017(l)(iv)(C)(8), the Phlx XL II system will execute orders at the opening price that have contingencies (such as, without limitation, All-or-None) and non-routable orders, such as ''Do Not Route'' or ''DNR'' Orders,[33] to the extent possible. The Phlx XL II system will only route non-contingency customer orders.

The Phlx XL II system will: (i) Re-price Do Not Route orders (that would otherwise have to be routed to the exchange(s) disseminating the ABBO for an opening to occur) to a price that is one minimum trading increment inferior to the ABBO, and (ii) disseminate the re-priced DNR Order as part of the new PBBO.[34]

During the Opening Process, permitted responses to an Imbalance Message are quotes, Opening Sweeps (as defined more fully below), and orders. Specialists, Streaming Quote Traders (''SQTs''),[35] Remote Streaming Quote Traders (''RSQTs''),[36] may submit quotes, Opening Sweeps and orders in response to an Imbalance Message. Non-SQT ROTs[37] may submit orders in response to an Imbalance Message.

An Opening Sweep is a one-sided electronic quotation submitted for execution against opening trading interest in the Phlx XL II system.[38] A Phlx XL II participant assigned in a particular option may only submit an Opening Sweep if, at the time of entry of the Opening Sweep, they have already submitted and maintained a valid opening-width quote. All Opening Sweeps in the affected series entered by a Phlx XL II participant will be cancelled immediately if that Phlx XL II participant fails to maintain a continuous quote with a permitted opening bid/ask differential in the affected series.

Under proposed Rule 1017(l)(v)(B), Opening Sweeps may be entered at any price with a minimum price variation applicable to the affected series, on either side of the market, at single or multiple price level(s), and may be cancelled and re-entered. A single Phlx XL II participant may enter multiple Opening Sweeps, with each Opening Sweep at a different price level. If a Phlx XL II participant submits multiple Opening Sweeps, the Phlx XL II system will consider only the most recent Opening Sweep at each price level submitted by such Phlx XL II

[31] The number of times will be published in an Options Trader Alert, which will be available on the Exchange's Web site.

[32] The number of seconds will be published in an Options Trader Alert, which will be available on the Exchange's Web site.

[33] *See* proposed Exchange Rule 1080(m).

[34] *See* proposed Rule 1017(l)(v)(D).

[35] An SQT is an Exchange Registered Options Trader (''ROT'') who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the floor of the Exchange. *See* Exchange Rule 1014(b)(ii)(A).

[36] An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. *See* Exchange Rule 1014(b)(ii)(B).

[37] A non-SQT ROT is an ROT who is neither an SQT nor an RSQT. *See* Exchange Rule 1014(b)(ii)(C).

[38] *See* proposed Rule 1017(l)(v)(A).

participant in determining the opening price. The Phlx XL II system will aggregate the size of all Opening Sweeps (*i.e.,* for all Phlx XL II participants) at a particular price level for trade allocation purposes. The Phlx XL II system will not cancel Opening Sweeps until the end of the opening process. Unexecuted Opening Sweeps will be cancelled once the affected series is open.

Under proposed Rule 1017(l)(vi), the Phlx XL II system will give priority to market orders first in time priority (including limit orders that are treated as market orders), then to resting limit orders at the opening price.

Under proposed Rule 1017(l)(vii), inbound orders, Opening Sweeps and quotes will not be included in the calculation of the opening price for a brief period established by the Phlx XL II system while the Phlx XL II system is in the process of completing the opening trade. After such brief period, inbound orders, Opening Sweeps and quotes received during the period will be entered into the Phlx XL II system in order of their arrival.[39]

Amendments to the Exchange's Firm Quote Rule

The Exchange also proposes to adopt amendments to its Rule 1082, Firm Quotations, that would reflect system improvements that should enhance the ability for Phlx XL II participants (*i.e.,* specialists, SQTs and RSQTs) to refresh, and potentially improve, their quotations when their option quotation size is exhausted at a particular price level, and that would reflect the Exchange's ability to refresh its disseminated market following the exhaustion of the Exchange's disseminated size.

Current Rule 1082(a)(ii)(B)(1) generally provides that if an SQT or RSQT's (other than a Directed SQT or RSQT)[40] quotation size in a particular series in a Streaming Quote Option[41] is exhausted or removed by the Risk Monitor Mechanism,[42] such SQT or RSQT's quotation is deleted from the Exchange's disseminated quotation until the time the SQT or RSQT revises his/her quotation.

Rule 1082(a)(ii)(B)(2) currently states that, if the Exchange's disseminated size in a particular series is exhausted at that particular price level, and no specialist, SQT or RSQT has revised their quotation immediately following the exhaustion of the Exchange's disseminated size at such price level, the Exchange shall automatically provide two-sided quotes that comply with the Exchange's rules concerning quote spread parameters on behalf of the specialist until such time as the specialist revises the quotation, with a size of one contract.

The instant proposed rule change to Rule 1082 is intended to reflect Phlx XL system improvements that should enhance the ability of Phlx XL II participants and the Exchange to refresh exhausted quotes while offering the maximum opportunity for better prices when remaining contracts from quotes or orders that exhaust the Exchange disseminated market are marketable and due for execution. The enhancements, discussed in detail below, are referred to as ''Quote Exhaust'' and ''Market Exhaust,'' respectively.

IOC Orders

Proposed Rule 1066(c)(8) defines an Immediate-or-Cancel (''IOC'') order as a limit order that is to be executed in whole or in part upon receipt. Any portion not so executed shall be cancelled. IOC Orders are not routable and will not be subject to any routing process or timer described in the Exchange's rules. If not executed immediately, an IOC Order will be cancelled by the Phlx XL II system. Contracts remaining in an IOC Order following a partial execution will be cancelled. IOC Orders will not be subject to any Route Timer and will not be included in the Quote Exhaust and Market Exhaust processes described below.

Quote Exhaust

The Exchange proposes to adopt Rule 1082(a)(ii)(B)(3) to codify the Quote Exhaust feature of the Phlx XL II system. Quote Exhaust occurs when the Exchange's disseminated market at a particular price level includes a quote, and such market is exhausted by an inbound contra-side quote or order (''initiating quote or order''), and following such exhaustion, contracts remain to be executed from the initiating quote or order through the initial execution price. For purposes of the proposed rule change and the proposed rule text, the initial execution price that gives rise to Quote Exhaust will be known as the ''reference price.''

Rather than immediately executing at the next available price, the system will employ a timer not to exceed one second[43] in order to allow market participants to refresh their quotes.

Quote Exhaust Timer

Proposed Rules 1082(a)(ii)(B)(3)(a) and (b) describe the Quote Exhaust Timer. When a Quote Exhaust occurs, the Phlx XL II system will initiate a ''Quote Exhaust Timer'' that will apply to all options traded on the Phlx XL II system, not to exceed one second[44] during which any Phlx XL II participant (including any participant(s) whose size was exhausted) may submit quotes, sweeps or orders at any price level. This gives the Phlx XL II participant who initially attracted the initiating quote or order to the Exchange, together with other Phlx XL II participants who wish to join, the ability to refresh his/her quote and thus provide an opportunity for better prices to be submitted on the Exchange before trading at the next available price or routing the order to an away market.[45]

During the Quote Exhaust Timer, the Exchange will disseminate the reference price, provided that such price does not lock an away market, in which case, the Exchange will disseminate a bid and offer that is one Minimum Price Variation (''MPV'') from the away market price, with a size of zero on the opposite side of the market from remaining unexecuted contracts.

If the remaining contracts in the initiating quote or order are either traded or cancelled during the Quote Exhaust Timer, the Quote Exhaust Timer will be terminated and normal trading will resume.

New Interest on the Opposite Side of the Market

Proposed Rule 1082(a)(ii)(B)(3)(c) describes what happens in the Phlx XL II system when interest is received on the opposite side of the market from the initiating quote or order during the Quote Exhaust Timer. If the Exchange receives an order, quote or sweep on the opposite side of the market from the initiating quote or order during the Quote Exhaust Timer that locks or crosses the reference price at any time

[39] This brief period will not exceed .25 of one second. The duration of the brief period will be published in an Options Trader Alert, which will be available on the Exchange's Web site. This brief period is similar to the current brief period during the opening. *See* Exchange Rule 1017(c)(iv).

[40] *See* Rule 1080(l).

[41] As a technical matter, the Exchange proposes to delete references to ''Streaming Quote Options,'' because all options traded on the Exchange are now ''Streaming Quote Options'' and therefore it is not necessary to distinguish them from other options traded on the Exchange.

[42] *See* Exchange Rule 1093.

[43] The duration of the timer will be published in an Options Trader Alert, which will be available on the Exchange's Web site.

[44] The duration of the Quote Exhaust Timer will be published in an Options Trader Alert, which will be available on the Exchange's Web site.

[45] In keeping with the Exchange's current practice, Phlx XL II will not route non-customer and contingency orders.

during the Quote Exhaust Timer, it will execute immediately against the initiating quote or order at the reference price. If the initiating quote or order that caused the Quote Exhaust is exhausted, the Quote Exhaust Timer will be terminated.

With respect to any order, quote or sweep received on the opposite side of the market from the initiating quote or order during the Quote Exhaust Timer that is inferior to the reference price, the system will place any non-IOC order onto the book and cancel all non-marketable sweeps and IOC orders. IOC Orders will be cancelled immediately if not executed and will not participate in the Quote Exhaust process.

New Interest on the Same Side of the Market

Proposed Rule 1082(a)(ii)(B)(3)(d) describes what happens in the Phlx XL II system when interest is received on the same side of the market as the initiating quote or order during the Quote Exhaust Timer. If the Exchange receives an order, quote or sweep on the same side of the market as the initiating quote or order during the Quote Exhaust Timer, the Phlx XL II system will cancel any sweep or IOC order. If such new quote or order, other than an IOC order, is a market or marketable limit order or marketable quote (*i.e.,* priced at or through the reference price) the Phlx XL II system will display it at the reference price, with a disseminated size that is the sum of such order and/or quote plus the remaining contracts in the initiating order or quote. The purpose of this provision is to enhance liquidity on the Exchange by adding all available liquidity received during the Quote Exhaust Timer to the PBBO at the reference price.

End of the Quote Exhaust Timer

Proposed Rule 1082(a)(ii)(B)(3)(e) describes what happens in the Phlx XL II system at the end of the Quote Exhaust Timer. If there are still unexecuted contracts remaining in the initiating quote or order or any new interest on the same side of the market, the Phlx XL II system will calculate a new PBBO.[46] The Phlx XL II system will conduct an Acceptable Range price ''test'' to determine whether there is a valid next available price at which the Phlx XL II system may execute the remaining unexecuted contracts. Passing the test is required to establish a valid price and proceed to execution processing. The Exchange believes that executions should not occur at prices outside of the Acceptable Range. The Quote Exhaust feature provides an opportunity for additional price discovery both on the Exchange and at away markets to which the remaining contracts could be routed.

Acceptable Range Test

Proposed Rule 1082(a)(ii)(B)(3)(f) describes the Phlx XL II system's ''Acceptable Range Test.'' The Acceptable Range Test determines if such next available price is within an Acceptable Range. The Acceptable Range for the next available price will be calculated by the Phlx XL II system by taking the reference price, plus or minus a value to be determined by the Exchange (*i.e.*, the reference price − (x) for sell orders and the reference price + (x) for buy orders).

EXAMPLE TABLE *

Bid price = or > than	Bid price < than	Acceptable Bid/ Ask Differential—less than 9 months to expiration	Acceptable Bid/ Ask Differential—9 Months or more expiration multiplier
$0.00	$2.00	$0.40	X
$2.00	5.00	0.80	2X
$5.00	10.00	1.00	2X
$10.00	20.00	1.60	2X
$20.00	n/a	2.00	2X

* **Note:** The table presented here is for example purposes only. The Exchange may modify the Bid Price ranges, the Differential values and the Multipliers and will announce such changes on its Web site.[47]

The purpose of this provision is to ensure that remaining contracts from the initiating quote or order do not execute at a price that is outside the Acceptable Range due to the potential for wide markets at the next price level.

Quote Exhaust Resolution

Proposed Rule 1082(a)(ii)(B)(3)(g) describes Quote Exhaust Resolution. The Phlx XL II system will first determine whether to trade at the next available Phlx price by comparing it to the Acceptable Range price[48] and the ABBO price[49] to establish a Best Price. The Phlx XL II system then considers whether the price of the initiating quote or order locks or crosses the Best Price, which, in turn, determines whether the initiating quote or order trades, is routed or is posted. This occurs as follows:

First, under proposed Rule 1082(a)(ii)(B)(3)(g)(i), the Phlx XL II system establishes the Best Price as the best of: The next available Phlx price, the Acceptable Range price and the ABBO price. The best of these three prices (''Best Price'') is, with respect to an initiating buy order, the lowest price of: (A) The next available Phlx offer; (B) the ABBO offer; or (C) the Acceptable Range price on the offer side of the market; and, with respect to an initiating sell order, the highest price of: (A) The next available Phlx bid; (B) the ABBO bid; or (C) the Acceptable Range price on the bid side of the market. Once the Best Price is established, the Phlx XL II system will consider whether the price of the initiating quote or order locks or crosses the Best Price. Under proposed Rule 1082(a)(ii)(B)(3)(g)(ii), if the price of the initiating quote or order (if a limit order) does not lock or cross the Best Price, the Phlx XL II system will post the remaining portion of the initiating quote or order at its limit price and normal trading will resume.

[46] The PBBO will include the remaining unexecuted portion of the initiating quote or order plus any new interest received on the same side of the market at the reference price, or if locking or crossing the ABBO, at one minimum trading increment away from the ABBO, for the full available size. The other side of the PBBO will be the actual Exchange interest at the best price.

[47] The initial table, and any subsequent modifications thereto, will be published in an Options Trader Alert, which will be available on the Exchange's Web site.

[48] The Acceptable Range price is, with respect to an initiating buy order, the highest price of the Acceptable Range, and, with respect to an initiating sell order, the lowest price of the Acceptable Range.

[49] Similarly to the Acceptable Range price, because the ABBO consists of a bid and an offer price, the ABBO price is, with respect to an initiating buy order, the away best offer, and, with respect to an initiating sell order, the away best bid.

Initiating Quote or Order Locks Best Price

Proposed Rule 1082(a)(ii)(B)(3)(g)(iii) describes what happens in the Phlx XL II system when the initiating quote or order locks the Best Price. If the initiating quote or order locks the Best Price, the system will execute, route if a routable order, and/or post the initiating quote or order as described below:

If the Best Price is the next Phlx price, the system will execute a trade up to its disseminated size. If this Best Price (next Phlx price) is equal to the ABBO price, any remaining unexecuted routable order volume from the execution on the Phlx will be routed away. After such routing, any remaining unexecuted contracts will be posted on the Exchange at the ABBO price. If this Best Price (next Phlx price) is equal to the Acceptable Range price, any remaining unexecuted routable order volume from the execution on the Phlx will be posted on the Exchange at the Acceptable Range price. Lastly, if this Best Price (next Phlx price) is equivalent to *both* the ABBO and the Acceptable Range price, any remainder order volume from the execution on the Phlx will be routed away, and if after routing there still remains open contracts, the remainder will be posted on the Phlx at the Acceptable Range price.

If the Best Price is the ABBO, where the ABBO is not equal to the next Phlx price, the initiating order will be routed away up to the size of the ABBO and, after routing, any remaining unexecuted contracts from the initiating order will be posted on the Exchange at the ABBO price. If the Best Price (ABBO is not equal to the next Phlx price) equals the Acceptable Range price, the initiating order will be routed away and after such routing, any remaining unexecuted contracts will be posted on the Exchange at the ABBO price.

If the Best Price is the Acceptable Range Price, where the Acceptable Range Price is not equal to either the next Phlx price or the ABBO, the initiating order or quote will be posted at the Acceptable Range Price.

Initiating Quote or Order Crosses Best Price

Proposed Rule 1082(a)(ii)(B)(3)(g)(iv) describes what happens in the Phlx XL II system when the initiating quote or order crosses the Best Price. If the initiating quote or order crosses the Best Price, the Phlx XL II system will execute, route, and/or post the initiating quote or order as described below:

If the Best Price is the next Phlx price, the Phlx XL II system will execute a trade at the Exchange's next available price up to the Exchange's disseminated size. If this Best Price (next Phlx price) is equal to the ABBO price, any remaining order volume from the execution on the Exchange will be routed away and, after such routing, any remainder volume will be posted on the Exchange at the ABBO price. If this Best Price (next Phlx price) is equal to the Acceptable Range price, any remaining volume from the execution on the Phlx will be posted at the Acceptable Range Price for a period not to exceed ten seconds [50] and cancelled after this time has elapsed. During this period, the Phlx XL system will disseminate a bid and offer that is one minimum variation from the away market price with a size of zero on the opposite side of the market from remaining unexecuted contracts.

Lastly, if this Best Price (next Phlx price) is equal to *both* the ABBO and the Acceptable Range price, any remainder order volume from the execution on the Phlx will be routed away, and if after routing there still remain unexecuted contracts, the remainder will be posted on the Phlx at the Acceptable Range price for a period not to exceed ten seconds,[51] and cancelled after this time has elapsed. During this period, the Phlx XL system will disseminate a bid and offer at the Acceptable Range price, with a size of zero on the opposite side of the market from remaining unexecuted contracts.

The purpose of the posting period is to expose the initiating quote or order at the Exchange-determined Acceptable Range price so that interested participants have the opportunity to trade against such initiating quote or order. The purpose of the cancellation following the posting period is to return any unexecuted portion of the initiating quote or order to the sender so that the sender may determine how they want the remainder handled (*e.g.*, re-price the initiating quote or order, trade at the next available price on the Exchange, or route to another market center).

[50] The posting time will be published in an Options Trader Alert, which will be available on the Exchange's Web site.

[51] The posting time will be published in an Options Trader Alert, which will be available on the Exchange's Web site.

If the Best Price is the ABBO, where the ABBO is not equal to the next Phlx price, the initiating order will be routed away and if after routing there remain unexecuted contracts, the remainder of the initiating order will be posted on the Phlx at the ABBO price. If this Best Price (ABBO is not equal to the next Phlx price) equals the Acceptable Range price, the initiating order will be routed away and if after routing there remain unexecuted contracts, the remainder of the order will be posted on the Phlx at the ABBO price for a period not to exceed ten seconds,[52] and cancelled after this time has elapsed. During this period, the Phlx XL II system will disseminate a bid and offer at the Acceptable Range price, with a size of zero on the opposite side of the market from remaining unexecuted contracts.

If the Best Price is the Acceptable Range price, where the Acceptable Range price is not equal to either the next Phlx price or the ABBO, the initiating quote or order will be posted on the Exchange at the Acceptable Range price for a period not to exceed ten seconds,[53] and cancelled after this time has elapsed. During this period, the Phlx XL II system will disseminate a bid and offer at the Acceptable Range price, with a size of zero on the opposite side of the market from remaining unexecuted contracts.

Under proposed Rule 1082(a)(ii)(B)(3)(g)(v), if the initiating order is non-routable, when the order would otherwise route according to the process described above, the order will be posted on the Phlx at a price one minimum trading increment inferior to the Best Price so as not to lock an away market.

Under proposed Rule 1082(a)(ii)(B)(3)(g)(vi), if, after trading at the Phlx and/or routing, the remainder of the initiating order is still marketable, the entire process of evaluating the best Phlx price and the ABBO will continue until: (A) The order size is exhausted, (B) the order reaches its limit price, or (C) the order is posted at the original Acceptable Range price.

These order handling processes are illustrated in the chart below:

[52] The posting time will be published in an Options Trader Alert, which will be available on the Exchange's Web site.

[53] The posting time will be published in an Options Trader Alert, which will be available on the Exchange's Web site.

Identify the best of	Test Initiating order or quote		
(1) Next Phlx price or (2) Acceptable range (AR) or (3) ABBO	Does not lock or cross the best	Locks the best	Crosses the best
Next Phlx price	Post at limit price	Trade	Trade.
Next Phlx price = ABBO	Post at limit price	Trade, will route if Phlx exhausted	Trade, will route if Phlx exhausted.
Next Phlx price = Acceptable Range.	Post at limit price	Trade and post any remainder balance.	Trade, post any remainder balance at AR price, cancel after timer.
Next Phlx price = Acceptable Range = ABBO.	Post at limit price	Trade, will route if Phlx exhausted, post any remainder balance.	Trade, will route if Phlx exhausted, post any remainder balance at AR price, cancel after timer.
ABBO	Post at limit price	Route and post any remainder balance.	Route and/or post.
ABBO = Acceptable Range	Post at limit price	Route and/or post	Route and/or post cancel after timer.
Acceptable Range	Post at limit price	Post at Acceptable Range	Post at Acceptable Range, cancel after timer.

* Non-routable orders will be handled according to the above table unless routing would occur. At such point, the non-routable order will be posted at one minimum trading increment away from the established Best Price.
** After routing, any unexecuted portions of routed order will be posted on the Phlx in accordance with current Phlx rules.

The purpose of Quote Exhaust is to enhance the process for refreshing a participant's quote that has been fully exhausted by an incoming quote or order that has, after exhausting the Phlx quote at a particular price level, remaining size to be executed at a price through the reference price. In addition, Quote Exhaust is intended to provide an opportunity for such quote or order to receive a price for that order better than the next available price. This process is illustrated in the example below.

Example II

Assume the Following Facts

The initiating order is a market order to buy 40 contracts;

The specialist submits a quote of 2.20 bid, 2.40 offer, with a size of 10x10;

Market Maker 1 submits a quote of 2.20 bid, 2.70 offer, with a size of 25x25;

The Away Market is 2.20 bid, 2.65 offer, with a size of 20x10;

The PBBO is 2.20 bid, 2.40 offer, with a size of 35x10.

The Following Events Will Occur Concurrently

The initiating order buys 10 contracts from the specialist at 2.40, exhausting the 2.40 quote;

The Phlx XL II system will start the Quote Exhaust Timer;

The Phlx XL II system will disseminate a PBBO of 2.40 bid, 2.40 offer, with a size of 30x0.

After the Quote Exhaust Timer

The initiating order buys 20 contracts from Market Maker 1 at 2.70 and the Phlx XL II system will contemporaneously route the unexecuted balance of the initiating order to the away market, 10 to buy at 2.70. This should result in a buy of 10 contracts at 2.65 on the away market.

The disseminated PBBO is 2.20 bid, 2.70 offer, with a size of 20x5.

The Exchange believes that Quote Exhaust provides the best opportunity for remaining portions of incoming quotes or orders to be executed on the Exchange at prices that are better than away markets by allowing Phlx XL II participants to refresh their quotes before routing away, thus potentially providing better prices at which to execute such remaining portions.

Exchange-Generated Quote

In Phlx XL II, if the Exchange's disseminated size in a particular series is exhausted at that particular price level, and no specialist, SQT or RSQT has revised their quotation immediately following the exhaustion of the Exchange's disseminated size at such price level, in Phlx XL II, the Exchange will not, as it currently does in Phlx XL under Rule 1082(a)(ii)(B)(2), automatically provide two-sided quotes that comply with the Exchange's rules concerning quote spread parameters on behalf of the specialist with a size of one contract. Instead, the Exchange will disseminate a bid of zero and an offer of $200,000, each for a size of one contract.[54] This system generated quote will indicate that the Exchange has no better priced interest and will typically be generated only in Market Exhaust scenarios (see below). The Exchange believes that this quote is preferable to a 0 X 0 quote, because an offer of 0 could be misinterpreted by a system as the best offer.

Market Exhaust

Proposed Rule 1082(a)(ii)(B)(4) describes the Phlx XL II system's Market Exhaust feature. Market Exhaust occurs when there are no Phlx XL II participant (specialist, SQT or RSQT) quotations in the Exchange's disseminated market for a particular series and an initiating order in the series is received.[55] In such a circumstance, the Phlx XL II system, using Market Exhaust, will initiate a Market Exhaust Auction for the initiating order.

Market Exhaust Auction

Proposed Rule 1082(a)(ii)(B)(4)(b) describes the Market Exhaust Auction. When an initiating order is received when there are no quotations in the Exchange market, the Phlx XL II system will immediately broadcast a notification (an ''Auction Notification'') to Phlx XL II participants; the purpose of the auction is to seek participation and determine the best price at which the contracts in the initiating order may be executed (the ''Auction Price''). The Auction Notification will include the series, size and side of the market of the initiating order. The Auction Notification will not include a price.

[54] *See* proposed Rule 1082(a)(ii)(B)(4)(a). This would replace the Exchange's current practice of automatically providing two-sided quotes that comply with the Exchange's rules concerning quote spread parameters on behalf of the specialist until such time as the specialist revises the quotation, with a size of one contract. The Exchange represents that it will, as it does today, surveil for compliance on the part of specialists (and SQTs and RSQTs) with the Exchange's continuous quoting requirements. *See* Exchange Rule 1014(b)(ii)(D).

[55] Market Exhaust can only be triggered by an initiating order.

The Auction will be for a period of time not to exceed three seconds [56] (the ''Auction Period''). The Market Exhaust Auction is used to determine the best price at which the contracts in the initiating order may be executed (the ''Auction Price'').

During the Auction Period

Proposed Rule 1082(a)(ii)(B)(4)(c) describes the responses that Phlx XL II participants may submit during the Auction Period. Phlx XL II participants may submit bids and offers in response to the Auction Notification into the system until the end of the Auction Period. Such responsive bids and offers may be submitted to the system for the auction in three ways. First, Phlx XL II participants may submit a two-sided quote in response to the Auction Notification. Secondly, Phlx XL II participants may submit a single-sided, single-priced quotation for the auction to be known as ''Auction Sweep'' [57] that will be effective only for the Auction Period and cancelled at the end of that period if not executed.[58] Auction sweeps may be entered at any price consistent with the minimum price variation applicable to the affected series, at single or multiple price level(s), and may be cancelled and re-entered. Finally, they may submit limit orders. IOC Orders will be cancelled immediately if not executed and will not participate in the Market Exhaust process. Any quote, Auction Sweep or order can be cancelled and/or replaced during the Auction Period. In addition, incoming orders from non-Phlx XL II participants and existing orders on the book will be eligible to participate at the end of the Auction Period, together with responses to the Auction Notification.

End of the Auction Period

Proposed Rule 1082(a)(ii)(B)(4)(d) describes what happens at the end of the Auction Period. If at the end of the Auction Period there are no quotes in the Exchange market that have a bid/ask differential that complies with the following table (a ''valid-width auction quote''), the initiating order, plus all other Auction Sweeps and orders received during the Auction Period will be cancelled.[59] Quotes that are not valid-width auction quotes will remain and a new PBBO will be calculated and disseminated.

EXAMPLE TABLE*

Valid width auction quote table

Bid price = or > than	Bid price < than	Acceptable bid/ask differential—less than 9 months to expiration	Acceptable bid/ask differential—months or more to expiration multiplier
$0.00	$2.00	$0.40	2X
2.00	5.00	0.80	2X
5.00	10.00	1.00	2X
10.00	20.00	1.60	2X
20.00	n/a	2.00	2X

***NOTE:** The table presented here is for example purposes only. The Exchange may modify the Bid Price ranges, the Differential values and the Multipliers and will announce such changes on its Web site.[60]

If at the end of the Auction Period there are valid-width auction quotes, the Phlx XL II system will determine the allowable executable price range from the lowest valid-width auction quote bid and the highest valid-width auction quote ask; this is the Auction Quote Range (''AQR'').

If the initiating order can be completely executed at or within the AQR and the ABBO, using contracts available from all available quotes, Auction Sweeps or orders priced at or within the AQR, a trade will be executed at the Exchange at the Auction Price.

If quotes, Auction Sweeps and orders submitted during the Auction Period would not allow the entire initiating order to trade at a price within the AQR without trading through the ABBO, the Phlx XL II system will determine if the total number of contracts displayed at the ABBO price on away markets would satisfy the number of marketable contracts available on the Exchange. If it does, the Phlx XL II system will route a number of contracts that will satisfy interest at other markets at the ABBO price, and determine a PBBO that reflects the remaining Phlx interest without locking the away market. In this situation, the Phlx XL II system will price any contracts routed to other markets at the ABBO price.

If the total number of contracts priced at the ABBO would not satisfy the number of marketable contracts the Exchange has, the Phlx XL II system will determine how many contracts it has available on the Exchange at a price equal to the ABBO. If the total number of ABBO contracts plus the number of contracts available on the Exchange at the ABBO price would satisfy the number of marketable contracts the Exchange has, the ABBO price becomes the Exchange Auction Price and the Phlx XL II system will trade available contracts on the Exchange at the Exchange Auction Price and contemporaneously route a number of contracts that will satisfy interest at other markets at prices better than the Exchange Auction Price. In this situation, the Phlx XL II system will price any contracts routed to other markets at the away market price. The Exchange Auction Price will always be at or within the AQR.

If the total number of ABBO contracts plus the number of contracts available on the Exchange at the ABBO price would not satisfy the number of marketable contracts the Exchange has, the Phlx XL II system will determine

[56] The duration of the Auction Period will be published in an Options Trader Alert, which will be available on the Exchange's Web site.

[57] *See* proposed Rule 1082(a)(ii)(B)(4)(c)(i).

[58] A single Phlx XL II participant may enter multiple Auction Sweeps, with each Auction Sweep at a different price level. If a Phlx XL II participant submits multiple Auction Sweeps, the Phlx XL II system will consider only the most recent Auction Sweep at each price level submitted by such Phlx XL II participant in determining the Auction Price. The Phlx XL II system will aggregate the size of all Auction Sweeps (*i.e.*, for all Phlx XL II participants) at a particular price level for trade allocation purposes.

[59] Inbound marketable orders received during the Auction Period would also be cancelled in this situation at the end of the Auction Period, because, since there are still no valid-width quotes at the end of the Auction Period, the Phlx XL II system has no basis on which to determine what is an acceptable range within which to trade.

[60] The initial table and any modifications thereto will be published in an Options Trader Alert, which will be available on the Exchange's Web site.

how many contracts are available on the Exchange at a price that is one Minimum Price Variation (''MPV'') through the ABBO price. If the total number of ABBO contracts plus the number of contracts available on the Exchange at the ABBO price plus the number of contracts available on the Exchange at a price that is one MPV through the ABBO price would satisfy the number of marketable contracts the Exchange has, the price that is one MPV through the ABBO becomes the Exchange Auction Price. The system will contemporaneously route a number of contracts that will satisfy interest at the ABBO and trade a number of contracts that will satisfy interest on the Exchange at the Exchange Auction Price.[61] In this situation, the Phlx XL II system will price any contracts routed to other markets at the Exchange Auction Price.

If the total number of ABBO contracts plus the number of contracts available on the Exchange at the ABBO price plus the number of contracts available on the Exchange at a price that is one MPV through the ABBO price would not satisfy the number of marketable contracts the Exchange has, the system may repeat the auction process.

The Phlx XL II system may repeat this process up to three times.[62] If after that number of times, the Phlx XL II system still cannot either route and/or trade the entire initiating order, the Phlx XL II system will conduct a Provisional Auction by routing to markets at the ABBO for their disseminated size, and trading as many contracts as possible on the Exchange at the ABBO price and at a price that is one MPV through the ABBO price. In this situation, the Phlx XL II system will price any contracts routed to other markets at the ABBO price. The Auction is now complete. Accordingly, unexecuted Auction Sweeps will be cancelled by the Phlx XL II system.

Any unexecuted contracts from the initiating order will be displayed in the Exchange quote at the Auction Price for a brief period not to exceed ten seconds[63] and subsequently cancelled back to the entering participant if they remain unexecuted and priced through the Auction Price. During the brief period, the Phlx XL II system will disseminate a bid and offer that is equal to the Auction Price, with a size of zero on the opposite side of the market from remaining unexecuted contracts. The purpose of the posting period is to expose the initiating order at the Auction Price so that interested participants have the opportunity to trade against such initiating order. The purpose of the cancellation following the posting period is to return any unexecuted portion of the initiating order to the sender so that the sender may determine how they want the remainder handled (*e.g.*, re-price the initiating order, trade at the next available price on the Exchange, or route to another market center).

This process is illustrated in the following example:

Example III

Assume the Following Facts

There is an order (''Order 1'') on the book to sell 20 contracts at 8.00;

The Phlx XL II system receives another order (''Order 2'') to buy 100 contracts at the market;

The specialist's quote in the affected series has been purged;

There are no Market Maker quotes in the affected series;

The away market is disseminating a market of 2.20 bid, 2.65 offer, with a size of 20x10;

The Phlx XL II system will disseminate a PBBO of 0.00 bid, 8.00 offer, with a size of 1x20;

The number of times the process will repeat is set to zero.

The Phlx XL II System Sends an Auction Notification

Assume, in response to the Auction Notification during the Auction Period:

The specialist submits a quote of 2.20 bid, 2.50 offer, with a size of 10x10;

Market Maker 1 submits a quote of 2.25 bid, 2.90 offer, with a size of 20x20;

The Phlx XL II system receives a market order (''Order 3'') to sell 50 contracts in the affected series;

The specialist submits an Auction Sweep to sell 30 contracts at 2.70;

The specialist submits another Auction Sweep to sell 60 contracts at 3.00.

At the End of the Auction Period

Order 2 buys 50 from Order 3 at 2.70;

Order 2 buys 40 from the specialist at 2.70;

The Phlx XL II system will route the balance of Order 2 (10 contracts) to the away market, to buy at 2.70. This should result in a buy of 10 contracts on the away market at 2.65;

The Exchange will disseminate a PBBO of 2.25 bid, 2.90 offer, with a size of 20x20.

In summary, the automated auction process logic seeks to first route away all contracts executable at a better price than the Exchange's Auction Price, then executes all contracts available on the Exchange at the Auction Price or one MPV through the NBBO and, lastly, routes away all contracts available at other exchanges at the Exchange's Auction Price. The foregoing processes occur contemporaneously.

The Exchange will execute orders at the Auction Price that have contingencies (such as All-or-None) and non-routable orders (such as a ''Do Not Route'' or ''DNR'' Orders), to the extent possible. Consistent with its routing approach, the Exchange will only route non-contingency customer orders. Thus, in a Provisional Auction, even orders priced at or through the Auction Price may not be executed because of insufficient size.

If a Market Exhaust Auction is in progress at (1) the close of the trading day or 2) at the time of a trading halt, the Auction will be immediately terminated and no trades would occur.

Priority at the End of the Auction

Just as provided in current Exchange Rule 1017(c)(i), the system will give priority to market orders first (including limit orders that are treated as market orders), then to resting limit orders at the Auction Price.[64] In order to preserve an orderly auction on the Exchange, inbound orders and quotes will not be included in the calculation of the Auction Price for a brief period established by the Phlx XL II system[65] while the Phlx XL II system is in the process of completing the auction trade. During this period, inbound orders and quotes will be queued on the Phlx XL II system in the order in which they are received. After this period once the auction is complete, such inbound orders, sweeps and quotes will be processed by the Phlx XL II system in order of their arrival.

Permitted Responses to Auction Notification

Permitted responses to an Auction Notification include quotes, Auction Sweeps (as defined more fully below), and orders.

An Auction Sweep is a proposed new method for entering electronic quotations by specialists, SQTs and RSQTs assigned to a particular option. An Auction Sweep is an electronic quotation submitted for execution

[61] The Phlx XL II system will route contracts to the ABBO when the next Phlx price is greater than one MPV through the ABBO.

[62] The number of times it will be repeated will be published in an Options Trader Alert, which will be available on the Exchange's Web site.

[63] The duration of the brief period will be published in an Options Trader Alert, which will be available on the Exchange's Web site.

[64] *See* proposed Rule 1082(a)(ii)(B)(4)(d)(v).

[65] This brief period will not exceed .25 of one second. This brief period is similar to the brief period during the opening. *See* Exchange Rule 1017(c)(iv).

against trading interest in the system. Auction Sweeps may be entered at any price, at single or multiple price level(s), and may be cancelled and re-entered. A single Phlx XL II participant may enter multiple Auction Sweeps, with each Auction Sweep at a different price level. If a Phlx XL II participant submits multiple Auction Sweeps at different price levels, the Phlx XL II system will consider only the most recent Auction Sweep at each price level submitted by such Phlx XL II participant in determining the Exchange Auction Price. The Phlx XL II system will aggregate the size of all Auction Sweeps (*i.e.*, for all Phlx XL II participants) at a particular price level for trade allocation purposes. Contracts will be allocated pursuant to Exchange rules concerning trade allocation.[66] Unexecuted Auction Sweeps will be cancelled once the auction is complete.

Order Routing

The Phlx XL II system will route only customer FIND and SRCH Orders (as defined below) with no other contingencies. Under proposed Rule 1080(m), customer FIND and SRCH Orders will first be checked by the Phlx XL II system for available contracts for potential execution. After checking the Phlx XL II system for available contracts, orders are sent to other available market centers for potential execution. When checking the book, the Phlx XL II system will seek to execute at the price at which it would send the order to a destination market center. In situations where the Exchange's disseminated bid or offer is one MPV inferior to the NBBO price, the Phlx XL II system will contemporaneously route to the away market(s) disseminating the NBBO at such away market's size, and execute remaining contracts at the Exchange's disseminated bid or offer up to its disseminated size.

If contracts remain unexecuted after routing, they are posted on the book. Once on the book, should the order subsequently be locked or crossed by another market center, the Phlx XL II system will not route the order to the locking or crossing market center, except as specified below.

Proposed Rule 1080(m)(i) provides that orders sent to other markets do not retain time priority with respect to other orders in the Phlx XL II system and the Phlx XL II system will continue to execute other orders while routed orders are away at another market center. Once routed by the Phlx XL II system, an order becomes subject to the rules and procedures of the destination market including, but not limited to, order cancellation. If a routed order is subsequently returned, in whole or in part, that order, or its remainder, shall receive a new time stamp reflecting the time of its return to the Phlx XL II system.

Proposed Rule 1080(m)(ii) provides that entering member organizations whose orders are routed to away markets shall be obligated to honor such trades that are executed on away markets to the same extent they would be obligated to honor a trade executed on the Exchange.

The Exchange proposes to adopt proposed Rule 1080(m)(iii)(A) to establish Nasdaq Options Services LLC (''NOS'') as the Exchange's exclusive order router. NOS is a member of an SRO unaffiliated with the Exchange that is its designated examining authority. NOS will serve as the Routing Facility of the Exchange (the ''Routing Facility''). The sole use of the Routing Facility by the Phlx XL II system will be to route orders in options listed and open for trading on the Phlx XL II system to away markets pursuant to Exchange rules on behalf of the Exchange.

Proposed Rule 1080(m)(iii)(B) would provide that the use of NOS to route orders to other market centers is optional. Parties that do not desire to use NOS must designate orders as not available for routing (*i.e.*, a Do Not Route Order, as described in proposed Rule 1080(m)(iv)(A)).

Proposed Rule 1080(m)(iii)(C) would provide that the Exchange will establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and the Routing Facility, and any other entity, including any affiliate of the Routing Facility, and, if the Routing Facility or any of its affiliates engages in any other business activities other than providing routing services to the Exchange, between the segment of the Routing Facility or affiliate that provides the other business activities and the routing services.

Finally, proposed Rule 1080(m)(iii)(D) would state that the books, records, premises, officers, directors, agents, and employees of the Routing Facility, as a facility of the Exchange, will be deemed to be the books, records, premises, officers, directors, agents, and employees of the Exchange for purposes of and subject to oversight pursuant to the Act. The books and records of the Routing Facility, as a facility of the Exchange, will be subject at all times to inspection and copying by the Exchange and the Commission.

Phlx Affiliation With NOS

Exchange Rule 985(b) generally prohibits the Phlx or an entity with which it is affiliated from acquiring or maintaining an ownership interest in, or engaging in a business venture[67] with a Phlx member or an affiliate of a Phlx member in the absence of an effective filing with the Commission under Section 19(b) of the Act. However, Rule 985(b) also states Phlx or an entity affiliated with Phlx could acquire or maintain an ownership interest in, or engage in a business venture with, an affiliate of a Phlx member without the need for the Exchange to file such affiliation under Section 19(b) of the Act, if there were information barriers between the member and Phlx and its facilities.

NOS is a member of Phlx. In July, 2008, the Commission approved NOS as an affiliate of Phlx for the limited purpose of providing routing services for NASDAQ Exchange for orders that first attempt to access liquidity on NASDAQ Exchange's systems before routing to Phlx.[68]

The Exchange requests that the Commission provide a further exemption from the restrictions on affiliation by allowing Phlx to use NOS to provide routing services for orders that first attempt to access liquidity on the Phlx's systems before routing to other exchanges.

Expanded Order Types

DNR Order. Proposed Rule 1080(m)(iv)(A) describes a Do Not Route (''DNR'') Order. A DNR order will never be routed outside of Phlx regardless of the prices displayed by away markets. A DNR order may execute on the Exchange at a price equal to or better than, but not inferior to, the best away market price but, if that best away market remains, the DNR order will remain in the Phlx book and be displayed at a price one minimum price variation inferior to that away best bid/offer. Any incoming order interacting with such a resting DNR order will receive the best away market price. Should the best away market change its price, or move to an inferior price level, the DNR order will automatically re-

[66] *See* Exchange Rules 1014(g)(vii) and (g)(viii).

[67] Rule 985(b)(i)(B) defines a The term ''business venture'' as an arrangement under which (A) the Exchange or an entity with which it is affiliated, and (B) an Exchange member or an affiliate of an Exchange member, engage in joint activities with an expectation of shared profit and a risk of shared loss from common entrepreneurial efforts.

[68] *See* Securities Exchange Act Release No. 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008) (SR–Phlx-2008–31).

price from its one minimum price variation inferior to the original away best bid/offer price to one minimum trading increment away from the new away best bid/offer price or its original limit price. Once priced at its original limit price, it will remain at that price until executed or cancelled. Should the best away market improve its price such that it locks or crosses the DNR order limit price, the Exchange will execute the resulting incoming order that is routed from the away market that locked or crossed the DNR order limit price.

FIND Order. Proposed Rule 1080(m)(v)(B) describes a FIND Order. A FIND order is an order that is routable upon receipt, or any time the option goes through an opening process. A FIND order on the Phlx XL II book during an opening, whether it is received prior to the opening or it is a good til cancelled (''GTC'') FIND order from a prior day, may be routed as part of the Opening Process. Once the Opening Process is complete, the FIND order is either eligible to trade at the Phlx price or placed on the Phlx book either at its limit price or at a price that is one Minimum Price Variation (''MPV'') from the ABBO price if it would otherwise lock or cross the ABBO. A FIND order will not be eligible for routing until the next time the option series is subject to a new Opening Process.

A FIND order received during open trading that is not marketable against the PBBO or the ABBO will be entered into the Phlx XL II book at its limit price. The FIND order will not be eligible for routing until the next time the option series is subject to a new Opening Process.

A FIND order received during open trading that is marketable against the PBBO when the ABBO is inferior to the PBBO will be traded at the Exchange at the PBBO price. If the FIND order has size remaining after exhausting the PBBO, it may (1) trade at the next PBBO price (or prices) if the order price is locking or crossing that price (or prices) up to and including the ABBO price, or (2) be entered into the Phlx XL II book at its limit price, or entered into the Phlx XL II book at one MPV away from the ABBO if locking or crossing the ABBO. The FIND order will not be eligible for routing until the next time the option series is subject to a new Opening Process.

A FIND order received during open trading that is marketable against the PBBO when the ABBO is equal to the PBBO will be traded at the Exchange at the PBBO. If the FIND order has size remaining after exhausting the PBBO, it will initiate a Route Timer not to exceed one second [69] in order to allow Phlx XL II participants and other market participants an opportunity to interact with the remainder of the FIND order. During the Route Timer, the FIND order will be included in the PBBO at a price one MPV away from the ABBO. If, during the Route Timer, any new interest arrives opposite the FIND order that is equal to or better than the ABBO price, the FIND order will trade against such new interest at the ABBO price.

What happens to a FIND order after the Route Timer expires depends on the ABBO price at that time. If, at the end of the Route Timer, the ABBO is still at the same or a better price, the FIND order will route to the away market up to a size equal to the lesser of either: (a) The away market's size, or (b) the remaining size of the FIND order. If the FIND order still has remaining size after routing, it will be entered into the Phlx XL II book and posted at the same price at which it was routed. The FIND order will not be eligible for routing until the next time the option series is subject to a new Opening Process.

A FIND order received during open trading that is marketable against the ABBO when the ABBO is better than the PBBO will initiate a Route Timer not to exceed one second [70] in order to allow Phlx XL II participants and other market participants an opportunity to interact with the FIND order. During the Route Timer, the FIND order will be included in the PBBO at a price one MPV away from the ABBO. If, during the Route Timer, any new interest arrives opposite the FIND order that is equal to or better than the ABBO price, the FIND order will trade against such new interest at the ABBO price.

What happens to a FIND order after the Route Timer expires depends on the ABBO price at that time. If, at the end of the Route Timer, the ABBO is still the best price, the FIND order will route to the away market up to a size equal to the lesser of either (a) the away market's size, or (b) the remaining size of the FIND order. If the FIND order still has remaining size, it will (i) trade at the next PBBO price up to one MPV through the ABBO price, subject to the order's limit price; [71] or (ii) be entered into the Phlx XL II book and posted at: (A) its limit price, or (B) one MPV inferior to the ABBO price if its limit price is equal to or through the ABBO price. The Phlx XL II system will route and execute contracts contemporaneously at the end of the Route Timer. The FIND order will not be eligible for routing until the next time the option series is subject to a new Opening Process.

SRCH Order. Proposed Rule 1080(m)(v)(C) describes a SRCH Order. A SRCH order is an order that is routable at any time.

A SRCH order on the Phlx XL II book during an opening, whether it is received prior to the opening or it is a GTC SRCH order from a prior day, may be routed as part of the Opening Process. Once the Opening Process is complete, a SRCH order is eligible either to: (1) Trade at the Phlx price, if that price is equal to or better than the ABBO or, if the ABBO is better than the Phlx price, orders have been routed to the ABBO markets for their full size; or (2) be routed to the ABBO if the ABBO price is the best price, and/or (3) be placed on the Phlx XL II book at its limit price if not participating in the Phlx opening at the opening price and not locking or crossing the ABBO. Once on the book, the SRCH order is eligible for routing if it is locked or crossed by an away market (see below).

A SRCH order received during open trading that is not marketable against the PBBO or the ABBO will be entered into the Phlx XL II book. Once on the book, the SRCH order is eligible for routing if it is locked or crossed by an away market.

A SRCH order received during open trading that is marketable against the PBBO when the ABBO is inferior to the PBBO will be traded at the Exchange at the PBBO price. If the SRCH order has size remaining after exhausting the PBBO, it may (1) trade at the next PBBO price (or prices) if the order price is locking or crossing that price (or prices) up to and including the price equal to the ABBO price, and/or (2) be routed, subject to a Route Timer not to exceed one second,[72] to the ABBO markets if all Phlx interest at better or equal prices has been exhausted, and/or (3) be entered into the Phlx XL II book at its limit price if not locking or crossing the Phlx price or the ABBO. Once on the book, the SRCH order is eligible for

[69] The duration of the Route Timer and all timers relating to FIND and SRCH orders will be published in an Options Trader Alert, which will be available on the Exchange's Web site.

[70] The duration of the Route Timer and all timers relating to FIND and SRCH orders will be published in an Options Trader Alert, which will be available on the Exchange's Web site.

[71] This is consistent with the provisions contained in the current Linkage Plan (''Plan'') and Phlx Rule 1083(t), reflecting that the definition of a ''trade-through'' does not include an order executed at a price that is one MPV inferior to the NBBO if a Linkage Order is transmitted to the Participant Exchange(s) that are disseminating the NBBO to satisfy all interest at the NBBO price (''trade and ship'').

[72] The duration of the Route Timer and all timers relating to FIND and SRCH orders will be published in an Options Trader Alert, which will be available on the Exchange's Web site.

routing if it is locked or crossed by an away market.

A SRCH order received during open trading that is marketable against the PBBO when the ABBO is equal to the PBBO will be traded at the Exchange at the PBBO. If the SRCH order has size remaining after exhausting the PBBO, it will initiate a Route Timer not to exceed one second [73] in order to allow Phlx XL II participants and other market participants an opportunity to interact with the SRCH order. During the Route Timer, the SRCH order will be included in the PBBO at a price one MPV away from the ABBO. If, during the Route Timer, any new interest arrives opposite the SRCH order that is equal to or better than the ABBO price, the SRCH order will trade against such new interest at the ABBO price.

What happens to a SRCH order after the Route Timer expires depends on the ABBO price at that time. If, at the end of the Route Timer, the ABBO is still the best price, the SRCH order will route to the away market up to a size equal to the lesser of either (a) the away market's size, or (b) the remaining size of the SRCH order. If the SRCH order still has remaining size after routing, it may: (1) Trade at the next PBBO price (or prices) if the order price is locking or crossing that price (or prices) up to one MPV through the ABBO price, and/or (2) be routed, subject to a Route Timer not to exceed one second,[74] to the ABBO markets if all Phlx interest at better or equal prices has been exhausted, and/or (3) be entered into the Phlx XL II book at its limit price if not locking or crossing the Phlx price or the ABBO. The Phlx XL II system will route and execute contracts contemporaneously at the end of the Route Timer. Once on the book, the SRCH order is eligible for routing if it is locked or crossed by an away market.

A SRCH order received during open trading that is marketable against the ABBO when the ABBO is better than the PBBO will initiate a Route Timer not to exceed one second [75] in order to allow Phlx XL II participants and other market participants an opportunity to interact with the remainder of the SRCH order. During the Route Timer, the SRCH order will be included in the PBBO at a price one MPV inferior to the ABBO. If, during the Route Timer, any new interest arrives opposite the SRCH order that is equal to or better than the ABBO price, the SRCH order will trade against such new interest at the ABBO price.

What happens to a SRCH order after the Route Timer expires depends on the ABBO price at that time. If, at the end of the Route Timer, the ABBO is still the best price, the SRCH order will route to the away market up to a size equal to the lesser of either: (a) The away market's size or (b) the remaining size of the SRCH order. If the SRCH order still has remaining size, it may: (1) Trade at the next PBBO price (or prices) if the order price is locking or crossing that price (or prices) up to one MPV through the ABBO price, and/or (2) be routed, subject to a Route Timer not to exceed one second,[76] to the ABBO markets if all Phlx interest at better or equal prices has been exhausted, and/or (3) be entered into the Phlx XL II book at its limit price if not locking or crossing the Phlx price or the ABBO. Once on the book, the SRCH order is eligible for routing if it is locked or crossed by an away market.

A SRCH order on the Phlx XL II book may be routed to an away market if it is locked or crossed by an away market. If an ABBO locks or crosses the PBBO which includes a SRCH order, the Phlx XL II system will initiate a Route Timer not to exceed one second [77] in order to allow Phlx users an opportunity to interact with the SRCH order. During the Route Timer, the SRCH order remains in the PBBO at its posted price. If, during the Route Timer, any new interest arrives opposite the SRCH order that is equal to or better than the ABBO price, the SRCH order will trade against such new interest at the ABBO price.

What happens to a SRCH order after the Route Timer expires depends on the ABBO price at that time. If, at the end of the Route Timer, the ABBO is still the best price, the SRCH order will route to the away market up to a size equal to the lesser of either: (a) The away market's size, or (b) the remaining size of the SRCH order. If the SRCH order still has remaining size, that size will remain on the book.

New Sweeps

In addition to the Opening Sweep described above, the Phlx will also introduce other new sweep capabilities. The Market Sweep [78] in Phlx XL II will replace the Phlx XL's current Book Sweep [79] order processing, and allow a Phlx user the ability to automatically execute multiple order price levels and a single quote price level. A Market Sweep will execute against both quotes and orders, but when a quote level is exhausted, the system will cancel the balance of the Market Sweep back to the entering party to allow quotes to be updated. Market Sweeps are processed on an immediate-or-cancel basis, may not be routed, may be entered only at a single price, and may not trade through the ABBO.

The Auction Sweep described above may be entered only during the auction process and will remain in effect only until the auction is completed. A single Phlx XL II participant may enter multiple Auction Sweeps, with each Auction Sweep at a different price level. If a Phlx XL II participant submits multiple Auction Sweeps at different price levels, the Phlx XL II system will consider only the most recent Auction Sweep at each price level submitted by such Phlx XL II participant in determining the Auction Price. The Phlx XL II system will aggregate the size of all Auction Sweeps (*i.e.,* for all Phlx XL II participants) at a particular price level for trade allocation purposes.

Sweeps of any type may only be entered by entities permitted to enter quotes in the class and series being swept. Unlike other types of sweeps, all Opening Sweeps in a series will be cancelled immediately if that Phlx XL II participant fails to maintain a continuous quote with a permitted opening bid/ask differential in the affected series.

Complex Order Live Auction Order Cancellation

Phlx also proposes to remove the prohibition in Rule 1080.08(e)(iii) on order cancellation in Complex Order Live Auction (''COLA'') and now allow the cancellation of any order in such auction including the original order that caused the auction to commence.[80] This is to allow customers greater flexibility to manage their orders during a COLA.

In addition, the Phlx XL II system will also execute the individual components of a Complex Order against sweeps that are executable.[81] This provision would

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[78] *See* proposed Rule 1080(c)(iii)(B).

[79] A Book Sweep is a one-sided single-priced quote that may only trade with an order on the book. *See* Exchange Rule 1080(c).

[80] *See* Exchange Rule 1080.08(e)(iii).

[81] The Phlx XL Complex Order system currently executes only quotes and orders on the limit order

Continued

allow additional opportunity for Phlx XL II participants to trade with existing liquidity on the Exchange.

Miscellaneous Rule Changes

The Exchange proposes to make various updates to Rule 1080 to delete obsolete provisions and generally update the rule. For example, the Exchange proposes to add the terms ''Phlx XL'' and ''Phlx XL II'' to the rule to more clearly identify the new features and to expressly begin replacing the outdated term ''AUTOM.'' [82] The Exchange also proposes to delete the requirement in Rule 1080.05 that off-floor broker-dealer limit orders delivered through the system must be represented on the Exchange floor by a floor member, as this provision is outdated. The Exchange believes that other forms of communication, such as telephone, are sufficient. The Exchange proposes to delete Rule 1080.03, which refers to a technology arrangement no longer in place. Similarly, the Exchange proposes to delete certain options floor procedure advices, such as Advice G–2, which duplicate existing rules [83] and do not impose any fines under the minor rule violation enforcement and reporting plan. In Rules 1014, 1080(k) and (l) and 1082, the Exchange proposes to delete the outdated term ''Streaming Quote Options.'' The Exchange also proposes to place a cross-reference to Rule 1017 in Rule 1080 to make clear that Rule 1080(a) applies to openings. The Exchange proposes to amend Rule 1047 to add new text stating that the Phlx XL II system will automatically halt trading in an equity option when the underlying security is subject to a regulatory halt on the primary market for such underlying security.

In addition, the Exchange proposes to replace numerous references to the Options Committee and the Foreign Currency Options Committee, and their respective Chairs, with ''the Exchange'' to reflect that the Exchange will have direct responsibility over these matters, consistent with a separate proposed rule change to make similar changes throughout the Exchange's rules.[84]

Finally, the Exchange proposes the following specific miscellaneous rule changes:

- Rule 1014(b)(ii)(E) would be amended to delete obsolete portions of the rule concerning expired dates of effectiveness for a 90-day effective period following commencement of the original Phlx XL system, and a one-year effective period for a requirement that non-SQT ROTs quote electronically in options in which they trade a certain percentage electronically;
- Rules 1017(b)–(f) would be amended to reflect that the rules will continue to apply to options traded on the original Phlx XL system, and to reflect that notification to membership of various time periods will be made on the Exchange's Web site. Any quantified term determined by the Exchange will be disseminated as an Options Trader Alert on the Exchange's Web site and will be retained on the Web site indefinitely so that persons may review such determinations as necessary
- Rules 1017(g)–(i) would be amended to reflect the applicability of each paragraph to options traded exclusively on the original Phlx XL system, and to options traded on the original Phlx XL system and the Phlx XL II system;
- Commentaries .01–.03 to Rule 1017 would be amended to state that Commentaries apply to the original Phlx XL system;
- Rule 1080(b) would be amended to reflect that DNR, SRCH and FIND orders are eligible for entry into the Phlx XL II system as agency orders and as orders for the proprietary accounts of SQTs, RSQTs, non-SQT ROTs, specialists, and off-floor broker-dealers;
- Rule 1080(c)(iv) would be amended to (i) reflect that orders in options traded on the original Phlx XL system will be handled manually by the specialist in certain situations, and (ii) to add new sub-paragraph (G) to the Rule stating that, respecting options traded on the Phlx XL II system, no orders will be executed manually;
- Rule 1080(c)(v) would be amended to reflect that it will apply to options traded on the Phlx XL system;
- Rule 1080, Commentary .06 would be amended to delete obsolete references to the deployment schedule for the Options Floor Broker Management System, which was completed in November 2003;
- Options Floor Procedure Advice (''OFPA'') A–12 would be amended to delete redundant references to the opening price acceptable range for options traded on the original Phlx XL system which are already included in Rule 1017;
- OFPA A–14, which has a fine schedule, would be amended to reflect that, respecting openings on the Phlx XL II system, the price of an opening transaction in an option series may only be arranged at a price that is within an acceptable OQR (as determined by the Exchange and announced to the membership on the Exchange's Web site), and to include identical language to proposed Rule 1017(l)(iii) concerning the calculation of the OQR;
- OFPA G–2, which has no fine schedule and which duplicates existing Exchange Rule 1047A, would be deleted.

Rollout and Deployment

The Exchange expects to roll out the Phlx XL II system over a period of 12 weeks following Commission approval of this proposal (the ''rollout period''), beginning with one single option traded on the Phlx XL II system, while other options traded on the Exchange will continue to trade on the original Phlx XL system (the ''legacy system'') during the rollout period. The Exchange will continue to delete options from the legacy system and place such options on the Phlx XL II system during the rollout period, while other options continue to trade on the legacy system. Eventually all options traded on the Exchange will be traded on the Phlx XL II system, and no options will be traded on the legacy system. Accordingly, the Exchange proposes to distinguish the proposed rules applicable to options traded on the Phlx XL II system from existing Exchange rules applicable to options traded on the legacy system.

Within 90 days following the completion of the rollout of the Phlx XL II system, the Exchange will offer a data feed to all market participants, which will include disseminated Exchange top-of-market data (including orders, quotes and trades). The new data feed will also include all information that is included in the Exchange's Specialized Order Feed (''SOF''), which provides information concerning simple orders, complex orders and complex strategies to Exchange quoting members. With respect to the speed with which users will receive this information, SOF users will receive this information no sooner than users of the new data feed.

Conclusion

All of the above proposals are designed to improve the speed, efficiency and quality of Exchange options executions and to provide greater flexibility for Exchange users in how they quote and trade, while also enhancing overall market quality by expanded protection of better displayed prices in the market.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b)

book against the individual components of a Complex Order. *See* Exchange Rule 1080.08(f)(iii)(A).

[82] *See* Exchange Rule 1080.

[83] *See* Exchange Rule 1047A.

[84] *See* Securities Exchange Act Release No. 59697 (April 2, 2009) (SR–Phlx–2009–23).

of the Act[85] in general, and furthers the objectives of Section 6(b)(5) of the Act[86] 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 Exchange believes that the proposals will improve the speed, efficiency and quality of Exchange options executions and to provide greater flexibility for Exchange users in how they quote and trade, while also enhancing overall market quality by expanded protection of better displayed prices in the market.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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–2009–32 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–2009–32. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–Phlx–2009–32 and should be submitted on or before May 5,2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[87]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–8422 Filed 4–13–09; 8:45 am]

BILLING CODE 8010–01–P

[85] 15 U.S.C. 78f(b).

[86] 15 U.S.C. 78f(b)(5).

[87] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59723; File No. SR–NSX–2009–02]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fee and Rebate Schedule Relating to Liquidity Adding Rebates

April 7, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 31, 2009, National Stock Exchange, Inc. filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

National Stock Exchange, Inc. (''NSX®'' or ''Exchange'') is proposing to (i) amend the Fee and Rebate Schedule (the ''Fee Schedule'') issued pursuant to Exchange Rule 16.1(c) in order to increase the displayed order liquidity adding rebate for Tape A and C securities executed at one dollar or above in the Automatic Execution Mode of order interaction in the event that certain volume thresholds are achieved, (ii) provide a rebate for adding liquidity in displayed orders at one dollar or above in the Order Delivery Mode of order interaction in the event that certain volume thresholds are achieved and (iii) establish a new Rule 16.3 to provide that, for purposes of applying the provisions of the Fee Schedule and Exchange Rule 16, an ETP Holder may request that the Exchange aggregate its activity with the activity of its affiliates.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nsx.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

With this rule change, the Exchange is proposing to increase the liquidity provider rebate for displayed orders (*i.e.,* those orders other than Zero Display Reserve Orders) [3] (''Displayed Orders'') executed in the Automatic Execution Mode of order interaction (''AutoEx'').[4] The proposed increased rebate applies only to Tape A and C securities executed at a price of one dollar and higher in AutoEx, and only after certain volume thresholds are achieved. In addition, the Exchange is proposing to establish a liquidity provider rebate for Displayed Orders executed in the Order Delivery Mode of order interaction (''Order Delivery'' or ''O/D'').[5] This rebate applies only to securities priced one dollar and higher in Order Delivery, and only after certain volume thresholds are achieved. The proposed rebate for Displayed Orders in Order Delivery mirrors the rebate for liquidity adding Zero Display Orders established pursuant to a rule change submitted by the Exchange for effectiveness on March 2, 2009.[6] Finally, with this rule change the Exchange is proposing to adopt a new Rule 16.3 to allow for the aggregation among affiliated ETP Holders of average daily volumes and other activity.

Increase in AutoEx Displayed Order Liquidity Adding Rebate for Tapes A and C

Prior to effectiveness of the instant rule filing, the AutoEx rebate for liquidity adding Displayed Orders in securities one dollar and above was $0.0026 per share in Tapes A and C, and $0.0030 per share in Tape B. The instant rule filing proposes to increase the rebate for Tape A and C securities in cases where certain average daily volume thresholds are achieved. Specifically, ETP Holders who achieve Liquidity Adding ADV [7] of less than 25 million will continue to receive the previously established liquidity adding rebate for executed Tape A and C Displayed Orders in AutoEx of $0.0026 per share.[8] However, under the instant rule filing, ETP Holders who achieve a Liquidity Adding ADV of 25 million and 40 million shares will receive higher rebates of $0.0027 and $0.0028, respectively, with respect to their executed liquidity adding displayed AutoEx Tape A and C securities priced at one dollar and higher.[9]

Like other calculations of ''average daily volume'' in the Fee Schedule, the measurement period for calculating the proposed rebate is generally the calendar month. However, in the event a pricing or rebate program utilizing this definition is implemented, modified or discontinued on other than month's end, the period of measurement used to determine ''average daily volume'' with respect to the rebate (as used in the definition of ''Liquidity Adding ADV'' and elsewhere in the Fee Schedule) shall be that partial month during which the program's terms are in effect. This is further explained in the Explanatory Endnotes to the Fee Schedule.

O/D Liquidity Adding Displayed Order Rebate

In addition, for securities trading at one dollar or higher in Order Delivery, this rule change proposes to provide a progressively higher rebate applicable to shares executed as liquidity providing Displayed Orders in O/D. ETP Holders who achieve an average daily volume of shares executed as Displayed Orders in O/D (''Liquidity Adding ADV (O/D Displayed)'') of 1 million,[10] 10 million [11] and 20 million [12] shares will receive rebates of $0.0008, $0.0010 and $0.0012, respectively, with respect to such shares (any such rebate hereinafter referred to as an ''O/D Liquidity Adding Displayed Order Rebate''). Liquidity Adding ADV (O/D Displayed) means, with respect to an ETP Holder, ''the number of Displayed Order shares such ETP Holder has executed as a liquidity provider on average per trading day (excluding partial trading days and securities under one dollar) across all tapes in Order Delivery for the calendar month (or partial month, as applicable) in which the executions occurred'' (see the Explanatory Endnotes to the Fee Schedule).

For purposes of clarity, if an ETP Holder fails to achieve Liquidity Adding ADV (O/D Displayed) of at least 1 million shares in a given month (or partial month, as applicable), then no O/D Liquidity Adding Displayed Order Rebate applies. In addition, for purposes of calculating an ETP Holder's Liquidity Adding ADV (O/D Displayed), only such ETP Holder's liquidity adding Displayed Orders executed in O/D in the given time frame are counted. Finally, the O/D Liquidity Adding Displayed Order Rebate applies only to those shares of an ETP Holder executed in O/D as liquidity adding Displayed Orders (*i.e.*, the rebate does not apply to shares of Zero Display Orders that add liquidity in O/D, nor to shares of liquidity providing Displayed Orders in AutoEx). These details are set forth in an explanatory endnote to the Fee Schedule.

Like other calculations of ''average daily volume'' in the Fee Schedule, the measurement period for calculating the O/D Liquidity Adding Displayed Order Rebate is generally the calendar month. However, in the event a pricing or rebate program utilizing this definition is implemented, modified or discontinued on other than month's end, the period of measurement used to determine ''average daily volume'' with respect to the rebate (as used in the definition of Liquidity Adding ADV (O/D Displayed) and elsewhere in the Fee

[3] As specified in Rule 11.11(c)(2)(A).

[4] The Exchange's two modes of order interaction are described in NSX Rule 11.13(b).

[5] The Exchange's two modes of order interaction are described in NSX Rule 11.13(b).

[6] *See* SR–NSX–2009–01.

[7] As used elsewhere in the Fee Schedule, ''Liquidity Adding ADV'' means, with respect to an ETP Holder, ''the number of shares such ETP Holder has executed as a liquidity provider on average per trading day (excluding partial trading days and securities under one dollar) across all tapes on NSX for the calendar month (or partial month, as applicable) in which the executions occurred'' (*see* the Explanatory Endnotes to the Fee Schedule).

[8] Similarly, no change is proposed with respect to the liquidity adding rebate applicable to Tape B securities in AutoEx.

[9] The instant rule filing proposes to establish tiered rebates for executed liquidity adding Tape A and C Displayed Orders in AutoEx. The first rebate tier is $0.0026 per share, applicable to Tape A and C shares executed at one dollar or more in AutoEx which added liquidity as Displayed Orders, where the ETP Holder's Liquidity Adding ADV is less than 25 million. The second tier is $0.0027 per share, applicable to Tape A and C shares executed at one dollar or more in AutoEx which added liquidity as Displayed Orders, where the ETP Holder's Liquidity Adding ADV is at least 25 million and less than 40 million. The third tier is $0.0028 per share, applicable to Tape A and C shares executed at one dollar or more in AutoEx which added liquidity as Displayed Orders, where the ETP Holder's Liquidity Adding ADV is at least 40 million.

[10] The first tier is $0.0008 per share, applicable to shares executed in O/D which added liquidity as Displayed Orders, where the number of such shares is greater than or equal to 1 million and less than 10 million.

[11] The second tier is $0.0010 per share, applicable to shares executed in O/D which added liquidity as Displayed Orders, where the number of such shares is greater than or equal to 10 million and less than 20 million.

[12] The third tier is $0.0012 per share, applicable to shares executed in O/D which added liquidity as Displayed Orders, where the number of such shares is greater than or equal to 20 million.

Schedule) shall be that partial month during which the program's terms are in effect.

Examples of Order Delivery Liquidity Adding Displayed Order Rebate [13]

The following charts may be used to illustrate application of the O/D Liquidity Adding Displayed Order Rebate. In a given calendar month (or other applicable period), the following ETP Holders achieve the following average daily volumes of executed shares (in each case, counting only securities priced at one dollar or higher and excluding partial trading days):

ETP Holder	1	2	3	4	5 (Threshold)	6
	AutoEx Displayed Liquidity Adding	AutoEx Zero Display Liquidity Adding	AutoEx Displayed Liquidity Taking	AutoEx Zero Display Liquidity Taking	Liquidity Adding ADV (O/D Displayed)	Liquidity Adding ADV (O/D Dark)
A	30,000	30,000	30,000	30,000	30,000	30,000
B	920,000	30,000	30,000	30,000	30,000	30,000
C	30,000	920,000	30,000	30,000	30,000	30,000

ETP Holder A will *not* receive an O/D Liquidity Adding Displayed Order Rebate. ETP Holder A fails to satisfy the eligibility requirement (ETP Holder A's Liquidity Adding ADV (O/D Displayed) of 30,000 (column 5) falls short of the first rebate tier of at least 1 million). ETP Holder B and ETP Holder C similarly fail to achieve the first tier of the O/D Liquidity Adding Displayed Order Rebate.

ETP Holder	1	2	3	4	5 (Threshold)	6
	AutoEx Displayed Liquidity Adding	AutoEx Zero Display Liquidity Adding	AutoEx Displayed Liquidity Taking	AutoEx Zero Display Liquidity Taking	Liquidity Adding ADV (O/D Displayed)	Liquidity Adding ADV (O/D Dark)
D	1 million	1 million	30,000	30,000	10 million	10 million

ETP Holder D *will* receive an O/D Liquidity Adding Displayed Order Rebate. ETP Holder D's Liquidity Adding ADV (O/D Displayed) of 10 million meets the second tier of the rebate. Accordingly, ETP Holder D's O/D Liquidity Adding Displayed Order Rebate for the given period will equal the number of full trading days in the measurement period multiplied by 10 million multiplied by $0.0010 (the second rebate tier for which ETP Holder D is eligible based on Liquidity Adding ADV (O/D Displayed) of at least 10 million and less than 20 million).

ETP Holder	1	2	3	4	5 (Threshold)	6
	AutoEx Displayed Liquidity Adding	AutoEx Zero Display Liquidity Adding	AutoEx Displayed Liquidity Taking	AutoEx Zero Display Liquidity Taking	Liquidity Adding ADV (O/D Displayed)	Liquidity Adding ADV (O/D Dark)
E	0	10 million	0	0	20 million	10 million

ETP Holder E *will* receive an O/D Liquidity Adding Displayed Order Rebate. ETP Holder E has achieved the third tier of the Liquidity Adding ADV (O/D Displayed) eligibility threshold (with 20 million shares). Accordingly, ETP Holder E's O/D Liquidity Adding Displayed Order Rebate for the given period will equal the number of full trading days in the measurement period multiplied by 20 million multiplied by $0.0012.

Aggregation of Activity of Affiliated ETP Holders

This rule change also proposes to adopt a new Rule 16.3 (and delete the obsolete text formerly contained therein) which would allow an ETP Holder to request that the Exchange aggregate its activity with the activity of certain of its affiliates for purposes of applying Chapter 16 and the terms of the Fee Schedule, including for purposes of achieving the volume rebates and discounts applicable in the various formulations of ''average daily volume'' used in the Fee Schedule. An ETP Holder requesting aggregation of affiliate activity shall be required to certify to the Exchange the affiliate status of entities whose activity it seeks to aggregate prior to receiving approval for aggregation, and shall be required to inform the Exchange immediately of any event that causes an entity to cease to be an affiliate. Proposed Rule 16.3 further provides that the Exchange reserves the right to request information to verify the affiliate status of an entity. Upon verification and approval by the Exchange, an ETP Holder's activity would include, for purposes of calculating, among other things, average daily volumes, the activity of its approved wholly owned subsidiary, parent and sister entities that are also ETP Holders.

Rationale

The Exchange has determined that these changes are necessary to increase the volume of Displayed Orders in both

[13] These examples merely illustrate the calculation of the rebates for Displayed Orders that Add Liquidity in Order Delivery. They do not calculate, nor show, the rebates and fees applicable to displayed orders that add liquidity [sic], Zero Display Orders that add liquidity in AutoEx or Order Delivery, orders that take liquidity, or fees for routing.

AutoEx and Order Delivery for the purpose of increasing the revenue of the Exchange and adequately funding its regulatory and general business functions. In addition, with respect to the O/D Liquidity Adding Displayed Order Rebate, this rule change will provide ETP Holders with equal incentive to submit Displayed Orders (relative to Zero Display Orders) in Order Delivery. With respect to aggregation of affiliated ETP Holder activity, the changes are necessary in order to effectively compete with other trading centers [14]. The proposed modifications are reasonable and equitably allocated to those ETP Holders that opt to provide and take liquidity in Displayed Orders and Zero Display Orders in either AutoEx or Order Delivery, and is not discriminatory because ETP Holders are free to elect whether or not to send displayed orders or Zero Display Orders via Order Delivery or AutoEx, in Tape A, B and/or C, and as a liquidity provider or liquidity taker. In addition, the proposed aggregation of affiliate activity is reasonable and equitably allocated among ETP Holders based on clearly establish standards in Rule 16.3, and is not discriminatory for the same reason. Based upon the information above, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest.

Operative Date and Notice

The Exchange intends to make the proposed credit and rebate structure effective on filing of this proposed rule for trading on April 1, 2009. Pursuant to Exchange Rule 16.1(c), the Exchange will ''provide ETP Holders with notice of all relevant dues, fees, assessments and charges of the Exchange'' through the issuance of a Regulatory Circular of the changes to the Fee Schedule and will post a copy of the rule filing on the Exchange's Web site (*http://www.nsx.com*).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[15] in general, and Section 6(b)(4) of the Act,[16] 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 the facilities of the Exchange. Moreover, the proposed fee and rebate structure is not discriminatory in that all ETP Holders are eligible to submit (or not submit) liquidity adding trades and quotes in Order Delivery or AutoEx, in any tape, and as either displayed or undisplayed, and may do so at their discretion in the daily volumes they choose during the course of the measurement period. All ETP Holders are further eligible to apply for affiliate aggregation pursuant to the objective criteria set forth in Rule 16.3.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has taken effect upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act [17] and subparagraph (f)(2) of Rule 19b–4 [18] thereunder, because, as provided in (f)(2), it changes ''a due, fee or other charge applicable only to a member'' (known on the Exchange as an ETP Holder). At any time within sixty (60) days of the filing of such 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–NSX–2009–02 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–NSX–2009–02. 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–NSX–2009–02 and should be submitted on or before May 5, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

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[14] *See, e.g.,* NASDAQ Rule 7027 (adopted by SEC Release 34–53128 (Jan. 13, 2006)).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(4).

[17] 15 U.S.C. 78s(b)(3)(A)(ii).

[18] 17 CFR 240.19b–4(f)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59726; File No. SR–FINRA–2009–025]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Incorporated NYSE Rules 2, 2A and 325 To Conform to Amendments Made by NYSE

April 8, 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 April 7, 2009, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend Incorporated NYSE Rules 2 (''Member,'' ''Membership,'' ''Member Firm,'' etc.), 2A (Jurisdiction) and 325 (Capital Requirements Member Organizations)[4] to conform to rule changes by the New York Stock Exchange, LLC (''NYSE'') to its versions of Rules 2, 2A and 325.[5]

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org*, at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA is proposing changes to Incorporated NYSE Rules 2,[6] 2A[7] and 325[8] to conform these rules to amendments made by NYSE which established a new market model (''New Model'').[9] As described by the NYSE in its filing,[10] the New Model: (i) Provides market participants with additional abilities to post hidden liquidity on Exchange systems; (ii) creates a Designated Market Maker (''DMM''), and phases out the NYSE specialist; and (iii) enhances the speed of execution through technological enhancements and reduces message traffic between Exchange systems and its DMMs.

The NYSE believes that its New Model requires a new type of market maker[11] with the ability to contribute liquidity in a security by trading competitively for its dealer account. The NYSE proposed to phase out the existing specialist system and to replace specialists with Designated Market Makers who will be employees of Designated MarketMaker Units (''DMM Units''). According to the NYSE, although the specialist system has served a central role in equities trading at the NYSE for well over a century, specialist trading is, by nature, well-suited to manual trading, and less suitable for electronic trading. The NYSE recognizes that the scheme of rules and obligations governing specialists can unduly hamstring them in an electronic market and prevent them from easily fulfilling their appointed role. To address this new reality, DMM Units will be given tools and opportunities that are not available to specialists, but that are more commensurate with trading in electronic markets.

Under the NYSE filings, definitions of ''Designated Market Maker'' and ''DMM Unit'' were added to NYSE Rule 2 (''Member,'' ''Membership,'' ''Member Firm,'' etc.) and a reference to specialist was changed to DMM under NYSE Rule 325 (Capital Requirements Member Organizations) to conform these rules to the operation of the New Model.[12]

Given these changes, FINRA is proposing to make conforming changes to Incorporated NYSE Rules 2, 2A and 325 to ensure consistency with NYSE's versions of Rules 2, 2A and 325.[13]

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[14] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change is necessary and appropriate to conform these rules to the operation of NYSE's New Model and to maintain consistency with the NYSE's amendments to its Rules 2, 2A and 325.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see* FINRA *Information Notice*, March 12, 2008 (Rulebook Consolidation Process).

[5] *See* File No. SR–NYSE–2008–46; File No. SR–NYSE–2008–127.

[6] Incorporated NYSE Rule 2 defines terms including ''member,'' ''member organization,'' and ''approved person.''

[7] Incorporated NYSE Rule 2A sets forth the jurisdiction of the Exchange.

[8] Incorporated NYSE Rule 325 sets forth capital requirements for member organizations.

[9] *See* Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (Order Approving File No. SR–NYSE–2008–46); Securities Exchange Act Release No. 59077 (December 10, 2008), 73 FR 76691 (December 17, 2008) (Order Approving File No. SR–NYSE–127). [sic]

[10] *See* File No. SR–NYSE–2008–46.

[11] The term ''market maker'' shall have the same meaning as that term in Section (3)(a)(38) of the Act.

[12] *See supra* note 5.

[13] Pursuant to Rule 17d–2 under the Exchange Act, NASD, NYSE, and NYSE Regulation, Inc. entered into an agreement (''Agreement'') to reduce regulatory duplication for firms that are Dual Members by allocating certain regulatory responsibilities for selected NYSE rules from NYSE Regulation to FINRA. The Agreement includes a list of all those rules (''Common Rules'') for which FINRA has assumed examination, enforcement and surveillance responsibilities under the Agreement relating to compliance by Dual Members to the extent that such responsibilities involve member firm regulation. *See* Securities Exchange Act Release No. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (Notice of Filing and Order Approving and Declaring Effective a Plan for the Allocation of Regulatory Responsibilities).

[14] 15 U.S.C. 78*o*–3(b)(6).

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

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(6) thereunder.[16]

A proposed rule change filed under Rule 19b–4(f)(6) [17] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[18] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. Such waiver would permit FINRA to implement these changes without delay, thereby allowing FINRA's Incorporated NYSE Rules to maintain their status as Common Rules under the Agreement upon filing of the proposed rule change with the Commission. The Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay for this reason, and hereby grants such waiver.[19]

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.

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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–FINRA–2009–025 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2009–025. 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 FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2009–025 and should be submitted on or before May 5, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–8426 Filed 4–13–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59714; File No. SR–CHX–2009–03]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Participant Fees and Credits

April 6, 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 April 1, 2009, Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend its Schedule of Participant Fees and Assessments (the ''Fee Schedule''), effective April 1, 2009, to provide for transaction fees and rebates to Exchange Participants for transactions involving issues priced less than one dollar that occur within the Exchange's Matching System. The text of this proposed rule change is available on the Exchange's website at *http://www.chx.com/rules/proposed_rules.htm* and in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549.

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 CHX included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received regarding the proposal. The text of these statements

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

may be examined at the places specified in Item IV below. The CHX 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

Through this filing, the Exchange would amend its Fee Schedule to provide for transaction and order processing fees and rebates to Exchange Participants for transactions involving issues priced less than one dollar that occur within the Exchange's Matching System.

Rule 610(c)(2) of Regulation NMS [3] generally requires that the fees changed by a trading center for execution of an order against a quotation of less than $1.00 per share cannot exceed or accumulate to more than 0.3% of the quotation price per share. In order to comply with the rule, the Exchange proposes to charge a ''take'' fee equal to 0.30% of the trade value and to pay a ''provide'' rebate equal to 0.10% of the trade value. Trade value is defined as a dollar amount equal to the price per share multiplied by the number of shares executed. These changes are designed, at least in part, to provide an incentive for Participants to submit single-sided orders involving issues priced less than one dollar to the Matching System for execution. Currently, the Exchange does not charge any fee or pay any rebates in connection with the execution of trades at a price less than one dollar per share.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [4] in general, and furthers the objectives of Section 6(b)(4) of the Act [5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(B)(3)(A)(ii) of the Act [6] and subparagraph (f)(2) of Rule 19b–4 thereunder [7] because it establishes or changes a due, fee, or other charge applicable only to a member imposed by the self-regulatory organization. Accordingly, the proposal is effective upon Commission receipt of the filing. At any time within 60 days of the filing of such 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 purpose 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–CHX–2009–03 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–CHX–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–CHX–2009–03 and should be submitted on or before May 5, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–8429 Filed 4–13–09; 8:45 am]

BILLING CODE 8010–01–P

[3] 17 CFR 242.610(c)(2)

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4)

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59724; File No. SR–ISE–2009–18]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment No. 1, Relating to Lowering the Liquidity Rebate Amount That Direct Edge ECN Passes Through to Non-International Securities Exchange, LLC Members

April 7, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 2, 2009, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which items have been prepared by the ISE. The ISE filed Amendment No. 1 to the proposal

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

on April 7, 2009.[3] The Commission is publishing notice to solicit comments on the proposed rule change, as amended, from interested persons, and is approving the proposal, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to lower the liquidity rebate that Direct Edge ECN (''DECN''), in its capacity as an introducing broker for non-ISE Members, passes through to such non-ISE Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of 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

DECN, a facility of ISE, operates two trading platforms, EDGX and EDGA. On March 27, 2009, the ISE filed for immediate effectiveness a proposed rule change to amend DECN's fee schedule for ISE Members to lower the rebate that ISE Members receive for orders that add liquidity on EDGX in securities priced at or above $1.00 that are reported to Tape B.[4]

DECN is a member of ISE as well as a facility of ISE. In its capacity as a member of ISE, DECN currently serves as an introducing broker for the non-ISE Member subscribers of DECN to access EDGX. Pursuant to SR–ISE–2009–17, DECN, as an ISE Member and introducing broker, receives rebates from DECN for transactions it executes on EDGX in its capacity as introducing broker for non-ISE Members. Since the rebate was lowered, DECN wishes to pass the lowered rebate through to non-ISE Member subscribers of DECN. As a result, the per share rebate that non-ISE member subscribers receive will be the same as the rebate that ISE Members receive pursuant to SR–ISE–2009–17.

Finally, ISE is seeking accelerated approval of this proposed rule change, as well as a retroactive effective date of April 1, 2009. ISE represents that this proposal will ensure that both ISE Members and non-ISE Members (by virtue of the pass-through described above) will in effect receive equivalent amounts and that the imposition of such amounts will begin on the same April 1, 2009 start date.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[5] in general, and furthers the objectives of Section 6(b)(4),[6] 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. In particular, this proposal will ensure that both ISE Members and Non-ISE Members (by virtue of the pass-through described above) will receive equivalent rebates.

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. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml);* or
- Send an E-mail to *rule-comments@sec.gov*. Please include File No. SR–ISE–2009–18 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–2009–18. 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 Commissions 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. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2009–18 and should be submitted by May 5, 2009.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change, as Amended

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,[8] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities.

[3] Amendment No. 1 supersedes and replaces the original filing in its entirety.

[4] *See* SR–ISE–2009–17.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

[7] In approving the proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(4).

ISE recently amended DECN's fee schedule to lower the rebate that DECN subscribers who also are ISE members receive for orders in Tape B securities priced at or above $1 that add liquidity on EDGX.[9] DECN receives this rebate for transactions it executes on EDGX in its capacity as an introducing broker for its non-ISE member subscribers.

The current proposal, which will apply retroactively to April 1, 2009, will allow DECN to pass through the lowered rebate to the non-ISE member subscribers for which it acts as an introducing broker. The Commission finds that the proposal is consistent with the Act because it will provide a rebate amount for non-ISE member subscribers that is equivalent to the rebate amount established for ISE member subscribers in the Member Fee Filing.[10]

ISE has requested that the Commission find good cause for approving the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. As discussed above, the proposal will allow DECN to pass through to non-ISE member subscribers the lowered rebate amount established for ISE member subscribers in the Member Fee Filing, resulting in equivalent rebate amounts for ISE member and non-member subscribers. In addition, because the proposal will apply the reduced rebate retroactively to April 1, 2009, the reduced rebates for ISE member and non-member subscribers will have the same effective date, thereby promoting consistency in DECN's fee schedule. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (File No. SR–ISE–2009–18), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–8425 Filed 4–13–09; 8:45 am]

BILLING CODE 8010–01–P

[9] *See* Securities Exchange Act Release No. 59592 (April 2, 2009) (notice of filing and immediate effectiveness of File No. SR–ISE–2009–17) (the ''Member Fee Filing''). The Member Fee Filing reduced the rebate for these orders from $.0035 per share to $.003 per share.

[10] *See* note 9, *supra*.

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59722; File No. SR–FINRA–2009–022]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to FINRA's Regulatory Notice on the FINRA Rule 9520 Series (Eligibility Proceedings)

April 7, 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 March 31, 2009, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II below, which Items have been substantially prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA proposes to make technical amendments to the proposed *Regulatory Notice* entitled ''Eligibility Proceedings: Amendments to FINRA Rule 9520 Series to Establish Procedures Applicable to Firms and Associated Persons Subject to Certain Statutory Disqualifications'' (the ''SD *Regulatory Notice*'') that details impending changes to the FINRA Rule 9520 Series. The Commission recently approved amendments to the FINRA Rule 9520 Series, which governs the eligibility procedures for persons subject to certain disqualifications, to comport with the amended definition of disqualification in the FINRA By-Laws.[3] The amendments to the FINRA Rule 9520 Series will become effective on June 15, 2009.

The proposed rule change makes technical amendments to the original SD *Regulatory Notice* filed on September 8, 2008, in connection with the amendments to the FINRA Rule 9520 Series.

The text of the proposed rule change is available at FINRA, the Commission's Public Reference Room, and *http://www.finra.org*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In September 2008, FINRA filed a proposed rule change to amend the FINRA Rule 9520 Series, which governs eligibility proceedings under which FINRA may allow a person subject to a statutory disqualification to enter or remain in the securities industry, to comport with the amended definition of disqualification in the FINRA By-Laws. FINRA filed the original SD *Regulatory Notice* as part of its original filing on September 8, 2008, and amended its filing on December 11, 2008.[4] The SD *Regulatory Notice* describes in detail the circumstances under which persons must obtain FINRA approval to enter or remain in the securities industry, notwithstanding the existence of additional categories of statutory disqualification. The proposed rule change was published for comment in the **Federal Register** on January 13, 2009.[5] The Commission received no comments on the proposed rule change. On March 17, 2009, the Commission

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59586 (March 17, 2009), 74 FR 12166 (March 23, 2009) (SR–FINRA–2008–045) (''SD Approval Order'').

[4] *See* SR–FINRA–2008–045, Exhibit 2 (filed September 8, 2008). Amendment No. 1 to SR–FINRA–2008–045 replaced and superseded the original rule filing except with regard to Exhibit 2.

[5] *See* Securities Exchange Act Release No. 59208 (January 6, 2009), 74 FR 1738 (January 13, 2009) (SR–FINRA–2008–045) (notice).

approved the proposed rule change and issued the SD Approval Order.[6]

The current proposed rule change makes several technical amendments to the SD *Regulatory Notice* to, among other things, comport with the amendments to the FINRA Rule 9520 Series and the Commission's SD Approval Order.[7] In addition, the proposed rule change updates the status of FINRA's rule filing regarding revising the questions on Forms U4 and U5, which is referenced in a footnote of the SD Regulatory Notice.[8]

The effective date of the technical amendments to the SD *Regulatory Notice* pursuant to the proposed rule change will be the date of Commission approval of the proposed rule change. The effective date of the related amendments to the FINRA Rule 9520 Series, as detailed in the SD *Regulatory Notice*, will be June 15, 2009.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[9] which requires, among other things, that FINRA's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change is consistent with the provisions of the Act noted above in that the proposed technical amendments to the SD *Regulatory Notice* will conform the text to the proposed amendments to the FINRA Rule 9520 Series and the Commission's recent SD Approval Order.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. 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–FINRA–2009–022 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2009–022. 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 FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2009–022 and should be submitted on or before May 5, 2009.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of Section 15 of the Act and the rules and regulations thereunder applicable to a national securities association.[10] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act[11] because the proposed technical amendments will conform the SD *Regulatory Notice* to the FINRA Rule 9520 Series and the Commission's recent SD Approval Order.

FINRA has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice thereof in the **Federal Register**. Granting accelerated approval will allow FINRA to inform its members of the amendments to the FINRA Rule 9520 Series that will become effective on June 15, 2009. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[12] for approving the proposed rule change prior to the thirtieth day after publication of the notice thereof in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–FINRA–2009–022) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–8423 Filed 4–13–09; 8:45 am]

BILLING CODE 8010–01–P

[6] *See supra* note 3.

[7] *See* Exhibit 2. For example, the proposed amendments to the SD *Regulatory Notice* note that, with respect to the Department of Member Regulation review of applications, disqualified persons, in addition to disqualified members or sponsoring members, as the case may be, may be providing consent to supervisory plans. In addition, they replace the term ''sponsoring member firm'' with ''sponsoring member.'' Further, the proposed amendments replace the phrase ''[i]f the parties cannot agree on a supervisory plan'' with ''[i]f a supervisory plan is rejected.'' The proposed amendments also replace references to ''Securities Exchange Act'' with ''Exchange Act'' for consistency. Finally, the proposed amendments add a footnote that references the SD Approval Order and the current filing.

[8] *See* Exhibit 2, at note 7.

[9] 15 U.S.C. 78*o*–3(b)(6).

[10] In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78*o*–3(b)(6).

[12] 15 U.S.C. 78s(b)(2).

[13] *Id.*

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59720; File No. SR–NYSEAmex–2009–09]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Revise Fees Payable by Member Organizations for Which the Exchange Is the Designated Examining Authority

April 7, 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 April 1, 2009, NYSE Amex LLC (''NYSE Amex Options'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The proposed rule change has been filed by the Exchange pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] 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 its Schedule of Fees and Charges for Exchange Services. The text of the proposed rule change 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Amex proposes to revise its fees payable by member organizations for which the Exchange is the Designated Examining Authority (''DEA'').

Currently, this fee is set at $1,000 per month for firms engaged in a public business and $275 per quarter for firms not engaged in a public business. The Exchange also charges a $250 annual fee per trader and a $100 annual FOCUS filing fee. Under the proposed structure, the Exchange will eliminate the current fees and replace them with a fee of $.00040 per dollar of gross revenue as reported on quarterly or annual FOCUS Report Form X–17A–5. Commission revenue generated from the conduct of a retail commodities future business will be excluded from DEA fee calculation. Going forward, for purposes of establishing minimum DEA fees, the Exchange will no longer distinguish among member organizations on the basis of whether they are engaged in public business and will instead categorize them based on whether or not they are clearing firms. The minimum fee for non-clearing firms will be a monthly fee of $275 ($825 per quarter) and the minimum fee for clearing firms will be a monthly fee of $1,000 ($3,000 per quarter). The revisions proposed in this filing make the Exchange's DEA fees identical to those charged by the Chicago Board Options Exchange (''CBOE'') and more reflective of the costs the Exchange incurs in connection with its role as DEA.[5]

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(4), in particular, in that it provides for the equitable allocation of dues, fees and other charges among its members and other market participants that use the trading facilities of NYSE Amex Options. Under this proposal, all members for which the Exchange is the DEA will be charged DEA fees at the same rate based on gross revenue.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act and SEC Rule 19b–4(f)(2) thereunder in that it establishes or changes a due, fee, or other charge imposed only on members by the self-regulatory organization.

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–NYSEAmex–2009–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2009–09. 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Securities and Exchange Act Release No. 46062 (June 11, 2002), 67 FR 41552 (June 18, 2002) (notice of immediate effectiveness of SR–CBOE–2001–66).

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 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NYSEAmex–2009–09 and should be submitted on or before May 5, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–8421 Filed 4–13–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59716; File No. SR–NYSEArca–2009–11]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change To Amend Rule 6.69—Reporting Duties

April 6, 2009.

I. Introduction

On February 13, 2009, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule 6.69 to revise the procedures for reporting open outcry trades that occur on the options trading floor. The proposed rule change was published for comment in the **Federal Register** on March 3, 2009.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change.

II. Description

NYSE Arca's proposal revises the procedures for reporting open outcry trades that occur on the options trading floor. Under existing NYSE Arca rules, all option transactions that occur on the options trading floor must immediately be reported to the Exchange, in a form and manner prescribed by the Exchange, for dissemination to the Options Price Reporting Authority (''OPRA'').[4] This requirement applies to all OTP Holders who are required to report trades either directly to OPRA or to another party who is responsible for reporting trades to OPRA. Currently, pursuant to existing Rule 6.69(b), the responsible party for reporting a transaction is the party that participates on the transaction as the seller.

The proposed rule change makes several clarifying changes to these reporting obligations. First, the revised rule provides that whenever a Floor Broker is participating on one side of a transaction, the Floor Broker becomes the responsible party for reporting the trade, regardless of whether the Floor Broker is the buyer or seller. Second, in the event that there is a Floor Broker participating on both sides of a transaction, the Floor Broker participating as the seller must report the transaction to the Exchange. Third, for transactions occurring on the Exchange between two Market Makers, the Market Maker participating as the seller must report the transaction to the Exchange.

Finally, in order to further clarify the rules regarding reporting duties, the Exchange proposes a new provision regarding Complex Orders. Since each party to a Complex Order transaction (which involves the simultaneous purchase and/or sale of two or more option series in the same underlying security) could be both buying and selling different series that make up an order, there may be no clearly defined seller, as is required by the existing rule. Consequently, pursuant to the proposed rule change, for Complex Order transactions between two Floor Brokers or two Market Makers, the party responsible for reporting the transaction will be the OTP Holder that first initiated the transaction. This provision does not affect the obligation that a Floor Broker has to report transactions pursuant to proposed Rule 6.69(b)(i), but will have bearing when a Complex Order is executed between two Floor Brokers or between two Market Makers.[5]

Presently, almost all orders on the Exchange are required to be in electronic format prior to representation on the trading floor.[6] The Exchange represents that, typically, Floor Brokers enter the terms of orders they receive into the Electronic Order Capture System (''EOC'') [7], and upon consummating a trade, the Floor Broker is able to electronically report the transaction to the Exchange for processing and dissemination to OPRA. In contrast, the Exchange notes that Market Makers trading for their own proprietary account are not required to electronically systematize their orders prior to responding to a call from a Floor Broker. Consequently, a Market Maker acting as a ''seller'' (who would be the responsible reporting party under the current rules) would be required to re-enter all the order information already contained in the Floor Broker's EOC system and then send the information to the Exchange for processing. The Exchange believes that it will be more efficient for the Floor Broker to be the responsible party for reporting a transaction. The Exchange further does not believe that requiring a Floor Broker to report every transaction to which they are a party will create any undue hardship or unnecessary burden on the Floor Broker, given the existing requirement that orders be put in electronic format prior to representation on the floor.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[9] which requires, among other things, that that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove

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[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59440 (February 24, 2009), 74 FR 9325 (''Notice'').

[4] For transactions executed on the Exchange's electronic trading platform, NYSE Arca will report the trade directly to OPRA.

[5] The proposal also eliminates Rule 6.69 Commentary .04, which relates to an obsolete and outdated practice. ''Hard cards,'' which refer to the cardboard backing of a paper trade ticket, are no longer in use on the trading floor.

[6] *See* Rule 6.67(c).

[7] The EOC system is the Exchange's electronic audit trail and order tracking system that provides an accurate time-sequenced record of all orders and transactions on the Exchange.

[8] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission believes that the proposed rule change will increase efficiency in trade reporting and remove potential confusion about which party to a transaction is responsible for reporting such information.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NYSEArca–2009–11) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–8419 Filed 4–13–09; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59713; File No. SR–FINRA–2009–024]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Trade Reporting Transfers of Proprietary Securities Positions in Connection With Certain Corporate Control Transactions

April 6, 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 April 3, 2009, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under Section 19(b)(3)(A) of the Act[3] and paragraph (f)(6) thereunder,[4] which renders the proposal effective upon receipt of this filing by 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] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA trade reporting rules to codify the reporting requirements applicable to over-the-counter (''OTC'') transfers of proprietary positions in debt and equity securities between a member and another member or non-member broker-dealer effected in connection with certain corporate control transactions.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org*, at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA trade reporting rules require that OTC transactions in debt and equity securities be reported to FINRA unless they qualify for an express exception under the rules.[5] For purposes of the trade reporting rules, a ''trade'' or ''transaction'' entails a beneficial change of ownership of securities between parties (e.g., a purchase or sale of securities) in which a FINRA member participates.[6] As a general matter, when members report trades to a FINRA trade reporting facility, FINRA facilitates the public dissemination of the trade information and/or assesses regulatory transaction fees.[7]

Occasionally, broker-dealers may transfer proprietary securities positions, along with other assets, in connection with corporate control transactions such as mergers and acquisitions. Such transfers are ''trades'' or ''transactions'' because they result in a change of beneficial ownership, but unlike the typical securities transaction, they are not driven by a trading or investment strategy (e.g., a desire to exit a position or lock in a profit) relating to a particular security position. Rather, the transfers are in furtherance of the consolidation of the broker-dealers' separate sales and proprietary trading businesses. Additionally, the securities that are transferred typically are assigned a value, such as the closing price of the security on a date certain, solely for purposes of effectuating the transfer.

As such, FINRA believes that public dissemination of such transfers would not provide meaningful price discovery information to the market. To the contrary, dissemination could confuse investors and other market participants, particularly where the positions being transferred are substantial. Public dissemination of significant and perhaps unusual trading activity could give the false impression of investor interest, market participant transactions and significant price discovery activities, and the volume reports could skew a variety of trading activity indicators.[8]

Accordingly, FINRA is proposing to amend its trade reporting rules to clarify

[5] *See* Rules 6282, 6380A, 6380B, 6622 and 6730.

[6] *See* Trade Reporting Frequently Asked Questions, FAQ 100.4, available at *http://www.finra.org/Industry/Regulation/Guidance/P038942*.

[7] Certain trades are reported to FINRA, but not for publication purposes (referred to as ''non-tape reports''). For example, FINRA rules require members to submit non-tape reports for transactions that are effected upon the exercise of an OTC option or for ''away from the market sales'' (e.g., a gift between two parties). The non-tape reports are used for audit trail and regulatory fee assessment purposes only and are not reported to the appropriate exclusive Securities Information Processor (''SIP'') for public dissemination. *See* Rules 6282(i)(2) and 7130(c) (relating to the Alternative Display Facility); 6380A(e)(2) and 7230A(g) (relating to the FINRA/Nasdaq Trade Reporting Facility); 6380B(e)(2) and 7230B(f) (relating to the FINRA/NYSE Trade Reporting Facility); and 6622(e)(2) and 7330(g) (relating to the OTC Reporting Facility).

[8] Similarly, FINRA amended its trade reporting rules to clarify that in the limited circumstance where securities are transferred pursuant to an asset purchase agreement (''APA''), such transfer does not have to be reported if (1) the APA is subject to the jurisdiction and approval of a court of competent jurisdiction in insolvency matters; and (2) the purchase price under the APA is not based on, and cannot be adjusted to reflect, the current market prices of the securities on or following the effective date of the APA. FINRA believes that transfers effected pursuant to an APA under these circumstances are not trade reportable events and that reporting and dissemination of these transfers would not provide meaningful price discovery information to the market. *See* Securities Exchange Act Release No. 59126 (December 19, 2008), 73 FR 79948 (December 30, 2008) (notice of filing and immediate effectiveness of SR–FINRA–2008–060).

that members are not required to report to FINRA for purposes of publication transfers of proprietary securities positions between a member and another member or non-member broker-dealer where the transfer (1) is effected in connection with a merger of one broker-dealer with the other broker-dealer or a direct or indirect acquisition of one broker-dealer by the other broker-dealer or the other broker-dealer's parent company and (2) is not in furtherance of a trading or investment strategy. However, while such transfers are not reportable for publication purposes, they nonetheless must be reported to FINRA for purposes of assessing applicable regulatory transaction fees pursuant to Section 3 of Schedule A to the FINRA By-Laws [9] and/or trading activity fees under Section 1(b) of Schedule A to the FINRA By-Laws.[10]

Specifically, with respect to equity securities, FINRA is proposing to amend Rule 6282(i)(2) and paragraph (e)(2) of Rules 6380A, 6380B and 6622, which provisions identify the transactions that are not required to be reported for publication, but must be reported for regulatory fee assessment purposes. FINRA also is proposing corresponding amendments to Rules 7130(c), 7230A(g), 7230B(f) and 7330(g), which provisions set forth the specific reporting requirements for trades reported for regulatory transaction fee assessment purposes. With respect to debt securities, FINRA is proposing to amend Rule 6750(b), which identifies the transactions in TRACE-eligible securities that are reported, but not disseminated.

The distinguishing factor is whether the position transfer is being effected as part of an overall sale and the consolidation of the broker-dealers' separate proprietary trading businesses (in which case it would fall within the proposed exception) rather than being driven by a trading or investment strategy (in which case it would not fall within the exception). For example, as a result of a corporate control transaction, a member, Firm 1, acquires all of the assets of another member (or non-member broker-dealer), Firm 2, or Firm 1's parent company acquires Firm 2, such that Firm 1 and Firm 2 become wholly owned by the same parent company. In connection with the corporate control transaction, Firm 1 and Firm 2 consolidate their separate sales and trading businesses onto a single platform and, along with the migration of sales and trading personnel, clients and systems and technology, Firm 2's proprietary positions are transferred to Firm 1. In this instance, the transfer from Firm 2 to Firm 1 would fall within the proposed exception and would not be reportable for publication purposes, but must be reported for regulatory purposes.

By way of further example, a member, Firm 1 and another member (or non-member broker-dealer), Firm 2, currently are wholly owned by the same parent company and operate separately. Firm 1 owns 100,000 shares of ABCD security and the value of ABCD has increased substantially since Firm 1 purchased the shares. As part of an investment strategy, Firm 1 sells the shares to Firm 2. In this instance, the sale from Firm 1 to Firm 2 would not fall within the proposed exception and must be reported for publication purposes.

The proposed rule change would expressly limit the exception to transfers between two members or between a member and a non-member broker-dealer that are effected in connection with a merger of one broker-dealer with the other broker-dealer or a direct or indirect acquisition of one broker-dealer by the other broker-dealer or the other broker-dealer's parent company. FINRA notes that these corporate control transactions are among the changes in a member's ownership or control that would trigger the notice requirements and membership application process under FINRA rules.[11] Thus, the proposed exception generally would apply where the merger or acquisition would require the member to submit notice and/or an application under FINRA rules. However, because FINRA membership application rules are broader than the scope of the proposed trade reporting exception, FINRA is clarifying that the proposed exception will not be considered satisfied merely because a member has submitted an application or notice under FINRA membership rules.

Pursuant to the proposed rule change, members will be required to report in the manner prescribed by FINRA to designate that the reports are submitted for regulatory and not publication purposes.[12] Members generally should report to FINRA on the same day as the ultimate transfer of the positions on their books and records, unless later reporting is warranted under specific circumstances.[13]

In addition, members will be required to provide FINRA at least three business days advance written notice of their intent to use this exception, including the basis for their determination that the transfer meets the terms of the exception. FINRA notes that while the advance notice requirement is not intended to establish a protocol for prior approval by FINRA, it may help reduce the potential for improper use of the proposed exception. Advance written notice to FINRA shall not constitute an estoppel as to FINRA or bind FINRA in any subsequent administrative, civil or disciplinary proceeding with respect to a member's use of the proposed exception. In other words, advance notice to FINRA should not be taken to mean that FINRA approved the transaction as properly qualifying under the terms of the exception. A member relying on the proposed exception must ensure that the transfer satisfies the terms of the exception.

Finally, FINRA is proposing certain technical, non-substantive changes to these rules. First, FINRA is proposing to reorganize Rules 7130(c), 7230A(g), 7230B(f) and 7330(g), and to delete the references to the ''.RA'' and ''.RX'' modifiers in the rules.[14] Second, FINRA is proposing to change the heading of paragraph (b) of Rule 6750 to ''Transaction Information Not Disseminated,'' and to create new numbered subparagraphs for the transactions that are reported to the

[9] Pursuant to Section 31 of the Act, FINRA and the national securities exchanges are required to pay transaction fees and assessments to the SEC that are designed to recover the costs related to the government's supervision and regulation of the securities markets and securities professionals. FINRA obtains its Section 31 fees and assessments from its membership, in accordance with Section 3 of Schedule A to the FINRA By-Laws.

[10] The trading activity fee is used by FINRA solely to fund its member regulatory activities, including the supervision and regulation of members through examinations, financial monitoring, policy, rulemaking, interpretive and enforcement activities. *See* Section 1(a) of Schedule A to the FINRA By-Laws.

[11] *See* NASD Rule 1017(a)(1) and (2). *See also*, Incorporated NYSE Rule 312.

[12] FINRA will publish a *Notice* setting forth the specific reporting requirements applicable to the proposed exception. Members also should refer to the applicable technical specifications for the FINRA facility to which they are reporting trades.

[13] FINRA expects that in most instances, if members cannot report on the same day that the transfers are reflected on their books and records (for example, if the transfers take place after the close of the FINRA trade reporting facilities), members will report no later than the following business day (T+1). However, FINRA recognizes that for some transfers, manual processing may be required or other operational issues may arise.

[14] This is consistent with Rules 6282, 6380A and 6380B, which no longer refer to specific labels (e.g., ''.PRP'' or ''.W'') for the trade report modifiers that members are required to use when reporting trades to FINRA. Rather, the rules identify the types of transactions that must have a unique modifier associated with them and such modifiers are labeled in the facility's technical specifications rather than in the rules.

Trade Reporting and Compliance Engine (''TRACE''), but not disseminated.

FINRA has filed the proposed rule change for immediate effectiveness. The operative date of the proposed rule change will be 30 days after the date of filing.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[15] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will clarify members' trade reporting obligations, enhance market transparency and protect investors and other market participants by ensuring that transfers that do not contribute to market price discovery and could confuse market participants are not disseminated.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and Rule 19b–4(f)(6) thereunder.[17]

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.

[15] 15 U.S.C. 78*o*–3(b)(6).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6).

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–FINRA–2009–024 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2009–024. 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 FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2009–024 and should be submitted on or before May 5, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–8417 Filed 4–13–09; 8:45 am]

BILLING CODE 8010–01–P

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59712; File No. SR–NASDAQ–2009–028]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Reduce Fees for NASDAQ Basic Data Feeds

April 6, 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 March 27, 2009, The NASDAQ Stock Market LLC (''NASDAQ'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ is proposing a rule change to reduce fees for ''NASDAQ Basic'' which is a real time data feed combining both NASDAQ's Best Bid and Offer (''QBBO'') and the ''NASDAQ Last Sale. NASDAQ Basic was approved on March 16, 2009,[3] as a pilot program (''Basic Pilot'') that included fees for usage and distribution of the data. NASDAQ has determined to further promote the deployment and usage of NASDAQ Basic by reducing the fee for its distribution. NASDAQ is seeking approval to implement this change effective April 1, 2009.

The text of the proposed rule change is available from NASDAQ's Web site at *http://nasdaq.cchwallstreet.com,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59582 (March 16, 2009) (SR–NASDAQ–2008–102).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item III [sic] below, and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Building on the success of its NASDAQ Last Sale product, NASDAQ has implemented a pilot to offer NASDAQ Basic, real-time quotation data in combination with last sale data solely from the NASDAQ Market Center. NASDAQ Basic is a ''Level 1'' product containing two data elements: (1) Quotation information from the NASDAQ Market Center and (2) last sale data from the NASDAQ Market Center. NASDAQ Basic is available in three forms, NASDAQ Basic for NASDAQ, NASDAQ Basic for NYSE, and NASDAQ Basic for Alternext. NASDAQ Basic is designed to meet the needs of current and prospective subscribers that do not need or are unwilling to pay for the consolidated data provided by the consolidated Level 1 products.

NASDAQ sought and received approval to assess a monthly fee for distributors of NASDAQ Basic in addition to applicable monthly per user fees. As approved, each Distributor of NASDAQ Basic for NASDAQ-listed stocks was to pay a monthly fee of $1,500 for either internal or external distribution. Each Distributor of NASDAQ Basic for NYSE-listed stocks was to pay a monthly fee of $250 for internal distribution or $625 external distribution. Each Distributor of NASDAQ Basic for Alternext-listed stocks was to pay a monthly fee of $250 for internal distribution or $625 external distribution. In addition, each Distributor that receives Direct Access to the NASDAQ Basic was also to pay a monthly fee of $2,000 for NASDAQ-listed stocks, $1,000 for NYSE-listed stocks, and $1,000 for Alternext-listed stocks.

NASDAQ developed the NASDAQ Basic product proposals in consultation with industry members and market data vendors and, after further consultation; NASDQ [sic] has determined to reduce the distribution fees for the product. First, NASDAQ proposes to make all three feeds available for a single monthly Distributor Fee of $1,500, rather than add separate fees for NYSE- and Alternext-listed securities. Second, NASDAQ proposes to eliminate the fee for Direct Access to NASDAQ Basic, currently set forth in Rule 7047(b). Finally, NASDAQ proposes to credit each Distributor of NASDAQ Basic up to $1,500 per month based upon that Distributor's monthly usage fees. In other words, a Distributor that reports $1,500 or more of monthly usage of NASDAQ Basic will pay no net Distributor Fee, whereas a Distributor that reports $1,000 of monthly usage will pay a net of $500 for the Distributor Fee.

2. Statutory Basis

In its recent order approving the NASDAQ Basic Pilot, it was determined that the product and fees were consistent with the provisions of Section 6 of the Act,[4] in general and with Section 6(b)(4) of the Act,[5] as stated above, in that it provides an equitable allocation of reasonable fees among users and recipients of NASDAQ data. NASDAQ believes that the current proposal to eliminate the distributor fees for NASDAQ Basic is also consistent with Section 6(b)(4) of the Act in that the remaining fees will be assessed uniformly on similarly situated users and that the fees for distribution and usage of the product will be borne by the ultimate end user of the product.

It was also determined that the product and fees are consistent with Section 6(b)(8) of the Act,[6] [sic] which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Commission found that NASDAQ's ability to price NASDAQ Basic is constrained by: (i) NASDAQ's compelling need to attract order flow from market participants; and (ii) the availability to market participants of alternatives to purchasing NASDAQ 's data. Finally, the Commission finds that the proposed rule change is consistent with Rule 603(a) of Regulation NMS,[7] [sic] adopted under Section 11A(c)(1) of the Act, which requires an exclusive processor that distributes information with respect to quotations for or transactions in an NMS stock to do so on terms that are fair and reasonable and that are not unreasonably discriminatory.

NASDAQ believes that its proposal to reduce distributor fees for NASDAQ Basic is equally consistent with these provisions of the Act. The market for non-core data is competitive, due to (1) competition between exchanges and other trading platforms that compete with each other in a variety of dimensions; (2) the existence of inexpensive real-time consolidated data and free delayed consolidated data, and (3) the inherent contestability of the market for proprietary last sale data.

The market for proprietary data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Broker-dealers currently have numerous alternative venues for their order flow, including eleven self-regulatory organization (''SRO'') markets, as well as broker-dealers (''BDs'') and aggregators such as the Direct Edge and NexTrade electronic communications network (''ECN''). Each SRO market competes to produce transaction reports via trade executions, and an ever-increasing number of FINRA-regulated Trade Reporting Facilities (''TRFs'') compete to attract internalized transaction reports. It is common for BDs to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, and ECNs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ECN and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including NASDAQ, NYSE, Alternext, NYSEArca, and BATS.

Any ECN or BD can combine with any other ECN, broker-dealer, or multiple ECNs or BDs to produce jointly proprietary data products. Additionally, non-broker-dealers such as order routers like LAVA, as well as market data

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78f(b)(8).

[7] 17 CFR 242.603(a).

vendors can facilitate single or multiple broker-dealers' production of proprietary data products. The potential sources of proprietary products are virtually limitless.

The fact that proprietary data from ECNs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and distribution of proprietary data products, as Archipelago and BATS Trading did prior to registering as SROs. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace writ large.

Consolidated data provides two additional measures of pricing discipline for proprietary data products that are a subset of the consolidated data stream. First, the consolidated data is widely available in real-time at $1 per month for non-professional users. Second, consolidated data is also available *at no cost* with a 15- or 20-minute delay. Because consolidated data contains marketwide information, it effectively places a cap on the fees assessed for proprietary data (such as last sale data) that is simply a subset of the consolidated data. The mere availability of low-cost or free consolidated data provides a powerful form of pricing discipline for proprietary data products that contain data elements that are a subset of the consolidated data, by highlighting the optional nature of proprietary products.

Market data vendors provide another form of price discipline for proprietary data products because they control the primary means of access to end users. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end users will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only that data which will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Retail broker-dealers, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: they can simply refuse to purchase any proprietary data product that fails to provide sufficient value. NASDAQ and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to successfully market proprietary data products.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN, and BATS Trading. Today, BATS publishes its data at no charge on its website in order to attract order flow, and it uses market data revenue rebates from the resulting executions to maintain low execution charges for its users. Several ECNs have existed profitably for many years with a minimal share of trading, including Bloomberg Tradebook and NexTrade.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While broker-dealers have previously published their proprietary data individually, Regulation NMS encourages market data vendors and broker-dealers to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg, Reuters and Thomson. New entrants are already on the horizon, including ''Project BOAT,'' a consortium of financial institutions that is assembling a cooperative trade collection facility in Europe. These institutions are active in the United States and could rapidly and profitably export the Project Boat technology to exploit the opportunities offered by Regulation NMS.

In light of the highly competitive market for market data, NASDAQ believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish a fair, reasonable, and not unreasonably discriminatory fee and an equitable allocation of fees among all users.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. To the contrary, as set forth in detail above, the market for the data elements contained in NASDAQ Basic is already competitive, with both real-time and delayed consolidated data as well as the ability for innumerable entities begin rapidly and inexpensively to offer competitive last sale data products.

The Commission has recently issued an order firmly establishing that in reviewing non-core data products such as NASDAQ Basic, the Commission will utilize a market-based approach that relies primarily on competitive forces to determine the terms on which non-core data is made available to investors.[8] The Commission adopted a two-part test:

> The first is to ask whether the exchange was subject to significant competitive forces in setting the terms of its proposal for non-core data, including the level of any fees. If an exchange was subject to significant competitive forces in setting the terms of a proposal, the Commission will approve the proposal unless it determines that there is a substantial countervailing basis to find that the terms nevertheless fail to meet an applicable requirement of the Exchange Act or the rules thereunder. If, however, the exchange was not subject to significant competitive forces in setting the terms of a proposal for non-core data, the Commission will require the exchange to provide a substantial basis, other than competitive forces, in its proposed rule change demonstrating that the terms of the proposal are equitable, fair, reasonable, and not unreasonably discriminatory.[9]

This standard begins from the premise that no Commission rule requires exchanges or market participants either to distribute non-core data to the public or to display non-core data to investors.[10]

In its NetCoalition Order the Commission concluded that ''at least two broad types of significant competitive forces applied to NYSE Arca in setting the terms of its Proposal to distribute the ArcaBook data: (1) NYSE Arca's compelling need to attract order flow from market participants; and (2) the availability to market participants of alternatives to purchasing the ArcaBook data. The Commission conducted an exhaustive 14-page review of these two competitive forces before concluding that the availability of alternatives, as well as the compelling need to attract order flow, imposed significant competitive pressure on the exchange's need to act equitably, fairly, and reasonably in

[8] Securities Exchange Act Release No. 57917 (Dec. 2, 2008) (NetCoalition Order'' [sic] resolving File No. SR–NYSEArca–2006–21).

[9] *Id.* at 48–49.

[10] *Id.* at 4.

setting the terms of the fees for its non-core data product.[11]

The market data provided in NASDAQ Basic is non-core data that is governed by the same analysis the Commission set forth in the NetCoalition Order. As with the NYSE Arca depth-of-book product, no rule requires NASDAQ or any other exchange to offer its BBO and Last Sale or vendors to display that data. Because NASDAQ Basic data is merely a subset of depth-of-book data, NASDAQ is subject to the same competitive forces that apply to depth-of-book data: Its compelling need to attract order flow from market participants; and the availability to market participants of alternatives to purchasing the NASDAQ Basic data. Indeed, the Commission invoked the same reasoning in approving pilot programs for NASDAQ Last Sale and NYSE Open Book which provide non-core last sale data from NASDAQ and the New York Stock Exchange, one element of this proposal.[12]

NASDAQ considerations in setting the fees for NASDAQ Basic are virtually identical to those the Commission approved in the NetCoaltiion [sic] Order. First, the proposed fees for NASDAQ Basic data will apply equally to all professional subscribers and equally to all non-professional subscribers. The fees therefore do not unreasonably discriminate among types of subscribers. Second, the proposed fees for the NASDAQ Basic data are substantially less than those charged by the Network Processors for the consolidated NBBO or last sale data. Third, NASDAQ projects that the total revenues generated by the fee for NASDAQ Basic data initially will amount to less than the $8 million per year that NYSE Arca projected would be generated by its ArcaBook data.[13]

Finally, as stated above, rapid effectiveness of the proposed rule change is in the public interest and supports the protection of investors by allowing data distributors to make additional market data available to investors that choose to purchase it. Widespread availability of NASDAQ Basic benefits investors by improving access to real-time market data that investors can choose to use. It also enables member firms to reduce their costs and to pass on those cost savings to their customers through reduced commissions.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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–NASDAQ–2009–028 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2009–028. 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2009–028 and should be submitted on or before May 5, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–8416 Filed 4–13–09; 8:45 am]

BILLING CODE 8010–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. USTR–2009–0011]

Initiation of Section 302 Investigation, Determination of Action Under Section 301, and Request for Comments: Canada–Compliance With Softwood Lumber Agreement

Correction

In notice document E9–8232 beginning on page 16436 in the issue of Friday, April 10, 2009 make the following correction:

On page 16438, in the second column, immediately following the signature block, five photographed pages were inadvertently deleted. They are reprinted in full below:

BILLING CODE 1505–01–D

[11] *Id.* at 51–65. The Commission then spent an additional 36 pages (65–101) analyzing and refuting comments challenging the Commission's competition analysis.

[12] *See* Securities Exchange Act Release No. 57966 (June 16, 2008), 73 FR 35182 (June 20, 2008) (File No. SR–NYSE–2007–04) (NYSE Real-Time Reference Prices); Securities Exchange Act Release No. 57965 (June 16, 2008), 73 FR 35178 (June 20, 2008) (SR–NASDAQ–2006–060) (NASDAQ Last Sale Data Feeds).

[13] *Id.* at 101–104.

[14] 17 CFR 200.30–3(a)(12).

Annex

A. Effective with respect to articles entered for consumption or withdrawn from warehouse for consumption on or after April 15, 2009, the Harmonized Tariff Schedule of the United States (HTS) is modified by adding in numerical sequence the following superior text and subheading to subchapter III of chapter 99 to the HTS. The superior text and subheading are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1-General", and "Rates of Duty 1-Special", respectively:

	"Articles the product of Canada, or originating goods of Canada under the terms of general note 12 to the tariff schedule:		
9903.53.01	Softwood lumber products described in U.S. note 13 to this subchapter, whose Region of Origin is Manitoba, Ontario, Quebec or Saskatchewan	10%	10% (CA)"

B. Effective with respect to articles entered for consumption or withdrawn from warehouse for consumption on or after April 15, 2009, the Harmonized Tariff Schedule of the United States (HTS) is modified by adding in numerical sequence the following U.S. note to subchapter III of chapter 99 to the HTS:

"13. (a) For the purposes of subheading 9903.53.01, the duties provided for in this subchapter are cumulative duties which apply in addition to the duties otherwise imposed on the articles involved.

(b) For the purposes of subheading 9903.53.01, and as provided in Annex 1A of the 2006 Softwood Lumber Agreement between the United States and Canada, signed on September 12, 2006, as amended by an Agreement between the United States and Canada, signed on October 12, 2006 (SLA 2006), "softwood lumber products" include all products classified under subheadings 4407.10.01, 4409.10.10, 4409.10.20, 4409.10.90, and 4418.90.25, and under statistical reporting number 4418.90.4605, and any softwood lumber, flooring, and siding described below. These softwood lumber products include:

(i) coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding 6 mm;

(ii) coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded, or the like) along any of its edges or faces, whether or not planed, sanded, or finger-jointed;

(iii) other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-

jointed, beaded, molded, rounded, or the like) along any of its edges or faces (other than wood moldings and wood dowel rods) whether or not planed, sanded, or finger-jointed;

(iv) coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded, or the like) along any of its edges or faces, whether or not planed, sanded, or finger-jointed; and

(v) coniferous drilled and notched lumber and angle cut lumber.

(c) For the purposes of subheading 9903.53.01, and as provided in Annex 1A of the SLA 2006, "softwood lumber products" shall also include:

(i) any product entering under subheading 4409.10.05 which is continually shaped along its end and/or sided edges which otherwise conforms to the written definition of the scope; and

(ii) lumber products that are classified as stringers, radius cut box-spring-frame components, and fence pickets, not conforming to the criteria listed in subdivision (f) of this note, as well as truss components, pallet components, and door and window frame parts, which may be imported under statistical reporting numbers 4418.90.4695, 4421.90.7040 and 4421.90.9760.

(d) For the purposes of subheading 9903.53.01 and the definition of "softwood lumber products," the subheading references and statistical reporting numbers in this note are provided for convenience; the written description of softwood lumber products in this note is dispositive.

(e) The following articles are not "softwood lumber products" for purposes of subheading 9903.53.01:

(i) trusses and truss kits, properly classified under subheading 4418.90;

(ii) I-Joist beams;

(iii) assembled box spring frames;

(iv) pallets and pallet kits, properly classified under subheading 4415.20;

(v) garage doors;

(vi) [edge-glued lumber, properly classified under subheading 4421.90.94, and other edge-glued wood, properly classified under statistical reporting number 4421.90.9760;

(vii) properly classified complete door frames;

(viii) properly classified complete window frames;

(ix) properly classified furniture;

(x) articles brought into the United States temporarily and claimed to be exempt from duty under subchapter XIII of chapter 98; and

(xi) household and personal effects.

(f) The following articles are not "softwood lumber products" for purposes of subheading 9903.53.01, provided that they meet the specified requirements detailed below:

(i) stringers (pallet components used for runners); if they have at least two notches on the side, positioned at equal distance from the center, to properly accommodate forklift blades, properly classified under statistical reporting number 4421.90.9760;

(ii) box-spring frame kits, if they contain the following wooden pieces - two side rails; two end (or top) rails; and varying numbers of slats. The side rails and the end rails should be radius-cut at both ends. The kits should be individually packaged, and should contain the exact number of wooden components needed to make a particular box spring frame, with no further processing required. None of the components exceeds 1 inch in actual thickness or 83 inches in length;

(iii) radius-cut box-spring-frame components, not exceeding 1 inch in actual thickness or 83 inches in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be substantial cuts so as to completely round one corner;

(iv) fence pickets requiring no further processing and properly classified under subheading 4421.90.70, 1 inch or less in actual thickness, up to 8 inches wide, and 6 feet or less in length, and having finials or decorative cuttings that clearly identify them as fence pickets. In the case of dog-eared fence pickets, the corners of the boards should be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring 3/4 of an inch or more;

(v) U.S.-origin lumber shipped to Canada for minor processing and imported into the United States, is excluded from the scope of subheading 9903.53.01 if the following conditions are met: (1) if the processing occurring in Canada is limited to kiln drying, planing to create smooth-to-size board, and sanding, and (2) if the importer establishes to the satisfaction of U.S. Customs and Border Protection (U.S. CBP) that the lumber is of U.S. origin; and

(vi) in addition, all softwood lumber products entered claiming non-subject status

based on U.S. country of origin shall be treated as excluded under subheading 9903.53.01, provided that these softwood lumber products meet the following condition: upon entry, the importer, exporter, Canadian processor and/or original U.S. producer shall establish to U.S. CBP's satisfaction that the softwood lumber entered and documented as U.S.-origin softwood lumber was first produced in the United States as a lumber product satisfying the physical parameters of the softwood lumber scope.

(g) Softwood lumber products contained in single family home packages or kits, regardless of tariff classification, are excluded from the scope of subheading 9903.53.01 if the importer certifies to subdivisions (i), (ii), (iii), and (iv) and the requirements in subdivision (v) are met:

(i) the imported home package or kit constitutes a full package of the number of wooden pieces specified in the plan, design or blueprint necessary to produce a home of at least 700 square feet produced to a specified plan, design or blueprint;

(ii) the package or kit must contain all necessary internal and external doors and windows, nails, screws, glue, sub floor, sheathing, beams, posts, connectors, and if included in the purchase contract, decking, trim, drywall and roof shingles specified in the plan, design or blueprint;

(iii) prior to importation, the package or kit must be sold to a retailer in the United States of complete home packages or kits pursuant to a valid purchase contract referencing the particular home design plan or blueprint, and signed by a customer not affiliated with the importer;

(iv) softwood lumber products entered as part of a single family home package or kit, whether in a single entry or multiple entries on multiple days, will be used solely for the construction of the single family home specified by the home design matching the U.S. CBP import entry; and

(v) for each entry into the United States, the following documentation must be retained by the importer and made available to U.S. CBP upon request:

(1) a copy of the appropriate home design plan, or blueprint matching the customs entry in the United States;

(2) a purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer;

(3) a listing of inventory of all parts of the package or kit being entered into the United States that conforms to the home design package being imported; and

(4) in the case of multiple shipments on the same contract, all items listed

in subdivision (g)(v)(3) which are included in the shipment at issue shall be identified as well.

(h) The additional duties provided for in subheading 9903.53.01 shall not apply to softwood lumber products produced by the companies listed in Annex 10 of the SLA 2006.

(i) The additional duties provided for in subheading 9903.53.01 shall no longer apply after the Office of the United States Trade Representative (USTR) in consultation with U.S. Customs and Border Protection (U.S. CBP) has determined that $54.8 million in additional duties has been collected. USTR shall notify U.S. CBP of the date on which to cease collecting the additional duties, and USTR shall publish a notice in the Federal Register terminating the application of additional duties under subheading 9903.53.01 and deleting this note and subheading 9903.53.01 and the superior text thereto from the HTS."

[FR Doc. Z9–8232 Filed X–XX–09; 8:45 am]
BILLING CODE 1505–01–C

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2009–16

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2008–16, Section 168(k)(4) Election Procedures.

DATES: Written comments should be received on or before June 15, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the revenue procedure should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Section 168(k)(4) Election Procedures.

OMB Number: 1545–2133.

Revenue Procedure Number: Revenue Procedure 2009–16.

Abstract: This revenue procedure provides the time and manner for (1) corporations to make the election to apply section 168(k)(4) of the Code, (2) corporations to make the allocation of the bonus depreciation amount resulting from the section 168(k)(4) election, (3) corporate partners who make the section 168(k)(4) election to notify partnerships, and (3) U.S. automobile manufacturing partnerships (such as, Chrysler) to make the election to apply section 3081(b) of the Act.

Current Actions: Extension of a previously approved collection.

Affected Public: Businesses and for-profit institutions.

Estimated Number of Respondents: 5,400.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 2,700.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 30, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–8430 Filed 4–13–09; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 13614–SP

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995,

Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 13614–SP, Interview and Intake Sheet.

DATES: Written comments should be received on or before June 15, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Interview and Intake Sheet.

OMB Number: 1545–1985.

Form Number: Form 13614–SP.

Abstract: This Spanish version of Form 13614 is used by screeners, preparers, or others involved in the return preparation process to more accurately complete tax returns of Spanish speaking taxpayers having low to moderate incomes. These persons need assistance having their return prepared so they can fully comply with the law.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 85,540.

Estimated Time per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 17,108.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 2, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–8436 Filed 4–13–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2009–XX

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2009–XX, Qualified Plug-in Electric Vehicle Credit.

DATES: Written comments should be received on or before June 15, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Qualified Plug-in Electric Vehicle Credit.

OMB Number: 1545–2137.

Form Number: Notice 2009–XX.

Abstract: The Energy Improvement and Extension Act of 2008 added new § 30D of the Internal Revenue Code to authorize credit for new qualified plug-in electric drive motor vehicles. This notice provides procedures for a vehicle manufacturer to certify that a motor vehicle meets certain requirements for the credit, and to certify the amount of the credit available with respect to the motor vehicle. The notice also provides guidance to taxpayers who purchase motor vehicles regarding the conditions under which they may rely on the vehicle manufacturer's certification.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Individual, businesses and other for-profit organizations.

Estimated Number of Respondents: 6.

Estimated Time per Respondent: 40 hours.

Estimated Total Annual Burden Hours: 280.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology;

and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 2, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–8431 Filed 4–13–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated National Pursuant to the Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the name of one individual whose property and interests in property have been unblocked pursuant to the Foreign Narcotics Kingpin Designation Act (''Kingpin Act'') (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

DATES: The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons of the individual identified in this notice whose property and interests in property were blocked pursuant to section 805(b)(3) of the Foreign Narcotics Kingpin Designation Act (''Kingpin Act''), 21 U.S.C. 1904(b)(3), is effective on April 8, 2009.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2420.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) via facsimile through a 24-hour fax-on demand service, tel.: (202) 622–0077.

Background

The Kingpin Act became law on December 3, 1999. The Act provides a statutory framework for the President to impose sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and to the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury consults with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security when designating and blocking the property of interests in property, subject to U.S. jurisdiction, of persons who are found to be: (1) materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On April 8, 2009, the Director of OFAC removed from the list of Specially Designated Nationals and Blocked Persons the individual listed below, whose property and interests in property were blocked pursuant to section 805(b)(3) of the Kingpin Act, 21 U.S.C. 1904(b)(3).

The listing of the unblocked individual follows:

AGUIRRE RAMOS, Manuel Francisco, Paseo de los Heroes, Av. 95 B7, Colonia Rio Tijuana, Tijuana, Baja California, Mexico; Prol. Puerta de Hierro, Colonia Puerta de Hierro, Tijuana, Baja California, Mexico; Pda. Manuel M. Flores 2, Colonia Hipodromo Dos, Tijuana, Baja California, Mexico; c/o INMOBILIARIA ESPARTA S.A. DE C.V., Tijuana, Baja California, Mexico; c/o INMOBILIARIA LA PROVINCIA S.A. DE C.V., Tijuana, Baja California, Mexico; Calle 2A Barrio Juarez 2034–702, Colonia Zona Central, Tijuana, Baja California, Mexico; DOB 16 Mar 1969; POB Baja California, Mexico; C.U.R.P. #AURM690316HBCGMN05 (Mexico); R.F.C. #AURM–690316–97A (Mexico) (individual) [SDNTK].

Dated: April 8, 2009.

Barbara Hammerle,

Acting Director, Office of Foreign Assets Control.

[FR Doc. E9–8437 Filed 4–13–09; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of amendment to system of records.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e), notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records currently entitled ''Call Detail Records—VA'' (90VA194) as set forth in the **Federal Register** 68 FR 12738. VA is amending the system of records by revising the Routine Uses of Records Maintained in the System Including Categories of Users and the Purpose of Such Uses. VA is republishing the system notice in its entirety.

DATES: Comments on the amendment of this system of records must be received no later than May 14, 2009. If no public comment is received, the amended system will become effective May 14, 2009.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov*; by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 (this is not a toll-free number) for an appointment. In addition, 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: Veterans Health Administration (VHA) Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; telephone (704) 245–2492.

SUPPLEMENTARY INFORMATION: The Report of Intent to Amend a System on Records Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Routine use 14 was added for the VA to disclose information from this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

Routine use 15 was added to disclose information to other Federal agencies that may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

Routine use 16 was added so that the VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

Routine use 17 was added so that the VA may disclose on its own initiative any information in the system, except the names and home addresses of veterans and their dependents, that is relevant to a suspected or reasonably imminent violation of the law whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule, or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule, or order. VA may also disclose on its own initiative the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal, or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, or order issued pursuant thereto.

Approved: March 25, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

90VA194

SYSTEM NAME:

Call Detail Records—VA.

SYSTEM LOCATION:

Records are maintained at Veterans Health Administration (VHA) facilities. Address locations for Department of Veterans Affairs (VA) facilities are listed in VA Appendix 1 of the biennial publication of VA's systems of records.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are assigned VHA telephone numbers or are authorized to use VHA telephone services, and individuals who receive or make calls billed to VHA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Call detail records consist of information on Federal Telecommunication System (FTS) telephone calls placed from VHA telephones or otherwise billed to VHA including the originating and destination telephone numbers; States and cities called; date and time of call; duration of each call; cost of call; name and title of caller; request number; account code; deactivation code; authorization code records indicating the assignment of telephone numbers to organizations and individuals; and the organizational location of telephones.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, section 501.

PURPOSE(S):

The records are used to generate call detail records; to verify telephone usage; to allocate costs of telephone services to individual users; to identify unofficial telephone calls; and to justify action when individuals misuse or abuse VA telephone services.

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

To the extent that records contained in the system include information protected by 45 CFR parts 160 and 164, (*i.e.*, individually identifiable health information, and 38 U.S.C. 7332), (*i.e.*, medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia or infection with the human immunodeficiency virus), that information cannot be disclosed under a routine use unless there is also specific statutory authority in 38 U.S.C. 7332 and regulatory authority in 45 CFR parts 160 and 164 permitting disclosure.

1. Disclosure may be made to individuals to determine their responsibility for telephone calls.

2. Disclosure may be made to another Federal agency or a telecommunications company providing telephone services to permit maintenance and repair of the account.

3. Information from this system of records may be disclosed to a congressional office from the record of an individual in response to an inquiry from the congressional office made on behalf of that individual.

4. Disclosure may be made to the National Archives and Records Administration (NARA) or to the General Services Administration (GSA) for records management inspections under Title 44 of United States Code.

5. Disclosure may be made at VA's initiative to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

6. A record from this system of records may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the reporting of an investigation, the letting of a grant or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

7. Records from this system of records may be disclosed in a proceeding before a court, adjudicative body, or other administrative body when the Agency, or any Agency component or employee (in his or her official capacity as a VA employee), is a party to litigation; when the Agency determines that litigation is likely to affect the Agency, any of its components or employees, or the United States has an interest in the litigation, and such records are deemed to be relevant and necessary to the legal proceedings; provided that the disclosure is compatible with the purpose for which the records were collected.

8. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, *etc.*, with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

9. Disclosure may be made to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

10. Disclosure may be made to the VA-appointed representative of an employee, including all notices, determinations, decisions, or other written communications issued to the employee in connection with an examination ordered by VA under medical evaluation (formerly fitness-for-duty) examination procedures or Department-filed disability retirement procedures.

11. Disclosure may be made to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

12. Disclosure may be made to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination practices, examination of Federal affirmative employment programs, compliance with the Uniform Guidelines of Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

13. Disclosure may be made to the Federal Labor Relations Authority, including its General Counsel, when requested in connection with investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator awards when a question of material fact is raised and matters before the Federal Service Impasses Panel.

14. VA may disclose information from this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

15. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

16. VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

17. VA may disclose on its own initiative any information in the system, except the names and home addresses of veterans and their dependents, that is relevant to a suspected or reasonably imminent violation of the law whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule, or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule, or order. VA may also disclose on its own initiative the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal, or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, or order issued pursuant thereto.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), VA may disclose records from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

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

STORAGE:

Records are maintained on electronic media (hard disk and floppy disks) and paper.

RETRIEVABILITY:

Records may be retrieved by name, authorization code, VA organizational unit, originating telephone number, destination telephone number, location code, date, time, cost, and/or duration of call.

SAFEGUARDS:

1. Access to telecommunication areas at health care facilities is generally limited by appropriate locking devices and restricted to authorized VA employees and vendor personnel. Generally, VA telecommunication areas are locked at all times and the facilities are protected from outside access by the Federal Protective Service or other security personnel.

2. Access to file information or the user database is controlled by access codes. The system recognizes authorized VA employees by individually unique passwords or access codes. Contractors accessing the database remotely use encryption and access codes.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with record disposition authority approved by the Archivist of the United States. Destruction of hard copy (paper) records is by shredding or burning or some other method that will macerate the record content. Working disks are erased as soon as the purpose for which they have been established has been served.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Implementation and Training Services, Communications Services Office (194D), Office of Information, State Route 9, Building 307A, Martinsburg, West Virginia 25401.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about themselves should contact the designated individual at the VHA facility where the records are maintained. Individuals must furnish the following information for their records to be located and identified: a. Full name; b. VA assigned telephone number or telephone service authorization number; and c. Description of information being sought, including the time frame of information being sought.

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to records about themselves should contact the designated individual at the VHA facility where the records are maintained. Individuals must furnish the following information for their records to be located and identified: a. Full name; b. VA assigned telephone number or telephone authorization number, and; c. Description of information being sought, including the time frame of information being sought. Individuals requesting access must also follow VA's Privacy Act regulations regarding verification of identify and access to records (38 CFR part 1).

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above.)

RECORD SOURCE CATEGORIES:

The information in this system of records is obtained from the following sources: a. Local VA telephone directories and other telephone assignment records; b. call detail records provided by suppliers of telephone services; and c. the individual on whom the record is maintained.

[FR Doc. E9–8448 Filed 4–13–09; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Tuesday,
April 14, 2009

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Peninsular Bighorn Sheep and Determination of a Distinct Population Segment of Desert Bighorn Sheep (*Ovis canadensis nelsoni*); Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

FWS–R8–ES–2007–0005; 92210–1117–0000–B4

RIN 1018–AV09

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Peninsular Bighorn Sheep and Determination of a Distinct Population Segment of Desert Bighorn Sheep (*Ovis canadensis nelsoni*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate revised critical habitat for the Peninsular bighorn sheep, a distinct population segment (DPS) of desert bighorn sheep (*Ovis canadensis nelsoni*) occupying the Peninsular Ranges of Southern California, under the Endangered Species Act of 1973, as amended (Act). In total, approximately 376,938 acres (ac) (152,542 hectares (ha)) fall within the boundaries of the critical habitat designation. This revised designation of critical habitat for Peninsular bighorn sheep reduces the 2001 designation by approximately 467,959 ac (189,377 ha). The revised critical habitat is located in Riverside, San Diego, and Imperial Counties, California.

DATES: This rule becomes effective on May 14, 2009.

ADDRESSES: The final rule, final economic analysis, and map of critical habitat will be available on the Internet at *http://www.regulations.gov*. Supporting documentation we used in preparing this final rule will be available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Suite #101, Carlsbad, CA 92011; telephone 760–431–9440; facsimile 760–431–5901.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat for Peninsular bighorn sheep in this final rule. For more information on the taxonomy, biology, and ecology of Peninsular bighorn sheep, refer to the final listing rule published in the **Federal Register** on March 18, 1998 (63 FR 13134), the original final critical habitat rule published in the **Federal Register** on February 1, 2001 (66 FR 8650), the proposed rule to revise critical habitat published in the **Federal Register** on October 10, 2007 (72 FR 57740), and the August 26, 2008 (73 FR 50498), notice of availability of the draft economic analysis (DEA) that announced revisions to the proposed critical habitat designation.

The listed entity treated in this rule is a DPS of desert bighorn sheep (*Ovis canadensis nelsoni*). We will refer to this entity as Peninsular bighorn sheep, or as a DPS (not species or subspecies).

As stated in the October 10, 2007, proposed critical habitat rule, we are formally recognizing the listed entity as Peninsular bighorn sheep, a DPS of the desert bighorn sheep (*Ovis canadensis nelsoni*). This is the currently accepted taxonomic placement of these animals. We submitted this as a change for inclusion in the Code of Federal Regulations (CFR). The taxonomic revision does not affect discreteness and significance of Peninsular bighorn sheep as a DPS. In the 1998 final listing rule, Peninsular bighorn sheep were listed as a DPS of the species *Ovis canadensis*. At the time of listing at least six subspecies of bighorn sheep (*Ovis canadensis*) were named, including *Ovis canadensis cremnobates*, which is a name that previously had been applied to the Peninsular bighorn sheep. However, because of ongoing questions regarding the distinctiveness of the subspecific taxa at that time, the Peninsular Ranges population was considered a distinct population segment (DPS) of the species *O. canadensis* rather than as a subspecies or a DPS of a particular subspecies.

Relevant information regarding the systematic relationships of the infraspecific (below species rank) taxa of bighorn sheep at or near the time of listing was based on morphometric (variation in size and shape) assessments, as well as molecular analyses, such as mitochondrial DNA (mtDNA) assessments (Wehausen and Ramey 1993; Ramey 1993; Ramey 1995; Boyce *et al.* 1999) and microsatellite and histocompatibility complex loci analysis (Boyce *et al.* 1997; Gutierrez-Espeleta *et al.* 1998). While the discriminatory value of these various approaches was not addressed in the recovery plan (USFWS 2000), the Service concluded in the morphology and taxonomy section of the Recovery Plan (USFWS 2000, p. 3) that the currently recognized subspecies for desert bighorn sheep, *Ovis canadensis nelsoni*, includes the Peninsular bighorn sheep. This taxonomic placement was recognized in the final critical habitat designation for the Peninsular bighorn sheep published in 2001 (USFWS 2001, p. 8650). In that rule, we described the range of the DPS as coincident with the U.S. portion of the formerly recognized *Ovis canadensis cremnobates*. The current known range for the Peninsular bighorn sheep remains the same, as does its status as a DPS of the desert bighorn sheep (*Ovis canadensis nelsoni*).

Regardless of its systematic affiliation, the Peninsular bighorn sheep continues to meet the criteria for consideration as a DPS. Within this document, we refer to the listed entity as a distinct population segment (DPS) of desert bighorn sheep (*Ovis canadensis nelsoni*), not as a subspecies as we did within the discussion portion of the October 10, 2007, proposed critical habitat rule. We will continue to use the common name Peninsular bighorn sheep when referring to this DPS. No discussions or references to the Peninsular bighorn sheep DPS are intended to apply to any other portions of the range (*e.g.*, San Bernardino Mountains, Joshua Tree National Park, the desert mountains of southwestern Nevada and northwestern Arizona) of the desert bighorn sheep (*Ovis canadensis nelsoni*). For a detailed discussion of the DPS analysis for Peninsular bighorn sheep, see the Distinct Vertebrate Population Segment section of the 1998 final listing rule (March 18, 1998, 63 FR 13134). Therefore, we are changing the listed entity from a DPS of the species *Ovis canadensis*, to a DPS of the subspecies *Ovis canadensis nelsoni*. This final rule includes a change to the List of Endangered and Threatened Wildlife at 50 CFR 17.11(h) to reflect this change.

DPS Description, Life History, Distribution, Ecology, and Habitat

No new substantial information pertaining to the DPS description, life history, ecology, or habitat of Peninsular bighorn sheep was received following the 2007 proposed rule to revise critical habitat for this DPS. Therefore, please refer to the final listing rule published in the **Federal Register** on March 18, 1998 (63 FR 13134), and the proposed rule to revise critical habitat published in the **Federal Register** on October 10, 2007 (72 FR 57740), for a discussion of the DPS's description, life history, ecology, and habitat.

DPS Distribution

During the first public comment period for the proposed rule, we received new information regarding occurrence data that had been collected within the past year. The areas in which new sheep occurrence data was received include the South Santa Rosa Mountains along Grave Wash and the Jacumba Mountains near Interstate 8. The occurrence data received falls within the boundary of the 2001 critical habitat designation and the 2000 Recovery Plan area; therefore, we do not believe this new information markedly affects the known distribution of Peninsular bighorn sheep. However, we considered this new occurrence data and revised our proposed designation to include these areas recently used by Peninsular bighorn sheep (see the Notice of Availability (NOA), August 26, 2008, 73 FR 50498). The areas represented by the new occurrence data are included in this final designation (see the ''Summary of Changes From the 2007 Proposed Rule To Revise Critical Habitat to This Final Rule to Revise Critical Habitat'' section of this final rule).

Previous Federal Actions

As discussed in the proposed rule to revise critical habitat for this DPS, a July 31, 2006, court-approved consent decree enacted a limited partial vacatur of tribal, mining, and Desert Riders lands and remanded the critical habitat designation back to the Service for new rulemaking. The Service was obligated under the consent decree to submit a proposed revised critical habitat designation to the **Federal Register** on or before September 30, 2007, and a final revised critical habitat designation on or before September 30, 2008. We published a proposed revised critical habitat designation in the **Federal Register** on October 10, 2007 (72 FR 57740), and accepted public comments on the proposed revised designation for 60 days, ending December 10, 2007. Because significant new information was received, the parties agreed to extend the due date to the **Federal Register** of the final revised critical habitat rule to March 30, 2009. On August 26, 2008 (73 FR 50498), we opened a second public comment period on the proposed revised critical habitat designation and announced our intention to hold two public hearings on the proposed rule that were held in Palm Desert, California, on September 10, 2008. In the same **Federal Register** notice we announced the availability of our Draft Economic Analysis (DEA) (dated June 9, 2008) and announced changes to the proposed rule. We accepted public comments during the second open comment period for 60 days, ending October 27, 2008. For more information on previous Federal actions concerning Peninsular bighorn sheep, refer to the final listing rule published in the **Federal Register** on March 18, 1998 (63 FR 13134), the final critical habitat designation published in the **Federal Register** on February 1, 2001 (66 FR 8650), and the proposed rule to revise critical habitat published in the **Federal Register** on October 10, 2007 (72 FR 57740).

Summary of Comments and Recommendations

We requested written comments from the public during two comment periods on the proposed rule to revise critical habitat for Peninsular bighorn sheep. The first comment period opened October 10, 2007 (72 FR 57740), and closed December 10, 2007, and was associated with the publication of the proposed rule. We received several requests for a public hearing during this comment period. The second comment period opened August 26, 2008 (73 FR 50498), and closed October 27, 2008, and was associated with the notice of availability of the DEA, announcement of revisions to the proposed critical habitat, and a notice of public hearings that were held September 10, 2008. During these two public comment periods, we contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule to revise critical habitat for this DPS and the associated DEA.

During the first comment period, we received 212 public comments directly addressing the proposed revision of critical habitat: 1 from a Federal agency, 2 from State agencies, 1 from an elected official, and 208 from organizations and individuals. During the second comment period and the September 10, 2008, public hearings, we received 5,092 comments directly addressing the proposed revision of critical habitat for this DPS or the DEA: 1 from an elected official, 2 from State agencies, 3 from local governments, and 5,086 from organizations and individuals.

Peer Review

In accordance with our policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we solicited expert opinions from five knowledgeable individuals with scientific expertise that included familiarity with the DPS, the geographic region in which it occurs, and conservation biology principles. We received responses from all five of the peer reviewers.

We reviewed all comments received from the peer reviewers and the public for substantive issues and new information regarding critical habitat for Peninsular bighorn sheep. These comments are addressed below and incorporated into the final rule as appropriate.

Peer Reviewer Comments

Comment 1: Several peer reviewers stated the proposed critical habitat is flawed because it does not provide for connectivity. One peer reviewer stated further that the proposal fragments the habitat available to the Peninsular bighorn sheep. Several peer reviewers asserted that, although essential habitat (as identified by the Peninsular bighorn sheep Recovery Team and depicted in the 2000 Peninsular bighorn sheep Recovery Plan) and critical habitat originally designated in 2001 promoted habitat connectivity among all subpopulations, the proposed critical habitat essentially severs the San Jacinto Mountains subpopulation (Unit 1) and the Carrizo Canyon subpopulation (Unit 3) from the remainder of the range (Units 2A and 2B). One peer reviewer also noted that movement of Peninsular bighorn sheep has been documented between these areas. According to the same peer reviewer, a collared ram from the San Jacinto Mountains was observed during July and August 2008 on several different occasions in the northern Santa Rosa Mountains with other bighorn sheep there. The peer reviewer concluded that not including these areas as critical habitat incorrectly suggests that these areas are not critical to the long-term recovery or survival of the population.

Another peer reviewer stated that movement between Units l, 2A, 2B, and 3 is important and that critical habitat should be extended to protect corridors connecting the units. The same peer reviewer maintained that if any unit is isolated, the subpopulation may not be viable and that critical habitat should be expanded to include corridors for movement between units. One peer reviewer noted an extensive and irrefutable body of scientific literature that illustrates the importance of habitat connectivity. Two peer reviewers stated that, despite the acknowledgement in the proposed rule that connectivity is vital for this species' recovery, the revised critical habitat designation decreases connectivity or does not include corridors for movement. One peer reviewer asserted that habitat fragmentation will only promote the

decline of this DPS and goes directly against the recommendations of the Recovery Plan that the Service adopted.

Our Response: We agree with the peer reviewers that habitat connectivity is important to allow for movement between ewe groups and to maintain genetic variation. We also agree with the peer reviewer that an extensive amount of scientific evidence illustrates the importance of habitat connectivity, and we considered this information during the development of this critical habitat designation. We acknowledge that areas potentially providing connectivity between Units 1 and 2A and between Units 2B and 3 were included in the 2001 critical habitat designation; however, based on our reevaluation of the data available at the time of the 2001 designation, data obtained since, and our revised methodology for delineating critical habitat, we find that those areas do not meet the definition of critical habitat because the available data do not identify specific areas between these units that contain the physical or biological features essential to the conservation of the DPS.

The best available data do not provide any information indicating what areas, if any, Peninsular bighorn sheep use as connectivity corridors within the expansive areas between Units 1 and 2A and Units 2B and 3. Although the peer reviewers presented data showing that at least one collared ram has moved between Units 1 and 2A, we do not have occurrence data suggesting a specific corridor between these units. In addition, we have no data documenting natural sheep movement between Units 3 and 2B. As such we have not included specific corridors between Units 1 and 2A or between Units 3 and 2B in the designation. However, we will continue to monitor movement between these units to determine if specific movement corridors exist. In contrast, where the available data do support the identification of specific areas utilized by the DPS as movement corridors, such as between the ewe groups in the Santa Rosa Mountains and the Vallecito Mountains ewe group, those areas are included in the critical habitat designation.

We recognize this finding is different than what is outlined as essential habitat in the 2000 Recovery Plan and what was designated as critical habitat in the 2001 designation (which largely adopted the boundary delineated in the Recovery Plan). The Recovery Plan and 2001 critical habitat rule note that allowing for ram movement between ewe groups is important for maintaining genetic variation in the Peninsular bighorn sheep metapopulation. While we believe connectivity areas are important for the Peninsular bighorn sheep's recovery, we have significantly more data available today than when the Recovery Plan and 2001 critical habitat were finalized. We have utilized the currently available data to more precisely identify areas meeting the definition of critical habitat; in particular, areas related to connectivity. Such areas are included in this designation where the data support the determination that such areas contain the physical and biological features essential to the conservation of the DPS. For other potential connectivity areas that were included in the 2001 designation, the available movement and occurrence data we have for those areas do not support the identification of specific areas that provide a movement corridor that is essential for the conservation of the DPS.

We believe it is important to note that critical habitat designation is a different process than development of a recovery plan. A critical habitat designation is a specific regulatory action that defines specific areas as critical habitat in accordance with the statutory definition. A recovery plan is a guidance document developed in cooperation with partners, which provides a roadmap with detailed site-specific management actions to help conserve listed species and their ecosystems. The term ''essential,'' as used in the recovery plan, is not necessarily used in the same manner as it is used in the definition of critical habitat. The recovery plan provides important information about the species and the actions that are needed to bring about its recovery, while critical habitat identifies specific areas that are essential for the species' conservation.

The deviation from the Peninsular bighorn sheep Recovery Plan boundary and the 2001 final critical habitat designation is primarily the result of using a revised methodology to delineate critical habitat. Our revised methodology incorporates new information to best identify areas that meet the definition of critical habitat (see ''Summary of Changes From the 2001 Critical Habitat Designation To the 2007 Proposed Rule To Revise Critical Habitat'' section for more discussion). As a result, the final revised critical habitat boundary does not include areas the Recovery Plan identified as necessary for the conservation of the Peninsular bighorn sheep that we since determined (based on the best available data at this time) are not essential for the conservation of this DPS. Therefore, we believe the final revised critical habitat boundary more precisely maps the physical and biological features that occur within the geographical area occupied by the Peninsular bighorn sheep at the time of listing, which includes those areas containing preferred habitat for sheep use.

There are likely additional areas outside of the final revised critical habitat boundary that contain some of the PCEs, including areas identified in the Recovery Plan and 2001 critical habitat. We recognize that areas outside of the critical habitat boundary are likely utilized by Peninsular bighorn sheep (primarily for movement of rams between ewe groups). However, as stated above, the data available at this time do not support the identification of specific areas containing the essential features that provide a movement corridor between Units 1 and 2A or between Units 2B and 3. Additionally, Unit 2A is continuous with Unit 2B and these units contain a large contiguous portion of the Peninsular Ranges allowing for movement between six ewe groups with these units. Furthermore, although we do not have information to identify specific movement corridors, the areas between Units 1 and 2A or between Units 2B and are steep, rugged, and remote and there are no perceived threats in these areas. Therefore, we are confident that these areas will still be available for any natural sheep movements between units allowing for genetic connectivity.

We recognize that the designation of critical habitat may not include all of the habitat that may eventually be determined to be necessary for the recovery of Peninsular bighorn sheep, and critical habitat designations do not signal that habitat outside the designation is unimportant or may not contribute to recovery. Areas outside the final revised critical habitat designation will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and regulatory protections afforded by the section 7(a)(2) jeopardy standard and the prohibitions of section 9 of the Act if actions occurring in these areas may affect sheep; these protections and conservation tools will continue to contribute to recovery of the DPS.

Please see the ''Criteria Used To Identify Critical Habitat'' and ''Summary of Changes From the 2001 Critical Habitat Designation To the 2007 Proposed Rule To Revise Critical Habitat'' sections of this final rule for further discussion of this topic.

Comment 2: Two peer reviewers stated that exclusion of areas under the Agua Caliente Band of Cahuilla Indians Tribal Habitat Conservation Plan (Tribal HCP) and Coachella Valley Multiple

Species Habitat Conservation Plan (Coachella Valley MSHCP) is inappropriate because the Coachella Valley MSHCP and the Tribal HCP are not yet approved, and therefore provide absolutely no protection to Peninsular bighorn sheep or their habitat at this time. One peer reviewer stated it would be pre-decisional to exclude critical habitat based on these plans. Another peer reviewer suggested that managers and those making policy decisions should have solid documentation that the Peninsular bighorn sheep will receive the same level of enforceable protection from the Tribal HCP and the Coachella Valley MSHCP as provided by the Endangered Species Act. One peer reviewer stated that the proposed exclusion of tribal lands and lands covered by the Coachella Valley MSHCP are not supported by the best available science and that removal of these areas from critical habitat will increase the threats to the persistence and recovery of Peninsular bighorn sheep.

Our Response: We believe the exclusion of the identified tribal lands and the lands covered by the Coachella Valley MSHCP, which is now final, is appropriate based on the potential impacts associated with designating these areas as critical habitat. Section 4(b)(2) of the Act states that the ''Secretary shall designate critical habitat, and make revisions thereto, on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat.'' The Act further states that the Secretary may exclude any 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 and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned.

We believe that critical habitat designation would negatively impact the working relationships and conservation partnerships we have formed with permittees, the Tribe, and other private landowners (*i.e.*, other relevant impacts), and could result in decreased voluntary conservation efforts to benefit the Peninsular bighorn sheep. Additionally, as explained in detail in the ''Application of Section 4(b)(2)—Other Relevant Impacts—Conservation Partnerships'' section of this final rule, we believe these conservation partnerships will provide as much or more benefit than consultation under section 7(a)(2) related to the critical habitat designation (the primary benefit of a designation).

The exclusion of Agua Caliente Band of Cahuilla Indians lands is not based on the 2007 draft Tribal HCP, but is primarily based on the importance of our government-to-government relationship with the Agua Caliente Band of Cahuilla Indians, our conservation partnership with the Tribe, and their current management of tribal lands as described in the 2001 Tribal Conservation Strategy (adopted by the Tribe on November 12, 2002, and implemented since its adoption). Furthermore, in accordance with the Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (June 5, 1997); the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951); Executive Order 13175; and the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2), we believe that fish, wildlife, and other natural resources on tribal lands are better managed under tribal authorities, policies, and programs than through Federal regulation wherever possible and practicable. Based on this philosophy, we believe that, in most cases, designation of tribal lands as critical habitat provides very little additional benefit to threatened and endangered species. Conversely, such designation is often viewed by tribes as unwarranted and an unwanted intrusion into tribal self governance, thus compromising the government-to-government relationship essential to achieving our mutual goal of managing for healthy ecosystems upon which the viability of threatened and endangered species populations depend. As an indication of the success of our partnership with the Agua Caliente Band of Cahuilla Indians and their commitment to natural resources management, a regional HCP is being developed, which incorporates protections and management of this DPS's essential physical and biological features.

The protections provided by the Coachella Valley MSHCP and the Tribe's resource management are consistent with the mandates under section 7 of the Act to avoid destruction or adverse modification of critical habitat and go beyond that prohibition by including active management and protection of essential habitat areas. These established partnerships demonstrate a continued commitment to conservation and aid in fostering additional partnerships for the benefit of all sensitive species on tribally-owned or controlled lands, Coachella Valley MSHCP permittee-owned/controlled lands, and other private lands. Finally, we determined that the Tribe's management of its resources provides protection and management, in perpetuity, of lands that meet the definition of critical habitat for Peninsular bighorn sheep in Units 1 and 2A, and the Coachella Valley MSHCP provides further evidence of this partnership and continued protection of these features. Furthermore, we determined that the routine implementation of conservation measures in these units, combined with protections provided under the jeopardy standard of section 7 of the Act in these two occupied units, provide assurances that the DPS will not go extinct as a result of these exclusions.

Please see the ''Application of Section 4(b)(2)—Other Relevant Impacts—Conservation Partnerships'' section of this final rule for additional discussion of the Coachella Valley MSHCP and tribal conservation strategies and the benefits provided to Peninsular bighorn sheep.

Comment 3: Several peer reviewers stated that alluvial fans and low-elevation habitat provide important resources for Peninsular bighorn sheep and noted that the proposed critical habitat does not include extensive areas of alluvial fans and other low-elevation habitat that were included in the 2001 critical habitat designation. Two peer reviewers stated that, based on a geographic information systems (GIS) evaluation of proposed critical habitat by California Department of Parks and Recreation staff, nearly 250,000 ac (101,172 ha) of habitat have been removed from the eastern side of critical habitat, as compared to critical habitat designated in 2001. The peer reviewers further stated this area includes alluvial fans, washes, bajadas (*i.e.*, converging alluvial fans), canyon bottoms, and open playas, which provide important forage resources and which are used during movement between more mountainous terrain. One peer reviewer stated that the fact that bighorn sheep use gentle terrain, such as alluvial fans and washes, despite potentially increasing their risk of predation, provides strong evidence that these areas provide critically important resources.

Another peer reviewer commented that the 2007 proposed revision eliminates key low-slope areas and raises the boundary upslope, which they assert is a contradiction to the best available science. One peer reviewer noted there are contradictions of slope

condition in the rule based on straight lines drawn on the critical habitat maps, even though the text in the proposed rule describes the importance of gentle slopes to bighorn sheep.

Our Response: We agree that low-elevation habitat is important for Peninsular bighorn sheep because these areas can provide seasonal abundance of forage vegetation and water resources. In our August 26, 2008, NOA (73 FR 50498), we announced a revision to our criteria used to identify critical habitat to include occurrence data from 1988 to 2008. Because of comments received from peer reviewers and the public about low-elevation habitat and the revision of our criteria used to identify critical habitat to include a larger occurrence data set, we reevaluated and revised our proposed revised critical habitat boundary. In our August 26, 2008, NOA (73 FR 50498), we announced changes to the proposed critical habitat revision, including the addition of 36,240 ac (14,667 ha) of habitat for Peninsular bighorn sheep, the majority of which is low-elevation, low-slope, or alluvial-fan habitat on the eastern edge of the Peninsular Ranges. We acknowledge there are some low-elevation areas included in the 2001 designation of critical habitat that are not included in this final designation. However, currently available data do not support a determination that these areas outside the geographical area occupied by the species at the time of listing are essential for the conservation of the sheep; therefore these areas do not meet the definition of critical habitat.

Please see the ''Criteria Used To Identify Critical Habitat,'' the ''Summary of Changes From the 2001 Critical Habitat Designation to the 2007 Proposed Rule To Revise Critical Habitat,'' and the ''Summary of Changes From the 2007 Proposed Rule To Revise Critical Habitat to This Final Rule To Revise Critical Habitat'' sections of this final rule for further discussion of this topic.

Comment 4: One peer reviewer objected to the statement in the proposed critical habitat rule that essential habitat delineated in the Recovery Plan (and in the 2001 critical habitat designation) included a ''buffer'' of 0.5 mile (mi) (0.8 kilometer (km)) around slopes greater than or equal to 20 percent. The peer reviewer stated that buffer areas identified in the Recovery Plan were added as ''essential habitat'' (as defined in the Recovery Plan) because these areas include important resources for bighorn sheep; they were not added as a buffer around essential habitat. The peer reviewer reiterated what was written in the Recovery Plan (*i.e.*, that bighorn sheep have been observed at great distances from slopes of greater than or equal to 20 percent, and the recovery team chose to define essential habitat as those areas within 800 m (2,625 ft) of slopes of greater than or equal to 20 percent). Additionally, the peer reviewer stated that the Peninsular bighorn sheep recovery team recognized that this area would capture the majority of Peninsular bighorn sheep use in these areas and that inclusion of these areas represented inclusion of important resources.

Our Response: The Recovery Plan acknowledges that the 800-m (2,625-ft) area around slopes greater than or equal to 20 percent is a buffer. Page 157 of the Recovery Plan describes the process of delineating these areas as follows: ''A buffer of 0.8 kilometer (0.5 mile) was then applied to the perimeter of all areas of slope [greater than or equal to 20 percent] in the derivative grid.'' The inclusion of this area around 20 percent slopes adds expanses of land to the Recovery Plan area and the 2001 critical habitat designation, but we have relatively little to no occurrence data indicating that sheep use those areas. By including these 0.5-mi (0.8-km) buffers in the Recovery Plan, a boundary was developed that included almost any location that a Peninsular bighorn sheep could possibly roam, but such a buffer would not meet the statutory definition of ''critical habitat,'' because such areas are not essential for the conservation of the DPS. As stated in section 3(5)(C) of the Act, except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species. Please see the ''Criteria Used To Identify Critical Habitat,'' and the ''Summary of Changes From the 2001 Critical Habitat Designation To the 2007 Proposed Rule To Revise Critical Habitat'' sections of this final rule for further discussion of this topic.

Comment 5: One peer reviewer stated that the proposed delineation does not appear to be based on good science or conservation principles and that the major reduction in area (as compared to the original critical habitat delineated in 2001) will jeopardize the chances of recovery and survival of this population. A second peer reviewer stated that the proposal to remove over 50 percent of critical habitat is contrary to the PCEs as well as the Recovery Plan. A third peer reviewer believes the revised critical habitat is geared towards sustaining the current, low population level of Peninsular bighorn sheep, rather than planning for recovery. Finally, a fourth peer reviewer stated it is unclear what changed between the time of the 2000 Recovery Plan and today that would cause certain areas to be eliminated that were previously determined as essential for the DPS's recovery.

Our Response: The designation of critical habitat for Peninsular bighorn sheep is based on the best scientific data available regarding the DPS, including: (1) A compilation of data from peer-reviewed, published literature; (2) unpublished or non-peer reviewed survey and research reports; and (3) opinions of biologists knowledgeable about Peninsular bighorn sheep and their habitat. Consequently, the PCEs, as described in this final rule, represent our best assessment of what habitat components are essential for the conservation of Peninsular bighorn sheep, and we believe that our final revised designation is adequate to ensure the conservation of this DPS throughout its extant range.

The Act defines critical habitat as (1) the specific areas within the geographical area occupied by the species at the time it is listed on which are found those physical or biological features (a) essential to the conservation of the species, and (b) which may require special management considerations or protection, and (2) specific areas outside the geographical area occupied by the species at the time it is listed upon a determination by the Secretary that such areas are essential for the conservation of the species. Consistent with section 3(5)(C) of the Act, the designation does not include the entire geographical area which can be occupied by Peninsular bighorn sheep, but is limited to those areas that we determined meet the definition of critical habitat. The reduction in total area from what was identified as important for the Peninsular bighorn sheep in the Recovery Plan and designated in 2001 is primarily the result of: (1) Exclusions of habitat under section 4(b)(2) of the Act; (2) revision of the primary constituent elements; (3) revision of our criteria used to identify critical habitat; (4) removal of lands within the geographical area occupied by the DPS at the time it was listed that do not contain the physical or biological features as identified by the PCEs in the appropriate quantity and spatial arrangement essential to the conservation of the DPS; and (5) removal of lands outside the geographical area occupied by the DPS at the time it was listed that are not

essential for the conservation of the DPS.

The 2001 critical habitat designation was predominantly based on the 2000 Recovery Plan, and we used the best available scientific information at that time to delineate critical habitat. Since 2001, we received significant additional occurrence data and formulated a better understanding about specific habitat requirements of this DPS that was not known when we first designated critical habitat for the Peninsular bighorn sheep. We utilized this new information to appropriately revise the PCEs and criteria used to identify critical habitat, consistent with the Act. Additionally, case law has developed since 2001 regarding the Act's requirements and the definition of critical habitat (*e.g.*, *The Cape Hatteras Access Preservation Alliance* v. *U.S. Dep't of the Interior*, 344 F. Supp. 2d 108 (D.D.C. 2004); *Home Builders Ass'n of N. Cal.* v. *U.S. Fish and Wildlife Service*, U.S. Dist. LEXIS 80255 (E.D. Cal. 2006); and *Arizona Cattle Growers' Ass'n* v. *Kempthorne*, 534 F. Supp. 2d 1013 (D. Ariz. 2008)).

Therefore, we refined our approach to this critical habitat designation, including identification of the geographical areas occupied by the DPS at the time of listing, identification of physical or biological features essential to the conservation of the DPS, determination of any areas outside the geographical area occupied by the DPS at the time of listing that are essential for the conservation of the DPS, and appropriate exclusions under section 4(b)(2) of the Act. A complete discussion of how data collected since the 2001 designation were utilized to refine the proposed designation can be found in the ''Summary of Changes From the 2001 Critical Habitat Designation To the 2007 Proposed Rule To Revise Critical Habitat'' and ''Summary of Changes From the 2007 Proposed Rule To Revise Critical Habitat To This Final Rule To Revise Critical Habitat'' sections of this final rule.

We delineated critical habitat for the Peninsular bighorn sheep using the criteria presented in the ''Criteria Used To Identify Critical Habitat'' section of this final rule. Application of these criteria results in the determination of the physical and biological features that are essential to the conservation of this DPS, identified as the DPS's PCEs laid out in the appropriate quantity and spatial arrangement essential to the conservation of the DPS. Therefore, not all areas supporting the identified PCEs will meet the definition of critical habitat.

Refer to our response to Comment 1 for a discussion on the difference between critical habitat designation and development of a Recovery Plan.

Our proposed designation, in combination with our August 26, 2008, NOA, which announced the addition of areas to the proposed designation, and this final designation accurately describe all specific areas meeting the statutory definition of critical habitat for Peninsular bighorn sheep. See the ''Summary of Changes From the 2001 Critical Habitat Designation To the 2007 Proposed Rule To Revise Critical Habitat'' and ''Summary of Changes From the 2007 Proposed Rule To Revise Critical Habitat To This Final Rule To Revise Critical Habitat'' sections of this final rule for more information.

Comment 6: Two peer reviewers pointed out that the proposed critical habitat rule states that researchers have documented movement of rams ''between up to three ewe groups.'' The peer reviewers suggested this statement incorrectly cites Rubin *et al.* (1998), which documented male movement among at least six groups, and the proposed rule therefore underestimates the importance of connectivity throughout the range. The peer reviewers stated that researchers have documented movement of radio collared males and females among all eight subpopulations, demonstrating that these subpopulations are currently linked via animal movement. One peer reviewer stated that historic ram movement data between the northern Santa Rosa Mountains and the San Jacinto Mountains was not used in delineating proposed critical habitat. The peer reviewer further stated that they believe the Service has had this data for years and, if used, they believe the Service would not have developed a critical habitat designation lacking connectivity between critical habitat units.

Our Response: We corrected the section of the critical habitat designation involving the Rubin *et al.* (1998) citation mentioned above and included the additional information on the metapopulation structure of Peninsular bighorn sheep into the PCEs discussion in this rule. With regard to historic ram movement data and connectivity, see our response to Comment 1 and the ''Criteria Used To Identify Critical Habitat'' and ''Summary of Changes From the 2001 Critical Habitat Designation To the 2007 Proposed Rule To Revise Critical Habitat'' sections of this final rule for further discussion.

Comment 7: One peer reviewer believes that the critical habitat designation should encompass areas of historical occupancy if it is intended to aid in the recovery of the Peninsular bighorn sheep.

Our Response: Please refer to our response to Comment 5 for the statutory definition of critical habitat. The Service may designate as critical habitat areas outside the geographical area occupied by a species at the time it was listed (*i.e.,* historical habitat) only when we can determine that those areas are essential for the conservation of the species (section 3(5)(A)(ii) of the Act). We have determined that designating critical habitat solely within the geographical area occupied by the DPS at the time it was listed will provide for the conservation of the Peninsular bighorn sheep. We, therefore, did not include areas of historical occupancy that were outside of these areas. As previously mentioned in this final rule, critical habitat designations do not signal that habitat outside the designation is unimportant or may not contribute to a species' recovery. See our response to Comment 5 above and the ''Criteria Used To Identify Critical Habitat'' section of this final rule for more information.

Comment 8: One peer reviewer had concerns about designating critical habitat based on occupancy at the time of listing. The peer reviewer identified what the peer reviewer believed to be two shortcomings of this approach, as follows: (1) Critical habitat is designated based on the distribution of a species at its lowest abundance level, and most likely its most limited spatial distribution, thereby reducing the probability of encompassing areas required for full recovery; and (2) designated critical habitat assumes that all areas have been sufficiently surveyed to document occupancy and doesn't address false absences. Another peer reviewer believes that the Service failed to recognize false absences as a result of this approach, and that this is a grave error because the peer reviewer believes many important areas may not be included in the critical habitat designation.

Our Response: In response to the peer reviewer's comment and other public comments related to the delineation of critical habitat based on occupancy at the time of listing, we revised our criteria used to delineate critical habitat as announced in the NOA published in the **Federal Register** on August 25, 2008 (73 FR 50498). As a revision to our criteria, we included areas with occupancy data indicating they are currently occupied or areas with occupancy data indicating they were occupied at some point between 2008

(present time) and 1988 (*i.e.,* the time of listing (1998) less 10 years, which is the average lifespan of Peninsular bighorn sheep). Use of a data set that considers a larger time-span of occurrence data accounts for the large fluctuations in Peninsular bighorn sheep population levels over the last two decades, and provides a reasonable delineation of the geographical area occupied by the species at the time of listing. After rangewide estimates were made in the 1970s, the population was estimated as high as 1,171 in 1974 (Weaver 1974, p. 5). The population was estimated at 570 individuals in 1988 (Weaver 1989, p. 11). We reported in the final listing rule for Peninsular bighorn sheep that the population at that time (1998) was approximately 280 individuals (March 18, 1998, 63 FR 13134). The most recent estimate from 2006 puts the population at approximately 800 individuals (Torres 2007, p. 1). By considering occurrence data between 1988 and the present, we are not designating critical habitat based on the distribution of the DPS at its lowest abundance level, nor its most limited spatial distribution as the peer reviewer suggested.

We realize that false absences can result from rangewide surveys for Peninsular bighorn sheep. Additionally, we are aware that not all areas within the range of the DPS have been surveyed or studied equally. For example, there is a disproportionate amount of data from the northern half of the Peninsular Ranges in the United States, compared to the southern half that has not been studied as thoroughly. Regardless, we used the best available scientific information and occurrence data in determining areas occupied by Peninsular bighorn sheep. No information is available to indicate which portions of the DPS's range might include false absences.

Comment 9: One peer reviewer believes that delineation of critical habitat must not rely on simple occurrence data alone, but should also rely on robust methods of identifying and mapping critical habitat based on habitat features.

Our Response: We agree with the peer reviewer's statement. We delineated critical habitat based on occurrence data and a combination of habitat features. We designated critical habitat for the Peninsular bighorn sheep within areas that we determined were occupied at the time of listing and that contain the physical and biological features essential to the conservation of the DPS. Lands were designated based on sufficient essential features being present to support the life processes. Please see our response to Comment 5 and the ''Criteria Used To Identify Critical Habitat'' section of this final rule for detailed discussions.

Comment 10: One peer reviewer noted a large number of known Peninsular bighorn sheep locations (documented post-listing) that were not included in the proposed revised critical habitat and further stated that it was unclear why these areas were not included. Another peer reviewer listed multiple areas that are documented as occupied at or since the time of listing but were not included in the proposed critical habitat designation. The peer reviewer indicated that occurrence data documenting occupancy were provided to the Service prior to the delineation of proposed critical habitat, and further stated that these areas provide lambing habitat, foraging areas, connectivity between mountainous areas, and important water sources. The peer reviewer determined that nearly 1,000 of these locations were not included in the proposed critical habitat following an examination of occurrence data collected during 2001 to 2003 with the use of Global Positioning System (GPS) collars in areas between Highway 74 and the southern edge of the Vallecito Mountains. Finally, another peer reviewer believes there are large areas without location data of Peninsular bighorn sheep that are included as critical habitat and areas with bighorn sheep location data that are not included as critical habitat.

Our Response: Upon receiving the peer reviewers' comments, we examined the occurrence data considered in the delineation of the proposed revised critical habitat and found that a set of data was missing from our GIS database. Subsequently, we included that occurrence data into our GIS database and double-checked to ensure that all occurrence records submitted to the Service were included for our analyses. In light of this data and our revised criteria used to identify critical habitat (*i.e.,* a data set that includes data since 1988), we revised our proposed critical habitat boundary, as reported in the NOA, to include the areas represented by the location data (August 26, 2008, 73 FR 50498).

Comment 11: One peer reviewer suggested the proposed revised critical habitat could have been improved had it been an ''open process'' that included the expertise of biologists on the Recovery Team, as well as others who have worked with bighorn sheep for decades, like what was done for the Peninsular bighorn sheep Recovery Plan. The peer reviewer believes that the resulting proposed critical habitat designation reflects a hurried process that used arbitrary decision-making, is not scientifically based, and contradicts the Services' Recovery Plan for the DPS.

Our Response: Contrary to the opinion of the peer reviewer, designating critical habitat is an open process. We solicited additional expert opinion and public comment through publication of our proposed revised rule that was developed using the best scientific data available at that point in time. As stated in the proposed rule, comments and materials received, as well as supporting documentation used in the preparation of the proposed rule, are available for public inspection at the Carlsbad Fish and Wildlife Office. In accordance with section 4(5)(A) of the Act and the regulations at 50 CFR 424.16(c)(1), the Secretary shall—

(i) Publish notice of the proposal in the **Federal Register;**

(ii) Give actual notice of the proposed regulation (including the complete text of the regulation) to the State agency in each State in which the species is believed to occur, and to each county or equivalent jurisdiction therein in which the species is believed to occur, and invite the comment of each such agency and jurisdiction;

(iii) Give notice of the proposed regulation to any Federal agencies, local authorities, or private individuals or organizations known to be affected by the rule;

(iv) Insofar as practical, and in cooperation with the Secretary of State, give notice of the proposed regulation to list, delist, or reclassify a species to each foreign nation in which the species is believed to occur or whose citizens harvest the species on the high seas, and invite the comment of such nation;

(v) Give notice of the proposed regulation to such professional scientific organizations as the Secretary deems appropriate; and

(vi) Publish a summary of the proposed regulation in a newspaper of general circulation in each area of the United States in which the species is believed to occur. Further, the regulations at 50 CFR 424.16(c)(2) state that at least 60 days shall be allowed for public comment following publication in the **Federal Register** of a rule proposing the listing, delisting, or reclassification of a species, or the designation or revision of critical habitat.

On May 14, 2007, representatives from the Carlsbad Fish and Wildlife Office and the Regional Office, including the Regional Director, met with recovery team members in part to inform members that we were initiating work to propose revisions to designated critical habitat for the Peninsular

bighorn sheep. At that meeting, we requested that recovery team members submit any data they wanted us to consider in our proposed revision. We received data from one recovery team member in response to this request.

During the development of this revision to critical habitat for the Peninsular bighorn sheep, we followed the appropriate guidance and regulations regarding inclusion of expert biologists and other appropriate entities, including the general public. In accordance with our policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we solicited expert opinions from five knowledgeable individuals with scientific expertise that included familiarity with the DPS, the geographic region in which it occurs, and conservation biology principles. We reviewed all comments received from the peer reviewers and the public for substantive issues and new information regarding the designation of critical habitat for Peninsular bighorn sheep.

Under section 4(f)(2) of the Act, the Secretary may procure the services of appropriate public and private agencies and institutions and other qualified persons in developing and implementing recovery plans. However, the Act limits the use of recovery teams appointed under this subsection to the development and implementation of recovery plans. The Act does not contain a provision for development of critical habitat teams. However, the Service could set up a critical habitat team, but it would be subject to the Federal Advisory Committee Act (FACA), unlike a recovery team that is exempt from FACA. Since the Act contains specific timeframes for completion of critical habitat designations, creating a critical habitat team would slow the process of designation of critical habitat causing us to be out of compliance with the statutory requirements of the Act. However, consistent with our peer review policy and the Act's standard of using the best available scientific data, we openly and publically solicited information for consideration in rule development and solicited peer review of our proposal.

In total, we received comments from all five peer reviewers that we solicited comments from, and we received 5,299 comments from the general public during two public comment periods and two public hearings. Therefore, we believe we followed an open process during development of the Peninsular bighorn sheep revised critical habitat designation.

Regarding the peer reviewer's beliefs that the proposed critical habitat designation reflects a hurried process that used arbitrary decision-making and was not scientifically based, we disagree with this comment. As noted above, we solicited information from the entire Peninsular bighorn sheep recovery team prior to the proposed revisions to the designation. We also solicited expert opinions from five knowledgeable individuals with scientific expertise that included familiarity with the DPS, the geographic region in which it occurs, and conservation biology principles. Additionally, the designation of critical habitat for Peninsular bighorn sheep is based on the best scientific data available regarding the DPS, including: (1) A compilation of data from peer-reviewed, published literature; (2) unpublished or non-peer reviewed survey and research reports; and (3) opinions of biologists knowledgeable about Peninsular bighorn sheep and their habitat (see our response to Comment 5 and the ''Criteria Used To Identify Critical Habitat'' section for additional discussion on use of available scientific data and how this data was used to develop criteria for identifying critical habitat).

Comment 12: One peer reviewer believes it is impossible to duplicate the delineation of the revised critical habitat based on the Service's poorly described methods and an inadequate explanation of how the PCEs were used to delineate critical habitat. Another peer reviewer believes the proposed rule does not provide specifics on how proposed revised critical habitat was delineated, nor does it include discussion of the actual methods of identifying and mapping the PCEs. The same peer reviewer stated that along several sections of the proposed revised critical habitat boundary, the boundary line follows a perfectly straight course, which does not appear to conform to (or follow) any obvious biological or topographical feature; therefore, the peer reviewer questioned how this boundary line was placed. Another peer reviewer could not identify the specific methods used to create the revised boundary of the proposed rule and further stated that the boundary lines give the appearance of being hand-drawn, rather than based on a scientific method.

Our Response: As discussed in our response to Comment 5 above and the ''Criteria Used To Identify Critical Habitat'' section of this final rule, we delineated critical habitat for the Peninsular bighorn sheep using the following criteria: (1) Areas that contain the PCEs required by the DPS as determined from aerial imagery and GIS data on vegetation, elevation, and slope; (2) areas within the ewe group distribution (*i.e.,* subpopulations) boundaries identified by Rubin *et al.* (1998); (3) areas occupied by the subspecies between 2008 (present time) and 1988; and (4) areas where occupancy data points indicate repeated Peninsular bighorn sheep use, but which were not captured within the ewe group distribution boundaries identified by Rubin *et al.* (1998). Application of these criteria results in the determination of the physical and biological features that are essential to the conservation of this DPS, identified as the DPS's PCEs laid out in the appropriate quantity and spatial arrangement essential to the conservation of the DPS. Since the 2007 proposed rule, we revised the ''Criteria Used To Identify Critical Habitat'' section of this rule to provide more detail and description of the stepwise process used, data considered, habitat features mapped, and method used to delineate critical habitat boundaries. The boundaries were drawn with GIS software using detailed aerial imagery maps and data layers of occurrences and habitat information. Any straight lines along the boundary of critical habitat are the result of following habitat features that are naturally straight in appearance.

Comment 13: One peer reviewer asked if a model was employed, and if so, describe the type and state whether it was based on expert opinion.

Our Response: We did not use a model to delineate critical habitat for the Peninsular bighorn sheep. For more information on how we delineated critical habitat, see the ''Criteria Used To Identify Critical Habitat'' section of this final rule.

Comment 14: One peer reviewer inquired as to whether or not PCEs were weighted in the process of revising critical habitat.

Our Response: The PCEs were not weighted in the process of revising critical habitat.

Comment 15: One peer reviewer expressed concern that Anza Borrego Desert State Park's vegetation maps were not utilized in the critical habitat revision. The peer reviewer believes that vegetation has a critical influence on what type of habitat the Peninsular bighorn sheep use; therefore, he asserts that this information would have been instrumental in delineating a more accurate critical habitat boundary. Another peer reviewer asked which vegetation layer was used in delineating critical habitat.

Our Response: We believed it was important to use a GIS vegetation data

layer that provided a consistent analysis over the entire extent of the Peninsular bighorn sheep range. Any vegetation layers that were prepared for a specific entity, including a park (such as Anza Borrego Desert State Park) or individual county, were not all-encompassing and therefore inappropriate for the analysis. The proposed and final revised critical habitat includes land in three separate counties (Imperial, Riverside, and San Diego). Therefore, the GIS layer that we used for the vegetation analysis portion of defining proposed critical habitat for the Peninsular bighorn sheep was the Fire and Resource Assessment Program layer created by the California Department of Forestry and Fire Protection. For further information on this vegetation data, see their Web site at: *http://frap/cdf/ca/gov*. This vegetation layer was most appropriate because it extended over the entire area of the Peninsular Ranges and allowed for consistency in our analysis of vegetation across the range of this DPS.

Comment 16: One peer reviewer was concerned that our methodology included an elevation cut-off of 4,600 ft (1,400 m) to guide the critical habitat boundary line. The peer reviewer stated that, at times, Peninsular bighorn sheep rely on areas higher than this, especially on the western side of the Santa Rosa Mountains.

Our Response: We acknowledge that Peninsular bighorn sheep have occasionally been observed above 4,600 ft (1,400 m) elevation; however, it is commonly accepted that sheep within the Peninsular Ranges are primarily restricted to lower elevations (see the ''Primary Constituent Elements (PCEs)'' section for more information). We do not have evidence to suggest that areas above 4,600 ft (1,400 m) elevation are essential for the conservation of this DPS, and the commenter did not provide information to support the assertion that sheep rely on higher elevations. As previously mentioned in this final rule, critical habitat designations do not signal that habitat outside of the designation is unimportant or may not contribute to recovery (see our response to Comment 1 above).

Comment 17: One peer reviewer stated that the rule indicates that areas with canopy cover greater than 30 percent were not included as critical habitat. The peer reviewer asked what information was used to determine this cut-off point and what GIS data layer was used to identify these areas.

Our Response: Generally, bighorn sheep primarily rely on their sense of sight to detect predators. Research shows that bighorn sheep will avoid habitat where dense vegetation reduces visibility and, instead, prefer to use habitat with vegetative canopy cover less than or equal to 30 percent (Risenhoover and Bailey 1985, p. 799; Etchberger *et al.* 1989, p. 906; Dunn 1996, p. 1). Bighorn sheep in the Peninsular Ranges avoid higher elevations (above 4,600 ft (1,400 m)), likely due to decreased visibility (and therefore increased predation risk) associated with denser vegetation (i.e., chaparral and conifer woodland) found at higher elevations (Service 2000, p. 10).

The GIS layer that was used for the vegetation analysis for the proposed revised critical habitat designation for the Peninsular bighorn sheep was the Fire and Resource Assessment Program layer created by the California Department of Forestry and Fire Protection. With this layer, we were able to highlight areas likely to have vegetative canopy cover over 30 percent (*i.e.*, chaparral and conifer woodland). Subsequently, we used detailed aerial imagery to focus on those areas and visually confirm whether or not those areas had canopy cover above 30 percent. If areas appeared to have canopy cover over 30 percent, those areas were removed from the critical habitat delineation. Therefore, vegetated areas within the final revised critical habitat designation include only those areas that provide lower density vegetation and better visibility to detect potential predators.

Comment 18: One peer reviewer inquired as to how we identified areas unlikely to be used by Peninsular bighorn sheep.

Our Response: As required by section 4(b)(2) of the Act, we used the best scientific data available in designating critical habitat, and more specifically (as per section 3(5)(A) of the Act), in determining the specific areas within the geographical area occupied by the DPS at the time of listing that contain the physical or biological features essential to the conservation of the DPS which may require special management considerations or protection, as well as in determining if any specific areas outside the geographical area occupied by the DPS at the time of listing are essential for the conservation of the DPS. Areas unlikely to be used by Peninsular bighorn sheep were identified by Service biologists using detailed aerial imagery maps of the Peninsular Ranges with GIS information on vegetation, elevation, slope, and sheep occurrence data from 1988 to 2008. Please see our responses to Comments 5, 16, and 17 and the ''Criteria Used To Identify Critical Habitat'' section for additional information related to how we used the data to delineate critical habitat.

Comment 19: One peer reviewer noted that the proposed rule (72 FR 57740, October 10, 2007) includes language describing how the delineation of critical habitat is supported by a draft habitat model provided to the Service by Peninsular bighorn sheep biologists, because areas designated as critical habitat ''roughly fall within the upper level habitat suitability classes derived from the preliminary model.'' The peer reviewer believes the Service incorrectly interpreted the draft model, suggesting that the Service did not understand the model results. The peer reviewer also stated that although the recent models are based on two years of GPS data from a subset of the total population, and may therefore underestimate use of some areas, they provide support for the essential habitat line and the original (2001) critical habitat line. The peer reviewer believes that the models do not provide support for the currently proposed revised critical habitat delineation.

Our Response: As stated in the proposed rule, we did not adopt the above mentioned predictive habitat model in our critical habitat delineation process because: (1) It was in draft form and had not been peer reviewed; and (2) it was based on only two years of GPS data from a subset of the Peninsular bighorn sheep population. In response to comments received from peer reviewers and the public, we reanalyzed the draft predictive habitat model. However, we continue to believe it is inappropriate to draw conclusions on whether the model supports or does not support our revised critical habitat designation for this DPS because there are limitations in the data set used to create the model (*i.e.*, only two years of GPS data), the model is in draft form, and has not been peer reviewed.

Comment 20: One peer reviewer believes that the proposed rule (as written) suggests that the proposed critical habitat delineation was based partially on ewe group delineations in Rubin *et al.* (1998). The peer reviewer noted that the Rubin *et al.* (1998) ewe group delineation was intended to document the approximate known distribution of ewe groups at that time. The peer reviewer further stated the ewe group delineation was not intended to represent essential habitat, it does not include additional areas used by rams, and it does not represent areas of connectivity. The peer reviewer clarified that the ewe group delineation in Rubin *et al.* (1998) was based on a small number of radiocollared sheep

(GPS collars had not been used in the study at that time), it did not include locational information on sheep in the San Jacinto Mountains, and it was based on data collected in the mid-1990s when the population of Peninsular bighorn sheep was at its smallest known size. Finally, the peer reviewer contends that the proposed rule is implying that ewe-group delineations in Rubin *et al.* (1998) were based on animal locations collected during 1971–1996 (p. 57747). However, the peer reviewer stated that ewe-group delineations were actually based on data collected during 1993–1996; Rubin *et al.* (1998) did use data collected since 1971, but those data were only represented by water-hole count data (used to examine long-term abundance trends). Therefore, the peer reviewer believes that the ewe group delineations in Rubin *et al.* (1998) present a minimum distribution of bighorn sheep in the Peninsular Ranges.

Our Response: As stated in this final rule and the ''Criteria Used To Identify Critical Habitat'' section of the NOA (73 FR 50498, August 26, 2008), we mapped ewe group areas from Rubin *et al.* (1998) over GIS imagery of the Peninsular Ranges to delineate the distribution of ewe groups in the proposed revised critical habitat as an initial step in the delineation process. We consider Rubin *et al.* (1998) to be the best available data on Peninsular bighorn sheep ewe group distribution. The ewe group delineations presented in Rubin *et al.* (1998) were based on data collected during 1993 to 1996 (not 1971 to 1996 as incorrectly stated in the proposed rule (72 FR 57740, October 10, 2007)), when the population of Peninsular bighorn sheep was at historically low levels. Therefore, the ewe group delineations present a minimum distribution of bighorn sheep in the Peninsular Ranges. However, this is the only data we are aware of that identifies the distribution of ewe groups and subgroups within the Peninsular Ranges. Furthermore, we believe that the ewe groups presented in Rubin *et al.* (1998) accurately depict the general locations of the known ewe groups in these ranges and provide a logical starting point for the delineation of critical habitat.

Comment 21: One peer reviewer believes that climate change will undoubtedly have an effect on habitat, and changes in temperature and precipitation will likely increase the importance of upper elevation habitats. Additionally, the peer reviewer believes the proposed revision to critical habitat excludes some high elevation areas currently occupied by bighorn sheep and reduces the protection of habitat that will be essential for conservation of the Peninsular bighorn sheep in the future.

Our Response: Peninsular bighorn sheep generally do not use the upper elevation habitats of the Peninsular Ranges at this time because those areas are more densely vegetated and provide conditions of poor visibility. For further discussion, see our responses to Comments 16 and 17.

We acknowledge that climate change could result in changes in the resources and habitat condition along an elevational gradient in the Peninsular Ranges. However, the scientific evidence available at this time does not suggest that upper elevation habitats in the Peninsular Ranges will become more visually open (*i.e.*, more suitable for Peninsular bighorn sheep) as a result of a climate change scenario like that described by the peer reviewer. The peer reviewer did not submit any specific data supporting the contention for the need to expand critical habitat to include currently unoccupied upper elevation habitat. We are unaware of any studies or data that would indicate this request is appropriate. In fact, Epps *et al.* (2004, p. 111) applied a climate change model that assumed an increase in temperature of 2 degrees Celsius and a decrease in precipitation of 12 percent and found no change in the probability of extinction for sheep in those ranges supporting the Peninsular bighorn sheep. Should additional data become available, we may revise this final critical habitat designation, subject to available funding and other conservation priorities.

Comment 22: One peer reviewer agreed with the Service regarding correction of an earlier error to recognize this listed entity as a DPS of the subspecies *Ovis canadensis nelsoni*. The peer reviewer also stated that no attempt was made by the Service in the proposed rule to give the reader a full geographic picture of how this DPS fits into the larger distribution of that subspecies. The peer reviewer believes that this animal should be referred to as a DPS, avoiding the term subspecies. The peer reviewer believes that if Peninsular bighorn sheep is defined as simply ''bighorn sheep in the Peninsular Ranges,'' then the word Peninsular in that phrase is redundant and unnecessary. The peer reviewer believes the problem is that the use of Peninsular bighorn sheep in this context gives the reader a false impression that there is something unique and different about this subspecies. The peer reviewer suggested this could be avoided by referring to the animal as ''bighorn sheep in the Peninsular Ranges.'' Another peer reviewer stated that the commonly accepted vernacular name for *Ovis canadensis nelsoni* is Nelson's bighorn sheep and not Peninsular bighorn sheep. The peer reviewer suggested the Service refer to this DPS throughout the rule as ''Nelson's bighorn sheep in the Peninsular Ranges.''

Our Response: As discussed in the Background section of this final rule, we are formally changing the listed entity as a DPS of the desert bighorn sheep, *Ovis canadensis nelsoni*, and this final rule includes such change to the list of Endangered and Threatened Wildlife at 50 CFR 17.11(h). Within this final rule, we believe it is appropriate to continue to refer to these sheep with the common name Peninsular bighorn sheep. Further, we will refer to this listed entity as a DPS, not a species or subspecies as we have in previous **Federal Register** publications. We also have included information on the geographic distribution of the desert bighorn sheep subspecies, of which Peninsular bighorn sheep are a DPS, in the ''Background'' section of this final rule.

Comment 23: One peer reviewer noted that in the proposed rule the Service stated it ''has been hypothesized that desert bighorn sheep can survive without a permanent water source,'' although the Service did not provide a citation. The peer reviewer believes the most appropriate citation should have been Krausman *et al.* (1985), which demonstrated this to be true for a Sonoran Desert population. The peer reviewer further believes that more meaningful discussion would have compared high temperatures for the population studied by Krausman *et al.* (1985) with those in the Peninsular Ranges, from which a greater need for water could be surmised. The same peer reviewer noted that the Service also did not provide a citation in the proposed rule when referring to water as ''especially important to lactating ewes. * * *'' The peer reviewer believes that Bleich *et al.* (1997) refuted this as a myth.

Our Response: In light of the peer reviewer's comment, we included the citation of Krausman *et al.* (1985) into our discussion of water in the ''Primary Constituent Elements (PCEs)'' section of this final rule. All other variables (*e.g.*, vegetation, elevation, climate, terrain) being the same, we agree with the peer reviewer that it could be assumed that sheep living in ranges with higher temperatures would have a greater need for water. However, we are not aware of an analysis comparing the Peninsular Ranges to the Little Harquahalas studied

by Krausman *et al.* (1985, p. 26). Regarding the peer reviewer's comment regarding Bleich *et al.* (1997), we reevaluated the available literature on the importance of water to lactating ewes. As a result, we revised the discussion of water in the ''Primary Constituent Elements (PCEs)'' section of this final rule.

Comment 24: One peer reviewer stated the proposed rule lists sites for breeding and space for mating as key habitat elements, but the peer reviewer believes there is no evidence to suggest that lack of breeding is a limiting factor for these sheep. The peer reviewer also believes there is no evidence that breeding takes place in any habitat other than where normal activities occur during the months in which breeding and mating take place.

Our Response: We acknowledge the peer reviewer's concerns regarding Peninsular bighorn sheep breeding habitat. We did not suggest in the proposed rule that lack of breeding is a limiting factor for Peninsular bighorn sheep or that breeding occurs exclusively in a specific type of habitat. Rather, our intention was to highlight the importance of maintaining space for individual and population growth and normal behavior, which includes breeding.

Comment 25: One peer reviewer believes the document could be strengthened by using primary literature (versus grey literature) and citing original sources.

Our Response: Consistent with section 4(b)(2) of the Act, the Secretary shall use the best scientific data available when making critical habitat determinations. Data reviewed by the Secretary may include, but are not limited to, scientific or commercial publications, administrative reports, maps or other graphic materials, information received from experts on the subject, and comments from interested parties. Designation of critical habitat for Peninsular bighorn sheep includes a compilation of data from peer-reviewed, published literature; unpublished or non-peer reviewed survey and research reports; and opinions of biologists knowledgeable about Peninsular bighorn sheep and their habitat. We use primary literature whenever possible, although in some cases grey literature provides timely and detailed information that may otherwise not be available. Therefore, in this final revised critical habitat designation we have used the best scientific information available at this time, including updated information provided by peer reviewers and commenters, which is incorporated into this rule where appropriate.

Comment 26: One peer reviewer believes the distribution of critical habitat could be more exact (and defensible) based on locations of sheep. The peer reviewer further stated that the Service should consider documented sheep locations approximately 500–1,000 m (1,640–3,280 ft) in any direction as the boundary of critical habitat, because the peer reviewer believes this would be defensible given the accuracy of the radio and GPS collar generated locations. Finally, the peer reviewer suggested other defensible options for a more exact critical habitat delineation, including the use of minimum convex polygons or 95 percent adaptive kernel techniques (and the connectivity between them).

Our Response: Consistent with 50 CFR 424.12(b), when considering the designation of critical habitat, the Secretary shall focus on the principal biological or physical constituent elements within the defined area that are essential to the conservation of a given species and that may require special management considerations or protection. Additionally, as per section 3(5)(A)(ii) of the Act, critical habitat also includes specific areas outside the geographical area occupied by the species at the time it is listed if such areas are essential for the conservation of the species. While delineating critical habitat, we not only considered Peninsular bighorn sheep locations, but also a combination of habitat features. We believe that drawing circles around occurrence points as the commenter has suggested (by delineating the critical habitat boundary as 500–1,000 m (1,640–3,280 ft) in any direction of a sheep location) would not accurately reflect essential habitat for this DPS because collared sheep represent a subset of the total number of sheep in the Peninsular Ranges. Additionally, there are a disproportionate number of collared animals in the northern extent of the DPS's range compared to the southern extent of its range. Therefore, we believe basing critical habitat only on occurrence data would lead to an underrepresentation of the habitat essential to the whole population.

Both the minimum convex polygons or 95 percent adaptive kernel techniques could be valid options for determining a species' habitat or home range; however, we believe our criteria used to identify critical habitat gives a more precise delineation of essential habitat based on occurrence data and the physical or biological features essential to the conservation of Peninsular bighorn sheep (see ''Criteria Used To Identify Critical Habitat''). We did consider the use of other techniques to delineate critical habitat, including minimum convex polygons or 95 percent adaptive kernel techniques such as the peer reviewer suggested. However, those techniques can yield broad and irregularly shaped polygons of habitat inclusive of expanses of areas that lack occurrence data.

We delineated critical habitat boundaries as described in the ''Criteria Used To Identify Critical Habitat'' section of this final rule. Please see this section for a detailed discussion of the delineation process used for this rule.

Comment 27: One peer reviewer stated it was not clear in the proposed rule how the distribution of bighorn sheep and occupied areas were determined. The peer reviewer believes the ''Methods'' section does not define occupied habitat. The peer reviewer believes that if sheep are regularly using an area, it is important for the Service to define occupied habitat. However, if sheep have not used an area in more than 5 to 10 years and there is no suitable habitat adjacent to that area, the peer reviewer believes it would be difficult to defend this area as critical. The peer reviewer suggested an in-depth cumulative effects examination to address this issue.

Our Response: We agree with the peer reviewer that areas of regular, repeated sheep use are important to this DPS; however, we disagree with the peer reviewer's assertion that areas not used by sheep in more than 5 to 10 years will be difficult to defend as critical habitat. Section 3(5)(A)(i) of the Act defines critical habitat as the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of the Act, on which are found those physical or biological features (a) essential to the conservation of the species and (b) which may require special management considerations or protection. As a revision to our criteria announced in the NOA (73 FR 50498, August 26, 2008), we included areas with occupancy data indicating they are currently occupied or areas with occupancy data indicating they were occupied at some point between 2008 (present time) and 1988 (i.e., the time of listing (1998) less 10 years, which is the average lifespan of Peninsular bighorn sheep).

Use of a data set that considers a larger time-span of occurrence data accounts for the large fluctuations in Peninsular bighorn sheep population levels over the last two decades. Because the average lifespan of sheep is approximately 10 years (Botta 2008a, p. 1), areas occupied 10 years prior to listing should be considered occupied at listing. Therefore, we appropriately

included areas supporting the essential physical and biological features that may require special management considerations or protection that are within areas occupied at the time of listing. We did not include areas that were unsuitable or otherwise did not support physical and biological features essential to the conservation of the species. Please see our response to Comment 8 and ''Criteria Used To Identify Critical Habitat'' section of this rule for additional discussion on occupancy and methodology used to develop critical habitat.

With regard to the assertions about a cumulative effects analysis, the peer reviewer may be confusing a cumulative effects analysis under section 7 of the Act or NEPA with the process for designating critical habitat. A ''cumulative effects'' analysis is not required under section 4 of the Act. Under section 4(b)(2) of the Act, we did consider the economic, national security, and other relevant impacts of designating critical habitat.

Comment 28: One peer reviewer believes that bighorn sheep habitat along the border could be altered by illegal immigrants and the Border Patrol (or other agents that pursue illegal immigrants). The peer reviewer also believes that future economic growth could further infringe on the bighorn sheep's habitat in the southern part of its range as it has in the northern part of its range. The peer reviewer believes that these issues should be addressed in a cumulative effects analysis.

Our Response: When delineating critical habitat for Peninsular bighorn sheep, we used the best available scientific information to determine those areas that meet the definition of critical habitat. We do not have any data indicating that activities associated with the Border Patrol activities or illegal immigration threaten Peninsular bighorn sheep habitat along the border, nor did the peer reviewer supply data to support this assumption. The DEA analyzed projected economic growth and associated economic impacts, and the majority of projected growth is expected to occur in the northern part of the range. We recognize the potential threat of development in the ''Special Management Considerations or Protection'' section of this final rule. Again, the peer reviewer may be confusing a cumulative effects analysis under section 7 of the Act or NEPA with the process for designating critical habitat.

Comment 29: One peer reviewer did not agree with our discussion of the potential negative effects of roads to Peninsular bighorn sheep as stated in the 2007 proposed rule. The peer reviewer believes that the citation of Epps *et al.* (2005, p. 1035) in the proposed rule is inappropriate to this DPS because that study was concerned with the effects of major fenced highways, and the roads in question in the Peninsular Ranges are smaller two-lane roads that Peninsular bighorn sheep cross regularly.

Our Response: In light of the above comment, we revised our discussion of the effects of roads on Peninsular bighorn sheep and revised our citation of Epps *et al.* (2005). Please see the ''Special Management Considerations or Protection'' section of this final rule.

Comment 30: One peer reviewer believes that the discussion in the 2007 proposed rule of behavioral interactions between humans and bighorn sheep is not objective and lacks a real analysis of the problem as its basis. The peer reviewer believes that an analysis is required regarding our statement that ''disturbance could modify the sheep's behavior or cause bighorn sheep to flee an area.'' The peer reviewer believes this statement falsely implies that such an incident is detrimental to the conservation of this animal. Additionally, the peer reviewer suggested we provide an alternative statement indicating that bighorn sheep in the Peninsular Ranges are a good example of a DPS that can readily habituate to human activities that are non-threatening and geographically predictable.

Our Response: The opening paragraphs of our proposed revised critical habitat designation clearly state that the rule is not intended to serve as a comprehensive review of desert bighorn sheep ecology and conservation, and such reviews can be found elsewhere. The proposed rule briefly discusses the natural history and management of bighorn sheep, and then concentrates upon the methodology used to designate critical habitat. The effects of human activities on bighorn sheep have been discussed and debated by many biologists and managers for decades; thus, we included a brief synopsis of the topic. We recognized there were differences of opinion, and thus we were careful to include words such as ''potential.'' It should be noted that we were discussing human activity in a general sense, and we listed a variety of activities as examples.

A careful review of the literature reveals that bighorn sheep group or individual responses to human activity are highly variable and influenced by local factors and local history. Therefore, generalized statements extending to all bighorn sheep are inappropriate. An overwhelming majority of biologists have expressed concern and have recommended limiting or managing human activities in bighorn sheep habitat. The peer reviewer is correct in asserting that much of the literature consists of opinions and that there is a need for additional well-designed studies that provide stronger inferences. However, considering the volume of opinions on the potential impacts that human activities may have on bighorn sheep, it was appropriate to include discussion of these potential impacts when considering if the physical or biological features essential to the conservation of the Peninsular bighorn sheep may require special management considerations or protection.

Comment 31: One peer reviewer made the following statement: ''Conspicuous by its absence in this proposal is any reference to the recent Turner *et al.* [2004] published habitat analysis of bighorn sheep in the northern Peninsular Ranges, the Ostermann *et al.* [2005] rebuttal to that, and the response by Turner *et al.* [2005].'' The peer reviewer further stated that a subsequent unpublished preliminary habitat analysis by Rubin *et al.* was referenced in the proposed rule instead, with a statement that it was not adopted because of its preliminary nature; yet it was used as validation of the critical habitat boundaries, which effectively is stating that it was adopted. The peer reviewer pointed out that in discussing why the new proposal includes much less habitat, the Service stated that many areas in the original critical habitat did not support features essential for the conservation of the Peninsular bighorn sheep or otherwise contain suitable habitat for the DPS. The peer reviewer stated this is the same point made by Turner *et al.* (2004), and regardless of whether the Service accepts the details of their habitat modeling, the peer reviewer believes it would be appropriate to cite them as having arrived at the same conclusion. Finally, the peer reviewer stated that, without advocating one study over the other, this is not objective, and there should be a discussion addressing why the Turner *et al.* analysis was not used, while an unpublished preliminary analysis was used.

Our Response: We considered the papers cited above (Turner *et al.* 2004; 2005; and Ostermann *et al.* 2005), but they did not play a role in the development of the critical habitat designation. Therefore, they were not cited and discussed in the proposed rule. Turner *et al.* (2004) based their model primarily upon data collected

from a subpopulation that exhibited atypical habitat selection patterns. Approximately 90 percent of the data points utilized were collected from a group of bighorn sheep that frequented urban areas in the vicinity of Rancho Mirage. Furthermore, 79 percent of the data points utilized were collected over only a seven-year period when bighorn sheep use of urban areas was most pronounced. This fact also biased the data from a spatial standpoint because point locations were much easier to collect in urban settings. Approximately 80 percent of the point locations utilized were obtained within 1.9 mi (3 km) of an artificial water source, which was located next to a residential community. Additionally, Turner *et al.* (2004) assumed that the density of bighorn sheep point locations in a given area accurately reflected habitat quality, and they did not account for variations in sampling effort and detection. Finally, the Turner *et al.* (2004) model utilized a subset of the available data. Only a small amount of the data utilized was collected from other bighorn sheep groups that exhibited behavior and habitat use patterns typical of bighorn sheep inhabiting the remainder of the Peninsular Ranges.

For the reasons stated above, the Turner *et al.* (2004) model should not be considered a general model for identifying or ranking bighorn sheep habitat in the Peninsular Ranges. Its validity is specific to the small group of sheep that frequented urban areas in Rancho Mirage from 1994–2000. The Turner *et al.* (2005) rebuttal to Ostermann *et al.* (2005) did not fully address the above issues, but instead aired past grievances with the Service and addressed aspects of Peninsular bighorn sheep recovery that were not specific to their model or Ostermann *et al.* (2005).

The preliminary habitat analysis conducted by Rubin *et al.* (2007) utilized point locations collected from bighorn sheep not closely associated with urban areas, and their efforts utilized different and recently developed methodology. The preliminary results were presented by Rubin *et al.* to our office and examined. However, the Rubin *et al.* (2007) preliminary results were not used to adjust the boundaries of the proposed critical habitat designation (see our response to Comment 20 above). The peer reviewer is justified in asserting that if the preliminary results of Rubin *et al.* (2007) were mentioned in the proposed rule, then the Turner *et al.* (2004) model, plus rebuttals, also should have been discussed. However; since neither model was used to designate the proposed critical habitat, we removed further discussion of the models (e.g., Rubin *et al.* 2007; Turner *et al.* 2004) from this final rule.

Public Comments

Comments Related to Criteria Used To Identify Critical Habitat

Comment 32: Two commenters stated that upon examination of occurrence data and the original critical habitat (2001), they believe that the original critical habitat was overdrawn. The commenters further believe that the original critical habitat contains large areas of land that have no evidence of current or historic bighorn sheep activity or that have had only a handful of observations over the past 30 years. The commenters noted that the Service's attempt to base the proposed critical habitat on more technical, state-of-the-art distributional information appears to be a step toward resolving some of these issues. The commenters believe the methodology used in the proposed rule is vague, and the sources of information do not appear to be publicly available. For example, one commenter questioned how the ewe group delineation from Rubin *et al.* (1998) was compared to all occupancy data collected since the time of listing on GIS imagery maps. Both commenters also questioned how ewe group delineation was expanded to include areas where occupancy data points indicate repeated Peninsular bighorn sheep use and recent sheep movements.

Our Response: We acknowledge that the 2001 critical habitat designation contains large areas of land that have no evidence of current or historic bighorn sheep activity or have had only a handful of observations over the past 30 years. A complete discussion of how information and data collected since the 2001 designation was utilized to refine the proposed designation and the steps used in the delineation process (*i.e.*, methodology) can be found in the ''Criteria Used To Identify Critical Habitat,'' ''Summary of Changes From the 2001 Critical Habitat Designation To the 2007 Proposed Rule To Revise Critical Habitat,'' and ''Summary of Changes From the 2007 Proposed Rule To Revise Critical Habitat To This Final Rule To Revise Critical Habitat'' sections of this final rule.

Comment 33: Two commenters believe it is disconcerting that the proposed rule expands areas of occupancy (from E. Rubin's ewe group determination) to include areas where there are only a handful of sightings, where sighting data are unverifiable, and where bighorn sheep have been recently released. The commenters believe this suggests that critical habitat can be ''created'' by releasing bighorn sheep into previously unoccupied areas. The commenters further stated that the expansion of the northernmost ewe group delineation in the San Jacinto Mountains could be justifiable; however, they believe there is no way to objectively evaluate the information used in support of this expansion. The commenters provided the example that several bighorn sheep sightings in Chino Canyon were the result of helicopter pursuits driving animals onto the valley floor. The commenters questioned if these coerced observations were included in the database. Additionally, the commenters believe the proposed rule expanded the southernmost ewe group delineation near Interstate 8 based on consistent, recent sightings of uncollared Peninsular bighorn sheep and asked the Service if this includes ewes, lambs, and rams. The commenters stated that their understanding was that California Department of Fish and Game (CDFG) personnel suggest these are occasional sightings of rams. The commenters believe that since these are uncollared animals, it is unknown if these ''consistent sightings'' are of one or a few individuals being repeatedly seen or from multiple groups colonizing the area and further indicated that subjective statements such as this by the Service are unacceptable in a final rule.

Our Response: We believe it was necessary and justifiable to explore and consider additional available scientific information because the ewe group delineations from Rubin *et al.* (1998) were intended to document the approximate known distribution of ewe groups at that time and were based on only a few years of data. Using the ewe group delineations as a starting point, we expanded our proposed critical habitat boundary from the ewe group delineations using a much larger set of occurrence data from 1988 to 2008 and information on essential habitat features. See our response to Comment 20 and the ''Criteria Used To Identify Critical Habitat'' section of this final rule for more discussion on the methodology and expanded critical habitat boundary.

In response to the commenters' assertion that we included areas where there are only a handful of sightings, where sighting data are unverifiable, and where bighorn sheep have been recently released, we used the best available scientific data in determining whether the areas in question meet the definition of critical habitat. A captive breeding program has been maintained by the Bighorn Institute since 1984 in

cooperation with CDFG and the Bureau of Land Management (BLM). Captive-bred Peninsular bighorn sheep have been released in the northern Santa Rosa Mountains and the San Jacinto Mountains (Ostermann *et al.* 2001, p. 751) solely into areas currently and historically occupied by the DPS. We recognize that a small percentage of data points considered may be those of released sheep from the captive breeding program; however, we do not suggest that critical habitat can be created by releasing sheep into previously unoccupied areas, as the commenters have asserted. Furthermore, all areas included in the designation contain data points from non-captive-bred sheep. In regard to the commenters' concerns and assertions about the data considered, we are not aware of any ''coerced'' observations in our database. Finally, the recent bighorn sheep sightings near Interstate 8 include multiple ewes and lambs in groups of varying sizes.

Comment 34: Several commenters expressed concern about the draft habitat model mentioned in the proposed rule.

Our Response: We did not use the draft habitat model in our critical habitat delineation for the proposed rule or this final rule. See our response to Comment 19 above.

Comment 35: Two commenters questioned why the Service does not mention in the proposed rule the three current peer reviewed papers on bighorn sheep critical habitat in the northern Peninsular Ranges (i.e., Turner *et al.* 2004; 2005; Ostermann *et al.* 2005). The commenters believe this is incongruous, as the critical habitat delineated in the proposed rule most closely approximates the conclusions of Turner *et al.* (2004).

Our Response: Please see our response to Comment 31 for a discussion of these papers.

Comment 36: Several commenters believe that the proposed revised critical habitat is flawed because it fails to consider historic and recent known Peninsular bighorn sheep locations. One commenter believes the current proposal fails to include and adequately consider the vast majority of known Peninsular bighorn sheep locations prior to the listing of the DPS as endangered in 1998, when the Peninsular bighorn sheep population was at a historic low point and their range was severely constricted. The commenter also believes that omitting historic locations of Peninsular bighorn sheep from critical habitat designation ensures that the distribution of the DPS will remain severely limited in relation to its historic distribution and is contrary to the Act. The commenter suggested that to promote recovery of the DPS, it is essential that Peninsular bighorn sheep be able to re-inhabit their historic range which, given the rapid expansion of human development in the area, will be impossible if sufficient historic habitat is not protected as critical habitat.

Additionally, one commenter believes the critical habitat designation in the proposed rule does not accurately take into account multiple sheep locations recorded since Peninsular bighorn sheep were listed in 1998. The commenter noted that conservation groups have been informed by the Peninsular bighorn sheep recovery team members that the proposed revised critical habitat fails to consider known sheep locations that were made available to the Service by members of the Peninsular bighorn sheep recovery team. The commenter noted their belief that the consequence of this omission (whether purposeful or inadvertent) is that significant areas of currently occupied habitat essential to the DPS are omitted from the proposed rule.

Our Response: Regarding the commenters' concern about a flawed proposal and assertions about historic and known sheep locations not considered in the proposed revised critical habitat designation, we revised our criteria in light of these concerns and similar comments from peer reviewers about the limited dataset used in the proposed rule. The revisions were announced in the NOA published in the **Federal Register** on August 26, 2008 (73 FR 50498). We revised our criteria to consider occurrence data between 2008 (present time) and 1988 (*i.e.*, the time of listing (1998) less 10 years, which is the average lifespan of Peninsular bighorn sheep). Use of a data set that considers a larger time-span of occurrence data accounts for the large fluctuations in Peninsular bighorn sheep population levels over the last two decades. See our response to Comment 8 above.

Regarding the concerns that critical habitat should include the historical range of the DPS, the Service may designate as critical habitat areas outside of the geographical area occupied by a species at the time it was listed (*i.e.*, historical habitat) only when we can demonstrate that those areas are essential for the conservation of the species (section 3(5)(A)(ii) of the Act). Likewise, we can designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to the species' present range would be inadequate to ensure the conservation of the species (50 CFR 424.12(e)). Refer to our response to Comment 7 for further discussion.

We believe that we considered a scope of occurrence data that is reflective of the large population fluctuations of Peninsular bighorn sheep over the past two decades, not just occurrence data from a ''historic low point'' when the range of this DPS was ''severely constricted,'' as the commenter suggests. See our response to Comment 8 above for a detailed discussion.

With regard to the commenter's concerns of the omission of occurrence data previously provided to the Service, we examined the occurrence data considered in the delineation of the proposed revised critical habitat and found that a set of data was missing from our GIS database. Subsequently, we included that occurrence data into our GIS database and double-checked to ensure that all occurrence records submitted to the Service were included for our analyses. Please see our response to Comment 10 above.

Comment 37: One commenter asserted that instead of including the full catalogue of known locations, the Service's proposed revised critical habitat gives greater weight to occurrence data acquired remotely through radio telemetry and GPS. The commenter believes that this nonrandom sampling inevitably biases the assessment of habitat selection by Peninsular bighorn sheep towards more intensively studied groups and that it cannot be construed as representative of habitat use throughout the range.

Our Response: We realize that much of the occurrence data for this DPS is based on data acquired remotely through radio telemetry and GPS. Additionally, we are aware that not all areas within the range of the DPS have been surveyed or studied equally (see our response to Comment 8). For example, the extreme southern portion of the Peninsular Ranges has not been studied as heavily with radio telemetry and GPS collar technology as in the north. Therefore, we use a variety of occurrence data such as photographic evidence, scat data, and field notes collected from Service biologists and other species experts to determine occupied habitat. The designation of critical habitat for Peninsular bighorn sheep is based on the best scientific data available regarding the DPS, including a compilation of data from peer-reviewed, published literature; unpublished or non-peer-reviewed survey and research reports; and opinions of biologists knowledgeable about Peninsular bighorn sheep and their habitat.

Comment 38: One commenter believes the proposed rule is flawed because it uses uncertain and unclear methodology, and another commenter believes the Service failed to consider the best scientific and commercial data available. Additionally, one commenter believes that the failure to provide a clear and transparent methodology prevents independent validation of the proposed changes insofar as scientists and other members of the public are unable to conduct a comprehensive appraisal of the methods and determinations.

Several commenters stated that it is unclear how the Service utilized the PCEs identified in the proposed rule to ascertain whether specific habitat should be categorized as critical. One commenter stated that he was unable to assess how the Service derived the maps of critical habitat, as they contain features not consistent with known topography or known bighorn sheep locations. The commenter further noted that the critical habitat maps in the proposed rule show several lengthy and inexplicable straight line edges of habitat, notably adjacent to Borrego Springs and south of Route 78, which do not conform to the terrain and for which no biological explanation or justification is provided in the proposed rule; they added that bighorn sheep habitat does not naturally occur in such a linear fashion. The commenter had concerns that these boundaries may have been based on political and economic reasoning rather than sound science.

Our Response: As discussed in our responses to Comments 5 and 12 above and the ''Criteria Used To Identify Critical Habitat'' section of this final rule, we delineated critical habitat for the Peninsular bighorn sheep using the following criteria: (1) Areas that contain the PCEs required by the DPS as determined from aerial imagery and GIS data on vegetation, elevation, and slope; (2) areas within the ewe group distribution (*i.e.*, subpopulations) boundaries identified by Rubin *et al.* (1998); (3) areas occupied by the DPS between 2008 (present time) and 1988; and (4) areas where occupancy data points indicate repeated Peninsular bighorn sheep use, but which were not captured within the ewe group distribution boundaries identified by Rubin *et al.* (1998). Application of these criteria results in the determination of the physical and biological features that are essential to the conservation of this DPS, identified as the DPS's PCEs laid out in the appropriate quantity and spatial arrangement essential to the conservation of the DPS. Since the 2007 proposed rule, we revised the ''Criteria Used To Identify Critical Habitat'' section of this rule to provide more detail and a description of the stepwise process used, data considered, habitat features mapped, and method used to delineate critical habitat boundaries. Any boundaries of the proposed critical habitat designation that seem straight in appearance are the result of our criteria used to identify critical habitat and are not the result of political or economic reasoning.

Comment 39: Many commenters stated that the methods were not designed by or made in consultation with members of the Peninsular bighorn sheep recovery team who are most familiar with Peninsular bighorn sheep ecology and habitat and that they diverge significantly from those methods previously used in the Recovery Plan to determine critical habitat for the DPS.

Our Response: In accordance with our policy on peer review published on July 1, 1994 (59 FR 34270), we solicited expert opinions from five knowledgeable individuals (some of which were on the recovery team) with scientific expertise that included familiarity with the DPS, the geographic region in which it occurs, and conservation biology principles. We reviewed all comments received from the peer reviewers and the public for substantive issues and new information regarding the designation of critical habitat for Peninsular bighorn sheep. Furthermore, on May 14, 2007, representatives from the Carlsbad Fish and Wildlife Office and the Regional Office, including the Regional Director, met with recovery team members in part to inform members that we were initiating work to propose revisions to designated critical habitat for the Peninsular bighorn sheep. At that meeting, we requested that recovery team members submit any data they wanted us to consider in our proposed revision. Therefore, we believe that we followed the appropriate guidance and regulations regarding inclusion of expert biologists and others during development of this critical habitat designation. See our response to Comment 11 above.

Comment 40: One commenter believes that the 0.5-mi (0.8-km) buffer zone around slopes equal or greater than 20 percent as described in the Recovery Plan is not necessary, and they expressed support for the Service not to include this buffer in the final critical habitat designation.

Our Response: The areas of the 0.5-mi (0.8-km) zone around 20 percent slopes were included in the Recovery Plan and 2001 final critical habitat designation because they may contain resources for the DPS, and bighorn sheep have on occasion been observed to wander great distances from areas of 20 percent slope. The inclusion of these areas resulted in the addition of large expanses of land to the Recovery Plan area and the 2001 critical habitat designation. However, based on the best scientific information currently available and our criteria used to identify critical habitat, those areas do not meet the definition of critical habitat. As a result, we are not including some areas that were previously designated as critical habitat that are within this 0.5-mi (0.8-km) zone around 20 percent slopes. See our response to Comment 4 above, and the ''Criteria Used To Identify Critical Habitat'' and ''Summary of Changes From the 2001 Critical Habitat Designation To the 2007 Proposed Rule To Revise Critical Habitat'' sections of this final rule for further discussion.

Comment 41: One commenter had concerns about the occurrence data considered in our criteria used to identify critical habitat. The commenter stated that no scientifically based reason is identified for why occurrence data from 1988 to present is used. The commenter followed that Peninsular bighorn sheep occurred in the area for millennia prior to 1988 and were in decline by the 1970's. The commenter was also concerned that our use of occupancy data points was restricted to those indicating repeated Peninsular bighorn sheep use. The commenter stated that given the incomplete records for the location of all bighorn sheep at all times, especially in the southern part of the range, they believe it is unreasonable that only the repeated occupancy data points were used for the designation.

Our Response: As stated in our response to Comment 27 above, we considered areas with occupancy data indicating that they are currently occupied or areas with occupancy data indicating they were occupied at some point between 2008 and 1988 (*i.e.*, the time of listing (1998) less 10 years, which is the average lifespan of Peninsular bighorn sheep). Use of a data set that considers this time span of occurrence data accounts for the large fluctuations in Peninsular bighorn sheep population levels over the last two decades. Because the average lifespan of sheep is approximately 10 years (Botta 2008a, p. 1), areas occupied 10 years prior to listing should be considered occupied at listing. Regarding the concerns over using repeated occupancy data given the incomplete records in the southern part

of the range, we are aware that not all areas within the range of the DPS have been surveyed or studied equally (see our response to Comment 8 above). Regardless, we used the best available scientific information and occurrence data in determining areas occupied by Peninsular bighorn sheep. Please see the ''Criteria Used To Identify Critical Habitat'' section of this rule for more information.

Comment 42: In response to our August 26, 2008, NOA announcing changes to the proposed rule, one commenter wrote; ''The proposed expansion of critical habitat beyond the boundaries, beyond those in the October 2007 critical habitat proposed rule, relies on essentially the same qualitative, opinion-based approach that led to the remand of critical habitat for new rulemaking by the Court (*Agua Caliente* v. *Scarlett*).''

Our Response: The commenter implies that the consent decree and associated remand of critical habitat reflect a court judgment supporting their opinion that the methodology used in delineating critical habitat is inappropriate. However, the court order upholding the approval of the consent decree states, ''It is also well established that in approving a consent decree, the Court does not delve into the merits of the case, but rather limits its review to determine if the settlement is fair, reasonable, and equitable.'' There was no court ''ruling'' that the methodology used to designate the critical habitat boundary was inappropriate. The parties agreed to a settlement to avoid the mutual risks and expenses of protracted litigation. Additionally, issues other than the methodology for delineating critical habitat, such as the economic analysis and tribal sovereignty, played important roles in the case.

Comments Related to the Primary Constituent Elements

Comment 43: One commenter believes that information about how PCEs are quantified, the models used for their application, and the methods applied to point-by-point determination of exclusion from critical habitat are not described in the proposed rule and are arbitrary. The commenter noted that some critical habitat was added in comparison to the critical habitat identified based on essential habitat designation in the Recovery Plan, and much habitat was deleted. The commenter inquired if there is a difference in the PCEs of these two groups (*i.e.*, areas added and areas deleted).

Our Response: In our responses to Comments 5, 12, and 38 and in the ''Criteria Used To Identify Critical Habitat'' section of this final revised rule, we explain how we delineated critical habitat for the Peninsular bighorn sheep. In response to the commenter's inquiry if PCEs were different for areas added than for those deleted from critical habitat, the same set of PCEs for Peninsular bighorn sheep were used in the process of determining areas to include and not include as critical habitat in this designation.

Comment 44: One commenter believes the PCEs set forth an almost unlimited area, confined only by certain upper-level altitudes.

Our Response: Some PCEs may extend beyond the boundary of critical habitat; however, we used ewe group delineations, occurrence data, and habitat features, in addition to the PCEs, to delineate the boundary of critical habitat. We believe that this process has resulted in critical habitat units that contain the PCEs laid out in the appropriate quantity and spatial arrangement essential to the conservation of the DPS. See the ''Criteria Used To Identify Critical Habitat'' section of this final rule for further discussion of the use of PCEs to delineate critical habitat.

Comments Related to DPS Biological Information

Comment 45: Two commenters believe the proposed rule gives a false impression that this population is a unique species or subspecies through weak use of nomenclature and erroneous information. The commenters also stated that in numerous places, the proposed rule refers to this DPS as if it were a subspecies or species. The commenters believe that the proposed rule incorrectly refers to this DPS as ''Peninsular bighorn sheep (*Ovis canadensis nelsoni*)'' in the title and body of the text; however, *Ovis canadensis nelsoni* is the Latin trinomial for ''desert bighorn sheep'' and the term ''Peninsular bighorn sheep'' was the common name for the now synonymized subspecies; *Ovis canadensis cremnobates*. The commenters believe this is a matter of peer-reviewed scientific literature and the proposed rule should use correct terminology and refer to this DPS as desert bighorn sheep (*Ovis canadensis nelsoni*) in the Peninsular Ranges of California (Wehausen and Ramey 1993; Ramey 1995).

Our Response: See our response to Comment 22 above. We are updating the listed entity to a DPS of desert bighorn sheep (*Ovis canadensis nelsoni*). However, we believe it is appropriate to continue to refer to these sheep with the common name Peninsular bighorn sheep within this rule. Additionally, we revised our discussion of the taxonomy of the listed entity in the ''Background'' section of this final rule.

Comment 46: Two commenters believe the proposed critical habitat rule includes overstatements that have little or no basis in fact about the negative impacts of human disturbance on bighorn sheep.

Our Response: Please see our response to Comment 30 above. We do not believe that the discussion in the proposed rule overstates impacts, and we based our discussion on a variety of widely discussed and debated impacts.

Comment 47: Two commenters stated that while it is important to minimize the effects or impacts of any construction project on bighorn sheep habitat, they believe the assertions in the proposed rule about power lines degrading and fragmenting habitat are without factual substantiation. The commenters also stated that once constructed, power lines and support structures are inanimate objects in the environment, and they believe there is no empirical evidence that power lines fragment bighorn sheep habitat or preclude movements under the power line.

Our Response: We agree with the commenters that it is important to minimize the effects or impacts of any construction project on bighorn sheep habitat. Our discussion of power lines in the proposed rule in relation to the threat of disturbance to Peninsular bighorn sheep and their habitat was limited to disturbance that would occur during power line construction. Once constructed, power lines become part of the inanimate landscape and may not impede sheep movement. Contrary to the commenters' assertions, we did not suggest or state in the proposed rule that sheep movement is precluded by power lines once constructed.

Comment 48: Two commenters noted the discussion in the proposed rule of roads fragmenting bighorn sheep habitat in which Epps *et al.* (2005) is cited as ''showing that nuclear genetic diversity of desert bighorn sheep populations was negatively correlated with the presence of human-made barriers (highways), which essentially eliminated dispersal.'' The commenters believe this is incorrect, stating that the study found there was a negative effect with fenced highways (*e.g.*, Interstates 10, 15, and 40; and State Highway 62), not roads in general.

Our Response: In light of the above comment, we revised our discussion of

the effects of roads on Peninsular bighorn sheep and revised our citation of Epps *et al.* (2005) to reflect that the study was of fenced highways, not roads in general. Please see the ''Special Management Considerations or Protection'' section of this final rule.

Comment 49: One commenter believes the proposed critical habitat designation does not take into consideration the effects of either natural or anthropogenic environmental variations and perturbations on the habitat requirements and utilization of Peninsular bighorn sheep, including changes due to development, fire and fire management, exotic species infestations, and climate change. The commenter asserted that the Service should revise and re-analyze the proposed critical habitat designation, taking into account these factors and ensuring that any new designation includes sufficient critical habitat to allow for Peninsular bighorn sheep recovery in light of the changes brought by climate change and other natural and anthropogenic alterations to sheep habitat across its range.

Our Response: As discussed in the ''Special Management Considerations or Protection'' section of this rule, when designating critical habitat, we assessed whether the geographical area occupied at the time of listing contains features that are essential to the conservation of the DPS and that may require special management considerations or protection. We considered the effects of anthropogenic factors (*i.e.*, development and expansion of urban areas, human disturbance related to recreation, construction of roadways and power lines, and mineral extraction and mining operations) on the essential features in the delineation of critical habitat. Additionally, we discussed the issue of climate change in our response to Comment 21 above. At this time, the available scientific evidence regarding potential effects of climate change on Peninsular bighorn sheep habitat does not warrant modification of this critical habitat delineation. We recognize that the threats faced by Peninsular bighorn sheep (including climate change and anthropogenic effects) may change in the future; however, we base our critical habitat designations on the best scientific information available at the time of the designation and do not speculate as to what areas may be found essential if better information becomes available or what areas may become essential over time.

Conservation (*i.e.*, recovery) is achieved when a five-factor analysis performed pursuant to section 4(a)(1) of the Act indicates that current and future threats have been minimized to an extent that the species is no longer threatened with extinction in the foreseeable future. Recovery is a dynamic process requiring adaptive management of threats, and there are many paths to accomplishing recovery of a species. We recognize that recovery efforts will occur both within and outside the boundaries of this final critical habitat designation. However, we believe that conservation of Peninsular bighorn sheep would be achieved if threats to this DPS, as described in the ''Special Management Considerations or Protection'' section of this rule, were reduced or removed due to management and protection of those areas.

Comment 50: One commenter stated that in recent years, climate science has advanced considerably, and the Service should take into account the current predictions for impacts to Peninsular bighorn sheep habitat based on global climate change, which includes dramatic vegetation shifts, significantly altered fire regimes, and effects on precipitation (California Climate Change Center 2006). The commenter believes that each of these climate change elements may adversely impact Peninsular bighorn sheep and its existing habitat. The commenter cited a study by Kelly and Goulden (2008) showing that the average elevation of the dominant plant species increased by 65 meters between the surveys of 1977 and 2006–2007 (a 30-year interval) in the Santa Rosa Mountains; this elevational shift in vegetation is attributable to global climate change. The commenter believes that this significant distributional movement of plant species in a relatively short time period indicates that a very dynamic change is occurring in Peninsular bighorn sheep habitat. The commenter also cited a study by Seeger *et al.* (2007) that concluded a broad consensus among climate models indicates that southwestern North America will become more arid in the 21st century due to global climate change. The commenter believes that as a result of these data, the Service should require additional areas and a robust critical habitat designation to provide refuge for Peninsular bighorn sheep during these changing times.

According to the commenter, a study on the effects of climate change on desert bighorn sheep in California by Epps *et al.* (2004, p. 110) concluded that ''global warming could have serious consequences for desert bighorn sheep, particularly if coupled with decreases in precipitation.'' The commenter further stated that the Epps *et al.* (2004) study found that an average increase of 3.6 degrees Fahrenheit combined with a 12 percent decrease in precipitation increased the likelihood of extinction in desert sheep from 20 percent to 30 percent over the next 60 years. Therefore, the commenter believes that the Service should revise and re-analyze the proposed critical habitat designation, while taking into account these climate change factors, to ensure that any new designation includes sufficient critical habitat that provides for bighorn recovery.

Our Response: We acknowledge that recent data indicate that plant distributional changes may be occurring in the Peninsular Ranges; however, we are unaware of data indicating a shift in the resource use and distribution of sheep in the Peninsular Ranges that would correlate with the change in plant distribution. By considering sheep occurrence data over the past 20 years, we are likely capturing recent shifts in sheep distribution that may have resulted from changes in plant distribution in the Peninsular Ranges. Additionally, we acknowledge that recent climate studies indicate that the Southwestern United States may experience decreases in precipitation and increases in temperature in the coming years. If in the future, data reveal that sheep are experiencing a shift in distribution to areas outside of the critical habitat designation, in association with changing plant distribution resulting from climate change, we may revise the critical habitat designation at that time, subject to available funding and other conservation priorities.

With regard to the citation of Epps *et al.* (2004), we agree that the study concluded that global warming could have serious consequences for desert bighorn sheep populations. Here, we would like to expand on the commenter's shortened description of Epps *et al.* (2004). The modeled 2.0 degree Celsius temperature increase, combined with a 12 percent precipitation decrease, resulted in an average increased extinction risk of 0.21 to 0.30 for desert bighorn sheep across California; however, the modeled climate scenario did not appear to markedly change the extinction probability for sheep occupying the Peninsular Ranges. Epps *et al.* (2004, p. 111) reported a 0–0.2 extinction probability for sheep in the Peninsular Ranges over the next 60 years under two scenarios, one being no further climate change and the other being the 2 degree temperature increase combined with the 12 percent precipitation decrease (see also our response to Comment 21

above). We cannot conclude from Epps *et al.* (2004) that the Peninsular bighorn sheep population will be under a greater risk of extinction from the modeled climate change scenario, and we do not believe it appropriate to revise and reanalyze our critical habitat designation at this time. Critical habitat designations do not signal that habitat outside of the designation is unimportant or may not contribute to recovery in the future. Should additional data become available, we may revise this critical habitat designation, subject to available funding and other conservation priorities.

Comment 51: A number of commenters believe that the proposed revision of critical habitat will have a negative impact on sheep recovery because it excludes habitat that supports processes essential to metapopulation survival. One commenter believes that maintaining and reestablishing habitat connectivity to provide long-term genetic and demographic connection between ewe groups is crucial to recovering the Peninsular bighorn sheep and notes that it is a Priority 1 strategy in the Recovery Plan (Service 2000, p. 113). Several commenters noted that connectivity of habitat, as well as the resulting facilitation of animal movements and gene flow among metapopulations, are recognized as crucial elements for recovery by the Service. Several commenters further stated that they believe the proposed rule fails to identify critical habitat in regions that are confirmed linkages between metapopulation subsegments, based on data and materials provided to the Service by the Bighorn Institute and by bighorn sheep researchers, such as Dr. Esther Rubin. Several commenters believe that the proposal would eliminate critical habitat crucial for maintaining connectivity between Unit 1 and Unit 2A (thereby isolating the Peninsular bighorn sheep population in the San Jacinto Mountains) and between Units 2B and 3 (thereby isolating the Carrizo Canyon population).

One commenter believes that connectivity between bighorn population sub-segments in the Peninsular Ranges has been predicted from preliminary genetic studies and verified by both radio tracking and GPS collar data. The commenter also stated that failure to identify critical habitat between the Northern Santa Rosa Mountains (Unit 2A) and the San Jacinto Mountains (Unit 1) and between the Fish Creek Mountains (Unit 2B) and Coyote Mountains (Unit 3) would result in a failure to apply the protections that the Service is required to afford to a recovering endangered species through the designation of essential habitat and critical habitat. The commenter further believes that such a failure would be especially pronounced in the case of the bighorn sheep, when the Recovery Plan and the best available science indicate that the protection of Peninsular bighorn sheep critical habitat connectivity is a crucial element for recovery to allow for its downlisting or delisting. Another commenter believes that failing to maintain critical habitat in these areas is a serious flaw of the proposed revised critical habitat designation and could jeopardize the persistence of isolated herds and preclude recovery of the Peninsular bighorn sheep.

Our Response: We agree with the commenters that habitat connectivity is important to allow for movement between ewe groups and to maintain genetic variation; however, we do not have occurrence data suggesting specific travel corridors connecting the units discussed by the commenters, and we are unable to identify specific areas containing physical or biological features essential to the conservation of the DPS. Please see our responses to Comments 1, 5, and 7 and the ''Criteria Used To Identify Critical Habitat'' section of this final rule for further discussion.

Comment 52: One commenter indicated that the population of Peninsular bighorn sheep dropped from possibly two million in 1800 to about 1,200 in the 1970s, and then to about 300 at the time of listing in 1998. The commenter believes that limiting Peninsular bighorn sheep habitat to 420,487 ac (170,166 ha) (as stated in the proposed rule) would not protect the entire range of the species.

Our Response: Our understanding is that the commenter may be confusing a possible estimate of all bighorn sheep in North America in 1800 with the Peninsular bighorn sheep DPS. As we stated in our response to Comment 8 above, when rangewide estimates were made in the 1970's, the population was estimated as high as 1,171 in 1974 (Weaver 1974, p. 5). At no point in history was the population of Peninsular bighorn sheep near two million. In this rulemaking, we are designating critical habitat for the Peninsular bighorn sheep and not the entire population of bighorn sheep that exists in various parts of North America. We believe the acreage we are designating in this final rule (376,938 ac (152,542 ha)) is adequate to provide for the conservation of the Peninsular bighorn sheep DPS.

Comments Related to Proposed Exclusions Under Section 4(B)(2) of the Act

Comment 53: One commenter stated that conservation groups disagree with the Service's assertion that it is appropriate to exclude some habitats from critical habitat designation because those areas are encompassed by the Coachella Valley MSHCP and draft Agua Caliente Band of Cahuilla Indians Tribal HCP. The commenter also believes that tribal lands should be retained in critical habitat for many reasons, including that the Tribal HCP is in draft form and not yet approved, nor is it found to adequately conserve the DPS. The commenter asserted that critical habitat should be designated even in areas where these plans may overlap to some degree in order to provide a safety net for habitat conservation for this endangered DPS. Several additional commenters also questioned the proposed exclusion of lands owned by the Agua Caliente Band of Cahuilla Indians Tribe.

One commenter noted that the proposed rule states (as reason for excluding critical habitat encompassed by the Agua Caliente HCP), ''The designation of critical habitat would be expected to adversely impact our working relationship with the Tribe and we believe that Federal regulation through critical habitat designation would be viewed as an unwarranted intrusion into tribal natural resource programs (October 10, 2007, 72 FR 57750).'' The commenter believes this argument is not acceptable because it fails to take the conservation and recovery goals of the Act adequately into account.

Our Response: We believe the exclusion of lands under the Coachella Valley MSHCP and Agua Caliente Band of Cahuilla Indians' lands is appropriate based on the potential impacts associated with designating these areas as critical habitat (see ''Exclusions Under Section 4(b)(2) of the Act'' section of this final rule for a detailed discussion). Section 4(b)(2) of the Act allows the Secretary to exclude areas from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of 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. We believe that critical habitat designation could negatively impact the working relationships and conservation partnerships we have formed with the

Coachella Valley MSHCP permittees, the Tribe, and other private landowners.

This belief is supported by the following statement from the Tribe received during the comment period for the proposed rule, ''Contrary to the requirements of the ESA, Executive Order 13175, and the Secretarial Order, the proposed rule fails to defer to the tribe's own established standards, it discourages the Tribe from developing its own policies, and it intrudes on tribal management of its lands. Designation of critical habitat could delay approval of the 2007 draft Tribal HCP, thus adding to the costs of preparing the Tribal HCP and undermining significant protections for the bighorn sheep. Designation of critical habitat also can be expected to increase the amount of time and financial resources necessary to undertake covered activities described in the Tribal HCP, yet it is unlikely to yield material benefits for the bighorn sheep.''

Additionally, as explained in detail in the ''Application of Section 4(b)(2)—Other Relevant Impacts—Conservation Partnerships'' section of this final rule, we believe these conservation partnerships through the Coachella Valley MSHCP and tribal conservation programs will provide as much or more benefit than consultation under section 7(a)(2) related to the critical habitat designation (the primary benefit of a designation). See our response to Comment 2 above for additional discussion. With regard to the commenter's assertion that this argument is not acceptable because it fails to take the conservation and recovery goals of the Act adequately into account, we take conservation into account when determining areas that meet the definition of critical habitat and in considering the benefits of specifying any particular area as critical habitat. After weighing the benefits of excluding a particular area against the benefits of including such area as critical habitat, the Secretary may exclude the area from critical habitat if he determines that the benefits of exclusion outweigh the benefits of inclusion and that the failure to designate such area as critical habitat will not result in the extinction of the species concerned. Thus, at the end of the analysis under section 4(b)(2) of the Act, we consider whether an exclusion will result in extinction of the species, not whether the exclusion could impact recovery goals.

Comment 54: One commenter stated opposition to the Service's policy of relying on section 4(b)(2) of the Act to exclude habitat that may be covered by management plans or conservation plans under the logic that these areas do not need ''special management'' pursuant to section 3(5)(A) of the Act. The commenter referred to this approach as ''belt and suspenders'' and reminded the Service that the district court of Arizona struck down this approach in *Center for Biological Diversity, et al.* v. *Norton* (D. Ariz. 2003). The commenter believes that all Peninsular bighorn sheep essential habitat needs special management because of the variety of impacts to its habitat (*e.g.*, impacts from development, grazing, fire management activities, and off-road vehicle use). The commenter believes that current or future management actions provided for the Peninsular bighorn sheep or its habitat by management plans or conservation plans are not a reasonable justification for excluding these areas from the protection that a designation of critical habitat provides. The commenter further stated that the Act defines critical habitat as an area that may need special management, and therefore areas that are receiving management under a management plan or conservation plan meet the definition of critical habitat and should not be excluded if the necessary management is being provided under a plan. The commenter concluded that the Service should include in the final critical habitat designation all areas within the boundaries of conservation or management plans for Peninsular bighorn sheep because these areas meet the definition of critical habitat by nature of their need for special management.

Our Response: The commenter appears to be confusing the purposes of sections 3(5)(A) and 4(b)(2) of the Act. Section 3(5)(A) provides the requirements for identifying critical habitat, while section 4(b)(2) directs the Secretary to consider the impacts of designating such areas as critical habitat and provides the Secretary with discretion to exclude particular areas if the benefits of exclusion outweigh the benefits of inclusion. In this final revised rule, we did not state that areas do not meet the definition of critical habitat under 3(5)(A) of the Act because they are being adequately managed. However, we consider the management of particular areas that do meet the definition of critical habitat in our analyses under section 4(b)(2) of the Act.

We explain our criteria for designating critical habitat in our response to Comment 6 above, as well as the ''Criteria Used To Designate Critical Habitat'' section below. We believe our criteria captures all areas that meet the definition of critical habitat under section 3(5)(A) of the Act, in particular those areas that were occupied at the time of listing, and contain the physical and biological features essential to the conservation of the DPS that may require special management considerations or protection. We will focus our response to this comment on our exclusion of lands under section 4(b)(2) of the Act that we determined met the definition of critical habitat under section 3(5)(A) of the Act.

Section 4(b)(2) of the Act states that the Secretary shall designate critical habitat, and make revisions thereto, under subsection (a)(3) on the basis of the best scientific data available and after taking into consideration the economic impact, the impact to national security, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude any 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 and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned. Therefore, consistent with the Act, we must consider the relevant impacts of designating areas that meet the definition of critical habitat using the best available scientific data prior to finalizing a critical habitat designation.

After determining the areas that meet the definition of critical habitat under section 3(5)(A) of the Act as described above, we took into consideration the economic impact, the impact on national security, and other relevant impacts of specifying any particular area as critical habitat for Peninsular bighorn sheep. In this final revised designation, we recognize that designating critical habitat in areas where we have partnerships with landowners that have led to conservation or management of listed species on non-Federal lands has a relevant perceived impact to landowners and a relevant impact to future partnerships and conservation efforts on non-Federal lands. These impacts are described in detail in the ''Conservation Partnerships on Non-Federal Lands'' section below. Based on these relevant impacts, we weighed the benefits of designating areas as critical habitat against the benefits of excluding these areas from the critical habitat designation. Please see the ''Application of Section 4(b)(2) of the Act'' and ''Exclusions Under Section 4(b)(2) of the

Act'' sections of this final revised rule for a detailed discussion of the benefits of excluding lands covered by management plans versus the benefits of including these areas in a critical habitat designation.

Upon weighing the specific benefits of inclusion against specific benefits of exclusion, we determined that the benefits of excluding a portion of Units 1 and 2A outweigh the benefits of including these areas in the final critical habitat designation. When weighing the benefits of including an area in the critical habitat designation, we fully consider the regulatory benefits provided to the species under section 7(a)(2) of the Act based on the statutory difference between a jeopardy analysis and an adverse modification analysis. In this analysis, we consider the recovery standards and the benefits associated with designation. Further, we determined that the exclusion of these areas will not result in extinction of Peninsular bighorn sheep. This determination to exclude areas where the benefits of exclusion outweigh the benefits of inclusion and where we determined that the exclusion will not result in the extinction of the DPS, is consistent with the statutory obligations of the Act. Therefore, we believe these exclusions are in full compliance with the Act.

Comment 55: One commenter stated that the exclusion of areas covered under the Coachella Valley MSHCP has some merit, but notes that the conservation areas in that plan are based on the 2001 critical habitat designation for bighorn sheep, which the commenter asserts incorporated the 0.5-mi. (0.8-km) buffer zone from areas of 20 percent slope as described in the 2000 Recovery Plan. The commenter asserted that this presents a potential inconsistency of conservation boundaries and recommends that the Service take steps to assure that the inappropriate buffer zone is removed from the Coachella Valley MSHCP.

Our Response: It is inappropriate to compare the boundaries of HCP conservation areas to the boundaries of a critical habitat designation. These two areas serve two different functions with regard to the conservation of species and should not be synonymized. Furthermore, critical habitat designations do not signal that habitat outside of the designation is unimportant or may not contribute to recovery. This includes habitat outside of the critical habitat designation but inside Coachella Valley MSHCP modeled Peninsular bighorn sheep habitat.

Comment 56: One commenter supported the exclusion of lands covered by HCPs under section 4(b)(2) of the Act and suggested that the Service exclude from critical habitat lands covered under the East County MHCP.

Our Response: At this time, the HCP for east San Diego County (East County MHCP) is being developed, and a draft plan is not available for public review. We understand the commenters' concern that a designation of critical habitat in areas that may be addressed in the future by the East County MHCP may have a negative effect on entities pursuing the HCP and deter its completion. This concern is consistent with our discussion of conservation partnerships in the ''Exclusions Under Section 4(b)(2) of the Act'' section of this final rule. However, we also recognize that there is a regulatory and recovery benefit to designating critical habitat in areas that are not protected through existing management or conservation plans. Exclusions under section 4(b)(2) of the Act must be considered on a case-by-case basis. Because a draft of the East County MHCP has not been released for public comment or formally evaluated by the Service, it is not clear that this framework plan will adequately address the conservation needs of Peninsular bighorn sheep. Additionally, it is unclear to us at this time which areas will actively develop subarea plans under the East County MHCP. Therefore, we cannot determine that the regulatory and recovery benefits of a critical habitat designation in these areas would be minimized by the measures provided under this future plan, and as such, we did not exclude these lands from critical habitat (portions of Units 2B and 3 in San Diego County). However, if this designation is revised in the future, we will re-evaluate these areas for potential exclusion at that time. We are committed to continue working with all East County MHCP partners to minimize any additional regulatory burden attributable to this critical habitat designation.

Comment 57: One commenter supported the exclusion of lands within the boundaries of the Coachella Valley MSHCP. The commenter suggested that all lands, including lands owned by such entities as the California Department of Fish and Game and the BLM, should be excluded from critical habitat. The commenter further stated that the Service agreed, in signing the Implementing Agreement, that all lands within the boundary of the Coachella Valley MSHCP would be excluded from critical habitat designation. The commenter indicated that failure to exclude these lands will violate the Service's agreement with the cities and signatories to the Implementing Agreement. Another commenter stated that Federal lands within the Coachella Valley MSHCP area owned by the BLM and Forest Service should be excluded from critical habitat designation, and failure to do so could result in unnecessary duplication of regulatory requirements. The commenter further stated that the BLM and Forest Service are participating in the Coachella Valley MSHCP as partners and that each of these agencies will participate in cooperative management and coordination of habitat conservation for covered species.

Our Response: Contrary to the commenter's assertion, Section 14.9 of the Implementing Agreement does not absolutely preclude critical habitat designation, and we disagree with the assertion that the failure to exclude all lands within the Coachella Valley MSHCP boundary will violate the Service's agreement with the signatories to the Implementing Agreement.

Consistent with the Implementing Agreement, we excluded lands under the jurisdiction of the permittees addressed by the Coachella Valley MSHCP in Unit 1 and Unit 2A from this final revised critical habitat designation because the benefits of exclusion outweigh the minimal benefits of inclusion. See our responses to Comments 53 and 55 above, and ''Application of Section 4(b)(2)—Other Relevant Impacts—Conservation Partnerships'' section below for more information regarding why we excluded 38,759 ac (15,685 ha) in Unit 1 and Unit 2A.

Finally, regarding the commenter's concern that Federal lands (owned by the BLM and the Forest Service) within the Coachella Valley MSHCP area should also be excluded from critical habitat designation, we acknowledge that these Federal landowners are Cooperating Agencies of the Coachella Valley MSHCP, and as such, are providing Complementary Conservation according to section 7.3 of the Implementing Agreement. We appreciate and commend the efforts of the BLM and the Forest Service to work with the Coachella Valley MSHCP permittees and to conserve federally listed species on their lands.

The Secretary has the discretion to exclude an area from critical habitat under section 4(b)(2) of the Act after taking into consideration the economic impact, the impact on national security, and any other relevant impact if he determines that the benefits of such exclusion outweigh the benefits of

designating such area as critical habitat, unless he determines that the exclusion would result in the extinction of the species concerned. Based on the record before us, we have elected not to exclude the BLM and Forest Service lands and are designating these lands as critical habitat for the Peninsular bighorn sheep.

Consistent with the ''No Surprises'' assurances provided to the Coachella Valley MSHCP permittees under section 10 of the Act, we do not expect that additional regulatory actions or measures will be required by the BLM or Forest Service due to designation of these lands as critical habitat.

Comments on Lands Designated as Critical Habitat

Comment 58: One commenter believes that if both the area north of Chino Canyon and near Interstate 8 are to be included in the final designation, then the observations used in support of these ''expansions'' should be presented in a table and copies of the original field notes used in support of this observation should be available for public inspection. Two commenters stated that if critical habitat is to be ''expanded,'' the raw data used to make such decisions should be made publicly available and open to inspection and independent validation.

Our Response: All occurrence data and other information used in the delineation of critical habitat for Peninsular bighorn sheep were available to the public during the comment periods and are on file at the Carlsbad Fish and Wildlife Office and available for public inspection (see **FOR FURTHER INFORMATION CONTACT** section of this rule).

Comment 59: Several commenters believe that the proposed critical habitat designation fails to protect habitat essential for Peninsular bighorn sheep recovery. One commenter stated the proposed rule excludes significant areas of habitat essential for the DPS and fails to support the goals called for in the Recovery Plan to promote population growth and protect, acquire, enhance, and restore habitat. Several commenters believe the proposal is contrary to the Recovery Plan as well as inconsistent with promoting the survival and recovery of the DPS. One commenter asserted that if Peninsular bighorn sheep were recovered within the newly proposed critical habitat, it would still be threatened or endangered in a significant portion of its range. The same commenter indicated that for critical habitat to facilitate recovery as it was designed to do, the designation should maintain all current critical habitat and be expanded to include reaches in all other areas identified as having recovery value as identified in the Recovery Plan. The commenter further stated that by proposing to exclude currently designated critical habitat, they believe the Service is failing in its obligation to provide for the recovery of Peninsular bighorn sheep because the value of the critical habitat to the recovery of the DPS will be diminished by these omissions. Finally, another commenter believes the Service should designate as critical habitat sufficient areas to allow for full recovery of Peninsular bighorn sheep.

Our Response: It is important to note that the designation of critical habitat is a different process than the development of a recovery plan. A critical habitat designation is a specific regulatory action that defines specific areas within the geographical area occupied by the species at the time of listing containing physical or biological features essential to the conservation of a species, and areas outside the geographical area occupied by the species at the time of listing that are essential for the conservation of the species. In contrast, a recovery plan is a guidance document developed in cooperation with partners and provides a roadmap with detailed site-specific management actions to help conserve listed species and their ecosystems.

Conservation (i.e., recovery) is defined in section 3 of the Act as the ''use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary.'' In accordance with section 4(a)(1) of the Act, we determine if any species is an endangered or threatened species (or revise its listed status) because of any of the five threat factors identified in the Act. Therefore, conservation, or recovery, is achieved when a five-factor analysis indicates that current and future threats are minimized to an extent that the species is no longer in danger of extinction or likely to become endangered in the foreseeable future. Recovery is a dynamic process requiring adaptive management of threats, and there are many paths to accomplishing recovery of a species. We believe that the lands identified in this rule as meeting the definition of critical habitat are adequate to ensure the conservation of Peninsular bighorn sheep throughout their extant range based on the best available scientific information at this time.

Additionally, we recognize that the designation of critical habitat may not include all of the habitat that may be determined to be necessary for the recovery of Peninsular bighorn sheep, and critical habitat designations do not signal that habitat outside of the designation is unimportant or may not contribute to recovery. Areas outside the final critical habitat designations will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act, as well as regulatory protections afforded by the section 7(a)(2) jeopardy standard and the prohibitions of section 9 of the Act if actions occurring in these areas may affect sheep. See the ''Criteria Used To Identify Critical Habitat,'' ''Summary of Changes From the 2001 Critical Habitat Designation To the 2007 Proposed Rule To Revise Critical Habitat,'' and ''Summary of Changes From the 2007 Proposed Rule To Revise Critical Habitat To This Final Rule To Revise Critical Habitat'' sections of this final rule for more information. Please also see additional discussion regarding recovery plans and conservation of Peninsular bighorn sheep in our responses to Comments 1, 5, 6, 7, and 53 above.

Comment 60: Several commenters stated that the proposed rule calls for eliminating large swaths of essential habitat, including a large area of low-elevation habitat along the eastern slopes of the bighorn's range that is considered by scientists familiar with Peninsular bighorn sheep to be essential habitat for the DPS and requisite for their recovery. Several commenters stated that the proposed critical habitat designation would eliminate alluvial-fan habitat (about 249,000 ac (100,767 ha), as noted by several commenters), much of which is the most important Peninsular bighorn sheep habitat in need of protection due to threats of housing and golf course projects. One commenter believes that not including these areas stands in stark contrast to the discussion in the proposed rule itself which acknowledges that: ''Special management considerations or protection may be needed to alleviate the effects of development on Peninsular bighorn sheep habitat, especially lower elevation habitat, alluvial fans, and areas of possible ewe group connectivity near urban areas (October 10, 2007, 72 FR 57746).'' The same commenter believes that this retraction of habitat ignores management actions currently in place (e.g., restrictions on trails, prohibitions on dogs) to limit disturbance in habitat so that this DPS could re-colonize historically used areas. Several commenters indicated that it is

important to the sheep's recovery that low-elevation alluvial areas remain critical habitat.

Our Response: We agree that low-elevation habitat is important for Peninsular bighorn sheep, and where occurrence data indicated sheep use, we revised our proposed revision of critical habitat to include additional areas, including habitat along the eastern edge of the Santa Rosa Mountains (August 26, 2008, 73 FR 50498). We included low-elevation, low-slope, and alluvial-fan habitat in the designation of critical habitat where the available data support a determination that those areas contain the physical and biological features essential to the conservation of the DPS. See our response to Comment 3 and the ''Criteria Used To Identify Critical Habitat'' and ''Summary of Changes From the 2007 Proposed Rule To Revise Critical Habitat To This Final Rule To Revise Critical Habitat'' sections of this final rule for further discussion of this topic.

Comment 61: One commenter believes that the Service eliminated from critical habitat a number of important water sources for Peninsular bighorn sheep. The commenter asserted that most of the 20 springs and seeps documented by the South Coast Regional Water Quality Control Board within existing Peninsular bighorn sheep habitat in the Santa Rosa and San Jacinto National Monument would not be in the proposed critical habitat designation. These springs include Agua Alta Spring, Cottonwood Spring, Potrero Spring, Agua Bonita Spring, Mesquite Flats Spring, Mad Women Spring, Dos Palmas Spring, Indian Spring, East Fork Spring, Palm Canyon Spring, Palm Canyon Hot Spring, West Fork Creek, Engbacha Spring, Trading Post Spring, and Murray Canyon Spring. The commenter further stated that important perennial streams such as Andreas Creek, West Fork Palm Canyon Creek, Cedar Creek, and Snow Creek have also been eliminated in the proposed designation. Finally, the commenter believes that these water sources should remain in critical habitat due to their present value to bighorn sheep recovery and because they will become increasingly important as climate change alters bighorn habitat and likely reduces available water.

Our Response: During the process of delineating critical habitat, we used water source information from U.S. Geological Survey's National Hydrography Dataset geodatabase (downloaded January 2007). When delineating boundaries of critical habitat, we made sure to include water sources within critical habitat (see ''Criteria Used To Identify Critical Habitat'' section of this rule). We believe we included sufficient water sources within the designation to account for the water needs of Peninsular bighorn sheep. Additionally, the commenter failed to provide: (1) Supporting information that the specific water sources identified in the comment are essential to Peninsular bighorn sheep; (2) data that sheep have been observed and documented to use these water sources; or (3) data indicating that climate change will lead to a reduction in water availability in the Peninsular Ranges. At this point in time, the available scientific evidence does not suggest that the scenario described above by the commenter will result from climate change in the Peninsular Ranges (see our response to Comment 21 above).

Comment 62: One commenter believes that the Service made an erroneous determination that all land in Unit 2A is currently occupied by the DPS. The commenter stated that the proposed critical habitat rule is flawed because it does not justify the inclusion of unoccupied areas, in contravention of both the Act and its implementing regulations. The commenter asserted that the criteria used to identify critical habitat clearly included criteria that leads to the inclusion of unoccupied habitat within the critical habitat delineation. The commenter added that the Service's effort to justify inclusion of unoccupied areas also crosses the line of reasonableness, as identified in *Home Builders* v. *U.S. Fish and Wildlife Service*, 268 F. Supp. 1197, 1214 (E.D. Cal. 200).

The same commenter opposed the delineation of critical habitat on private property in Riverside County, stating that property-specific surveys and reports by experts reflect that the property neither contains necessary PCEs nor exhibits characteristics consistent with critical habitat. The commenter provided biological reports in support of their assertion that the property is not occupied by Peninsular bighorn sheep, does not contain features essential to the conservation of the species, and does not require special management considerations. Finally, the commenter believes that as unoccupied territory, the property is not essential for the conservation of the DPS, and that the Service erroneously determined that the property contains resources essential to the conservation of Peninsular bighorn sheep.

Our Response: All of the critical habitat units (including Unit 2A) are occupied; however, bighorn sheep have large home ranges, and not all areas within their range (or the critical habitat units) will be occupied at all times of the day, season, or year. Additionally, all critical habitat units contain the PCEs in a continuous patch of habitat that allows the population distribution of Peninsular bighorn sheep within the units to shift and move based on the resource needs of the DPS. Consequently, individual survey results for Peninsular bighorn sheep within the critical habitat units may be negative in any given year, even though surveyed areas still contain habitat required for the long-term conservation of the DPS.

With regard to the property specific claims from the commenter, we agree that portions of the property in question do not contain the PCEs for Peninsular bighorn sheep. We also recognize that the majority of occurrence data considered in the delineation of critical habitat (local to the property in question) lies to the west of the property in the Santa Rosa Mountains. For reasons discussed in the above paragraph, negative survey results do not automatically indicate an area is not essential to the DPS. We determined that a portion of the property (approximately 46 ac (19 ha) in the southwest corner of section 7) does meet the definition of critical habitat; however, those 46 ac (19 ha) fall within the Coachella Valley MSHCP area and are excluded from this final designation (see ''Exclusions Under Section 4(b)(2) of the Act'' section of this final rule for a detailed discussion). Other areas in the property, including some areas previously designated as critical habitat in 2001, do not meet the definition of critical habitat and are not included in this designation.

Comment 63: One commenter stated that the revision of critical habitat is justified and overdue. The commenter added that the 2001 designation included areas that did not have documentation of use by Peninsular bighorn sheep and the commenter further suggested that the revision is more definitive of the actual critical habitat needs than was the previous designation.

Our Response: We agree with the commenter that some areas in the 2001 critical habitat designation did not have documented sheep use. Further, we believe the criteria we used to identify critical habitat in this final rule yields a more precise identification of the areas within the geographical area occupied by Peninsular bighorn sheep containing the physical or biological features essential to the conservation of this DPS. Please see the ''Criteria Used To Identify Critical Habitat,'' ''Summary of Changes From the 2001 Critical Habitat

Designation To the 2007 Proposed Rule To Revise Critical Habitat,'' and ''Summary of Changes From the 2007 Proposed Rule To Revise Critical Habitat To This Final Rule To Revise Critical Habitat'' sections of this rule for more detailed discussions.

Comment 64: Two commenters believe that property owned by Cornishe of Bighorn is not Peninsular bighorn sheep habitat, does not meet the definition of critical habitat, and any benefits associated with designating the property as critical habitat are outweighed by the benefits of exclusion. The commenters indicated the property lies within the approved Coachella Valley MSHCP area and should be excluded from designation pursuant to section 4(b)(2) of the Act.

Our Response: Although we disagree with the commenter's assertion that the area in question does not meet the definition of critical habitat, we acknowledge that the property falls within the boundaries of the Coachella Valley MSHCP from which we are excluding all private lands and permittee-owned or controlled lands. As a result, the property in question is excluded from the designation of critical habitat for Peninsular bighorn sheep. Please see the ''Application of Section 4(b)(2)—Other Relevant Impacts—Conservation Partnerships'' section of this final rule for additional discussion of the Coachella Valley MSHCP and the benefits provided to Peninsular bighorn sheep.

Comment 65: In response to our addition of critical habitat to Unit 3 near Interstate 8 in the August 26, 2008, NOA, one commenter stated, ''In the October 2007 Proposed Rule, the USFWS made an appropriate proposal for critical habitat near [Interstate 8] based on currently occupied habitat rather than transiently used areas or potential habitat, both of which were not essential to the recovery of this DPS.'' The commenter believes that there are no data to suggest more than transient use by a handful of bighorn sheep in Unit 3 near Interstate 8 based on his review of information provided by us under the Freedom of Information Act, the historic record, and the commenter's fieldwork in this area. The commenter further stated that there is no evidence that there was ever a permanent bighorn sheep population of 20 to 30 individuals between Interstate 8 and the U.S.-Mexico border. The commenter wrote, ''During my on-the-ground surveys for bighorn sheep in the [Interstate 8] Island and south of it, no bighorn sheep were observed. That the USFWS has only produced speculative 'evidence' of potential bighorn sheep fecal pellets (which could also be from deer) from this relatively small area clearly shows that it is not permanently occupied by bighorn sheep or that more than a few individuals occasionally visit it.'' To illustrate the ''transient'' nature of bighorn sheep use of the Interstate 8 island area, the commenter described finding ungulate tracks and pellet groups (a preliminary DNA test yielded the ND5 sequence, presumably a positive test for bighorn sheep) concentrated around a sand hill with numerous brittlebush (*Encilia farinosa*) plants; six months later the forage was consumed or desiccated, and no additional ungulate sign was present.

Our Response: We determined that the area of concern near Interstate 8 to the U.S.-Mexico border meets the definition of critical habitat and is used more than ''transiently'' by Peninsular bighorn sheep (Botta 2008b, pp. 1–3; Botta 2008c, p. 1; Botta 2009, pp. 1–4; Davenport 2009, pp. 6–7; James 2007, pp. 1–4; Kim 2008, p. 2; Roblek 2008a, p. 1–12; Roblek 2008b, p. 1; Wagner 2007, p. 1; Wagner 2008, pp. 1–3). According to data in our files, there are numerous and repeated sightings of bighorn sheep over several years in the Jacumba Mountains around the area known as Mountain Springs. A recent aerial survey (conducted on November 17, 2008) counted 14 bighorn sheep, including ewes, lambs, yearlings, and rams in the approximately 3,000-acre area of habitat existing between the east- and west-bound lanes of Interstate 8 (Botta 2009, p. 1). An additional 36 bighorn sheep were counted within less than a mile of the area. Bighorn sheep were also counted in the area during the aerial census conducted in 2006 (Botta 2008b, p. 1). Finally, there are multiple sightings in the area reported by other agencies and individuals, some of which have occurred south of Interstate 8 (Davenport 2009, p. 5). The commenter furnishes no objective, repeatable method for deciding that sheep use of the area is ''transient,'' nor does he explain how he quantified the number of sheep in the area.

Approximately 50 bighorn sheep were visually detected in the Interstate 8 island area during the last aerial survey. Additionally, the 2006 aerial survey recorded bighorn sheep in the area, and data have been repeatedly obtained from other agencies and individuals (Davenport 2009, p. 5; James 2007, p. 1; Kim 2007, p. 2). The commenter implies that occasional observations of mule deer in the area justifies concluding that the area ''is not permanently occupied by bighorn sheep.'' However, the commenter furnishes no objective method that is accepted by the scientific community for determining ''permanent'' occupancy. Given that aerial surveys and other site visits have repeatedly recorded bighorn sheep in the area, we consider the area occupied by bighorn sheep, and sightings of mule deer do not confound these direct observations of bighorn.

In regard to the commenter's assertions based on the ground surveys of the Interstate 8 island area, we believe that this type of survey is an unreliable method for estimating bighorn sheep population levels or distribution in the Peninsular Ranges. Although it may be a viable methodology for some locations, the conditions needed for such surveys to be effective do not exist in the Peninsular Ranges. The topography is rugged and vast, and the animals blend with their habitat extremely well, making it easy for an observer to miss bighorn sheep. A group of animals can easily be hidden within the vegetation and topography, and a human (on foot) can only view a small fraction of the area. Furthermore, bighorn sheep are capable of detecting hikers and quickly moving out-of-view before being seen.

The brittlebush scenario described above by the commenter in support of ''transient'' sheep use illustrates how Peninsular bighorn sheep, a relatively large mammal, exist in one of the harshest deserts in North America. They move across the landscape in response to changing resource conditions and need large intact blocks of habitat to recover and persist through time. Although brittlebush is a Peninsular bighorn sheep forage species, it is not the only one present in the area. The scenario described by the commenter actually lends support to the designation of the area as critical habitat.

Comment 66: One commenter stated that the supposed connectivity between the U.S. bighorn sheep population and those in northern Baja has no basis in fact. The commenter added that south of the U.S.-Mexico border, there are only a handful of bighorn sheep sightings within 25 mi (40 km) of the border within the mountains of northern Baja (Sierra Cucapa and Sierra de Juarez), and the commenter believes there is no evidence that these areas constitute more than transient use.

Our Response: Bighorn sheep populations are found along the eastern escarpment of the Peninsular Ranges extending most of the length of the Baja Peninsula. An examination of the topography on both sides of the border reveals the type of steep, rugged topography and vegetation typical of bighorn sheep habitat. We find no

reason to believe that prior to European settlement bighorn sheep failed to move across what is now the international boundary. To our knowledge, the mountainous areas south of the border have not been surveyed since the mid 1990's, and the commenter is correct in pointing out our lack of recent information concerning bighorn sheep distribution and abundance in Baja Norte, Mexico. The mid 1990's corresponded with the low point of bighorn sheep population levels in the United States and bighorn sheep were not regularly observed in some areas where they are currently present. Bighorn sheep in Mexico may have experienced similar population fluctuations and changes in distribution over time.

It has been hypothesized that the bighorn sheep we are seeing around Interstate 8 and south are originating from Carrizo Gorge to the north. Although plausible, none of the observed Peninsular bighorn sheep have been radio-collared or ear-marked, as some are in Carrizo Gorge. Therefore, we cannot be certain of the origin of the sheep observed in the U.S. Jacumba Mountains. Interaction with bighorn sheep in the Peninsular Ranges of Mexico is the only possible route for a natural connection with other bighorn sheep populations for the DPS in the United States. All other routes are precluded in the United States by human developments.

Comment 67: One commenter states that the area south of Interstate 8 is not essential to the recovery of this DPS because the Carrizo subpopulation has already exceeded the minimum population number needed for recovery (approximately fourfold based on California Department of Fish and Game census data).

Our Response: The Recovery Plan for Peninsular bighorn sheep establishes downlisting and delisting criteria that go beyond just attaining a minimum population number, including maintaining at least 25 ewes for 6 and 12 consecutive years, respectively, in each of 9 recovery regions. The goal of maintaining 25 ewes for 6 and 12 years is a minimum, not an upper limit. The designation of critical habitat in the Jacumba Mountains will also contribute to the preservation of habitat connectivity and the ability of Peninsular bighorn sheep to move freely throughout the Peninsular Ranges.

Comment 68: Upon examination of our data used in the delineation process obtained by a commenter through the Freedom of Information Act process, the commenter stated the Service and others assume that tracks and pellets found in the Interstate 8 area are from bighorn sheep rather than mule deer and that ''tracks and pellets of bighorn sheep and mule deer are not reliably distinguishable.''

Our Response: We agree with the commenter that it is not possible to reliably distinguish bighorn sheep and mule deer fecal pellets (by themselves) because there is too much variation. However, in the context of a field situation there is frequently other information present. Most biologists with extensive field experience believe they can identify the respective tracks reliably when there are several sets or the substrate allows for a distinct impression. Additionally, the physical characteristics of the hooves differ; therefore, the tracks are distinguishable by a trained biologist. As previously mentioned, the elevation, topography, and vegetation also provide a context for identification. Given that the vast majority of animal sightings in typical bighorn sheep habitat are Peninsular bighorn sheep, it would be reasonable to conclude that the majority of sign was left by Peninsular bighorn sheep (Botta 2008b, pp. 1–3; Botta 2008c, p. 1; Botta 2009, pp. 1–4; Davenport 2009, pp. 6–7; James 2007, pp. 1–4; Kim 2008, p. 2; Roblek 2008a, pp. 1–12; Roblek 2008b, p. 1; Wagner 2007, p. 1; Wagner 2008, pp. 1–3). As mentioned previously, just because deer are observed near water or at higher elevations in bighorn habitat does preclude the occurrence of Peninsular bighorn sheep in the area.

Comment 69: One commenter stated that the proposed critical habitat near Interstate 8 lacks permanent sources of water (one of the PCEs necessary for bighorn sheep survival). The commenter stated that the area south of Interstate 8 proposed for critical habitat does not have any sources of permanent water that would allow for year-round occupancy by bighorn sheep, referencing correspondence from U.S. Border Patrol Supervisor Palmer as evidence.

The commenter also wrote, ''The area proposed for critical habitat south of [Interstate 8] lacks adequate escape terrain for permanent bighorn sheep occupancy. My preliminary GIS analysis shows that the escape terrain falls far short of the necessary contiguous 15 square kilometers as defined by McKinney *et al.* (2003) that are needed to sustain a bighorn sheep population. The suggestion in the proposed rule that slopes greater than 20 percent somehow qualify as bighorn sheep escape terrain is erroneous.''

Our Response: Upon examination of the correspondence with the Border Patrol that was supplied with the commenter's letter, the correspondence mentions a possible permanent water source south of Interstate 8, approximately one mile from Mountain Springs. Additionally, the correspondence notes that free-standing water was observed in this area from a helicopter on November 17, 2008, and that the surrounding range appears quite dry, which would indicate the water source may be ''permanent.'' Supervisor Palmer confirms that under drought conditions the springs listed by the commenter are typically dry. The Service's surveys throughout the Peninsular Ranges have shown that many water sources that have historically been considered ''permanent'' are now frequently dry. As Supervisor Palmer mentions in his correspondence, many of these water sources fill or flow following rains. After a rain event the duration of time that free-standing water continues to be available is highly variable, and sheep distribution may reflect variations in water persistence. Currently, many water sources throughout the Peninsular Ranges, including those listed in the Jacumba Mountains, are overgrown with salt cedar (*Tamarix* sp.), and in areas where managers have removed this exotic species, free-standing water has often returned.

Regarding the commenter's assertions about escape terrain, our GIS analysis shows there are 3.5 square mi (9 square km) of 40 to 60 percent terrain and 1.4 square mi (3.6 square km) of greater than or equal to 60 percent terrain south of Interstate 8, for a total of 4.9 square mi (12.6 square km). Bighorn sheep in the area use the Interstate 8 island and the area to the north of the west-bound lanes. If these areas are also included, there are 6.2 square mi (16.2 square km) of 40 to 60 percent terrain and 2.3 square mi (6.1 square km) of terrain greater than or equal to 60 percent for a total of 8.6 square mi (22.3 km). McKinney *et al.* (2003, p. 1233) reported that 12 of 14 populations of desert bighorn sheep persisted, and 8 of the 12 persisting populations occupied areas with greater than 5 square mi (13 km) of escape terrain. Therefore, 4 populations (or a third) persisted with greater than 5 square mi (13 km) of escape terrain. Consequently, we question the commenter's use of the word ''necessary.'' McKinney *et al.* (2003, p. 1235) offered the 5.8 square mi (15 km) figure as a general guideline for planning translocations and management interventions. Such a recommendation highlights the importance of escape terrain to bighorn sheep, but the number does not

represent an absolute requirement. McKinney *et al.* (2003, p. 1235) showed that bighorn sheep populations with access to larger areas of escape terrain experienced less variability in population metrics and a greater probability of persistence. In summary, we believe there is adequate escape terrain in the area to support bighorn sheep, as evidenced by their present occurrence and re-colonization of the area, our GIS analysis, and historical accounts.

We were unable to locate anywhere in the proposed rule where areas of 20 percent slope were described as escape terrain for Peninsular bighorn sheep. Therefore, we assume the commenter was confused by the general description of bighorn sheep habitat, which did contain the 20 percent figure. Bighorn regularly use areas of 20 percent slope (and less) to access important resources. Escape terrain is one essential component of Peninsular bighorn sheep habitat, but there are other essential components, as listed in the proposed revised critical habitat designation. In the Peninsular Ranges, Peninsular bighorn sheep have frequented areas far from classically defined escape terrain for extended periods of time. Therefore, only conserving the very steepest areas is not a viable strategy for ensuring the recovery and persistence of bighorn sheep in the Peninsular Ranges.

Comments From Tribes

Comment 70: The Agua Caliente Band of Cahuilla Indians stated that the Service should not have designated any of their lands as critical habitat in the proposed rule in light of the relationship between the United States and the Tribe as set forth, *inter alia,* in Executive Order 13175 and Secretarial Order 3206 and because (1) The reservation falls within the Tribe's sovereign jurisdiction, and (2) the land within the reservation does not require special management considerations or protection since it has been and will continue to be conserved pursuant to the Tribal HCP. The Tribe also believes that the benefits of excluding all tribal lands within the Tribal HCP Plan Area from Units 1 and 2A outweigh the benefits of including these lands as critical habitat for the bighorn sheep based on the balancing requirement of section 4(b)(2) of the Act. 16 U.S.C. 1533(b)(2).

Our Response: In the proposed rule, we did not finalize any designation of Agua Caliente Band of Cahuilla Indians tribal lands as critical habitat, but proposed them as critical habitat, as required by our regulations at 50 CFR 424.19, and concurrently proposed those lands for exclusion from critical habitat under section 4(b)(2) of the Act. We believe the conservation benefits for Peninsular bighorn sheep that would occur as a result of designating the 4,790 ac (1,938 ha) in Units 1 and 2A as critical habitat (*e.g.,* protection afforded through the section 7(a)(2) consultation process) are minimal compared to the overall conservation benefits for the DPS that have been realized through the implementation of the 2001 Tribal Conservation Strategy and that will continue to be realized through the Tribe's ongoing commitment to conserve Peninsular bighorn sheep habitat.

Furthermore, the benefits to recovery of inclusion of these lands primarily have already been met through the identification of those areas most important to the DPS. By excluding these lands from the designation, we are honoring our responsibility to work with the Tribe on a government-to-government basis and acknowledging the Tribe's management of its resources, and helping to preserve our ongoing partnerships with the Tribe and to encourage new partnerships with other Tribes, landowners, and jurisdictions. Those partnerships (and the landscape-level, multiple-species conservation planning efforts they promote) are critical for the conservation of Peninsular bighorn sheep. Designating critical habitat on non-Federal lands within the Tribe's 2001 Tribal Conservation Strategy and 2007 draft Tribal HCP boundary could have a detrimental effect on our partnership and could be a significant disincentive to the establishment of future partnerships and HCPs with other Tribes and landowners. Therefore, we are excluding all Agua Caliente Band of Cahuilla Indians tribal lands from the final designation of critical habitat for Peninsular bighorn sheep. See our response to Comment 2 above and the ''Application of Section 4(b)(2)—Other Relevant Impacts—Conservation Partnerships'' section of this final rule.

Comment 71: The Agua Caliente Band of Cahuilla Indians believes that the proposed rule fails to exclude from designation all tribal lands lying inside portions of proposed Unit 2A (North Santa Rosa Mountains). The Tribe stated these off-reservation tribal lands fall within the geographic region covered by the Tribal HCP, and the Tribal HCP includes conservation measures and actions that will be of greater benefit to the bighorn sheep than designation and piecemeal section 7 consultations. The Tribe suggested that the benefits of excluding these off-reservation tribal lands from designation in Unit 2A outweigh the benefits of designation, thus satisfying the requirements for exclusion pursuant to section 4(b)(2) of the Act. The Tribe also believes that contrary to the requirements of the Act, Executive Order 13175, and the Secretarial Order, the proposed rule fails to defer to the Tribe's own established standards, thus discouraging the Tribe from developing its own policies and intruding on tribal management of its lands. Additionally, the Tribe believes that designation of critical habitat could delay approval of the Tribal HCP, thus adding to the costs of preparing the Tribal HCP and undermining significant protections for the bighorn sheep. Finally, the Tribe believes that designation of critical habitat can be expected to increase the amount of time and financial resources necessary to undertake covered activities described in the Tribal HCP, yet it is unlikely to yield material benefits for the bighorn sheep.

Our Response: The Agua Caliente Band of Cahuilla Indians is correct in that we did not propose their lands within Unit 2A for exclusion. At the time of the proposed rule, we were not aware of tribal ownership in this unit. In light of the above comment, we re-analyzed our ownership data for Unit 2A and found that tribal land exists within that unit. In the NOA published in the **Federal Register** on August 26, 2008 (73 FR 50498), we revised our proposed exclusion to include approximately 467 ac (189 ha) of tribal land in Unit 2A. Furthermore, we are excluding all tribal lands from the final revised designation of critical habitat for Peninsular bighorn sheep as stated above in our responses to Comments 2 and 70, and the ''Application of Section 4(b)(2)—Other Relevant Impacts—Conservation Partnerships'' section of this final rule.

Comment 72: The Agua Caliente Band of Cahuilla Indians agrees with the Service insofar as we state that ''fish, wildlife, and other natural resources on Tribal lands are better managed under Tribal authorities, policies, and programs than through Federal regulation * * *.'' But the Tribe does not believe that it is appropriate to limit the preceding statement by adding the final phrase ''wherever possible and practicable.'' The Tribe stated that tribal sovereignty goes further than precluding Federal regulation of reservation lands ''wherever possible and practicable.''

Our Response: We believe our position is consistent with the Act and all applicable policies and guidance (*i.e.,* Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the

Endangered Species Act'' (June 5, 1997); the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951); Executive Order 13175; and the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2)). There were situations in the past, and there will continue to be situations in the future, where it is necessary to designate critical habitat on tribal lands. The Service is not prohibited from designating critical habitat on tribal lands and can only exclude lands meeting the definition of critical habitat from designation when we can demonstrate that the benefits of exclusion outweigh the benefits of inclusion of such lands and that the exclusion will not result in the extinction of the species concerned. By caveating our position with the statement ''wherever possible and practicable,'' we recognize that there may be situations where we must designate critical habitat on tribal lands. We believe that, in most cases, designation of tribal lands as critical habitat provides very little additional benefit to threatened and endangered species. Conversely, such designation is often viewed by tribes as unwarranted and an unwanted intrusion into tribal self governance, thus compromising the government-to-government relationship essential to achieving our mutual goals of managing for healthy ecosystems upon which the viability of threatened and endangered species populations depend.

Comments Related to Critical Habitat Designation Process

Comment 73: One commenter believes the public hearing was not adequately publicized, as there was no notice in a local newspaper.

Our Response: Public involvement in the activities and proposals of the Service is very important to us. We made every effort to ensure that the public was adequately apprised of Peninsular bighorn sheep hearings at least 15 days prior to the hearings occurring. First, in our **Federal Register** notice published on August 26, 2008 (73 FR 50498), we provided information about the date, time, and location of the public hearings for the Peninsular bighorn sheep proposed revision of critical habitat. Second, we issued a press release on August 25, 2008, which was distributed to more than 100 stakeholders, including elected officials, local governments, species experts, interested members of the public, and all local media outlets. Third, we posted the press release and other information about the Peninsular bighorn sheep on the Service's Region 8 Web site. Fourth, a copy of the August 26, 2008, **Federal Register** notice was posted on the *http://www.regulations.gov* Web site. Finally, announcements of the public hearings on September 10, 2008, were carried in news stories that published in the Riverside Press-Enterprise on August 28, 2008, the San Diego Union-Tribune on August 29, 2008, and the Los Angeles Times on September 2, 2008. Although legal notices were not specifically published in local newspapers, such notices are not required and we believe that adequate notice of the hearings was provided to the public in a timely manner through a variety of conduits.

Comments From Other Federal Agencies

Comment 74: The California Desert District of the BLM stated that the proposed changes to critical habitat affect BLM management of public lands within the jurisdiction of their El Centro and Palm Springs/South Coast Field Offices. The BLM stated they have no objections to the revised boundaries of critical habitat in the Palm Springs/South Coast Field Office and added that they support the use of the best available scientific information when designating regulatory boundaries such as for critical habitat pursuant to the Act. The BLM stated that in the El Centro Field Office jurisdiction, they agree that the revised boundaries near the Coyote Mountains that exclude the Ocotillo aggregate mining operations better reflect the actual use areas for bighorn sheep. Additionally, the BLM stated that in the Fish Creek Mountains the boundary appears to be drawn through the existing mining pit of U.S. Gypsum Corporation, which is partially permitted by BLM. The BLM requested that revisions be made at this location to exclude the mine.

Our Response: We determined that BLM lands in the Fish Creek Mountains contain physical or biological features essential to the conservation of Peninsular bighorn sheep, and therefore, meet the definition of critical habitat (see ''Criteria Used To Identify Critical Habitat'' section below). Occurrence data used in the delineation of critical habitat indicates that areas adjacent to the mining pit are utilized by Peninsular bighorn sheep. However, we recognize that lands within active mining pits do not generally provide suitable habitat or suitable conditions for this DPS. Thus, we are not designating lands in the Fish Creek Mountains within the existing active mining pit of U.S. Gypsum Corporation. When determining the critical habitat boundaries within this final revised rule, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, active mining pits, and other structures because such lands lack essential features for the Peninsular bighorn sheep. 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 lands. Any such structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this final revised critical habitat are excluded by text in this final rule. Therefore, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action may affect adjacent critical habitat.

Comments From State Agencies

Comment 75: Two commenters from the California Department of Parks and Recreation stated that the proposed critical habitat does not include approximately 249,000 ac (100,767 ha) of alluvial-fan habitat previously designated as critical habitat, much of which is the most important sheep habitat in the range in need of protection due to threats of housing development and golf course projects.

Our Response: As discussed in our responses to Comments 3 and 60 above, we agree that low-elevation habitat is important for Peninsular bighorn sheep. We acknowledge there are some low-elevation areas included in the 2001 designation of critical habitat that are not included this final designation. Although we received limited new information during the public comment period indicating sheep use of low-elevation and low-slope habitat, the available data do not indicate that the areas of low-elevation and low-slope habitat not included in this designation meet the definition of critical habitat. Please see the ''Criteria Used To Identify Critical Habitat,'' the ''Summary of Changes From the 2001 Critical Habitat Designation to the 2007 Proposed Rule To Revise Critical Habitat,'' and the ''Summary of Changes From the 2007 Proposed Rule To Revise Critical Habitat to This Final Rule To Revise Critical Habitat'' sections of this final rule for further discussion of this topic.

Comment 76: Two commenters from the California Department of Parks and Recreation indicated that the proposed critical habitat delineation proposes to create two areas of metapopulation fragmentation: one isolating the San

Jacinto Mountains (Unit 1) and the other isolating the Carrizo Canyon (Unit 3) population in the south end of the range.

Our Response: As discussed in our responses to Comments 1, 6, and 51, the best scientific data currently available do not support a determination that specific areas containing the physical or biological features essential to the conservation of the Peninsular bighorn sheep connect Units 1 and 3 to the remainder of the range. Please see the ''Criteria Used To Identify Critical Habitat'' and ''Summary of Changes From the 2001 Critical Habitat Designation to the 2007 Proposed Rule To Revise Critical Habitat'' sections of this final rule for further discussion.

Comment 77: Two commenters from the California Department of Parks and Recreation expressed concern that the proposed revision to critical habitat was completed without the consultation and support of the Peninsular bighorn sheep recovery team or any other group of biologists with in-depth knowledge of bighorn sheep or Peninsular bighorn sheep habitat.

Our Response: We followed the appropriate guidance and regulations regarding inclusion of expert biologists and others during development of this critical habitat designation. In accordance with our policy on peer review, published on July 1, 1994 (59 FR 34270), we solicited expert opinions from five knowledgeable individuals (some of which were on the recovery team) with scientific expertise that included familiarity with the DPS, the geographic region in which it occurs, and conservation biology principles. Furthermore, on May 14, 2007, representatives from the Carlsbad Fish and Wildlife Office and the Regional Office, including the Regional Director, met with recovery team members in part to inform members that we were initiating work to propose revisions to designated critical habitat for Peninsular bighorn sheep. At that meeting, we requested that recovery team members submit any data they wanted us to consider in our proposed revision. For further discussion of this topic, see our responses to Comments 11 and 39 above.

Comments Related to the Draft Economic Analysis

Comment 78: One commenter asserts that in assessing the costs of the designation of critical habitat for Peninsular bighorn sheep the Service must look only at the incremental cost of the proposed designation and must not consider the costs attributable to listing alone when considering exclusion of habitat areas.

Our Response: The U.S. Office of Management and Budget's (OMB) guidelines for conducting economic analysis of regulations direct Federal agencies to measure the costs of a regulatory action against a baseline, which it defines as the ''best assessment of the way the world would look absent the proposed action.'' In other words, the baseline includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat. Impacts that are incremental to that baseline (*i.e.*, occurring over and above existing constraints) are attributable to the proposed regulation. Significant debate has occurred regarding whether assessing the impacts of the Service's proposed regulations using this baseline approach is appropriate in the context of critical habitat designations.

In order to address the divergent opinions of the courts and to provide the most complete information to decision-makers, the economic analysis reports both: (a) The baseline impacts of Peninsular bighorn sheep conservation from protections afforded the DPS absent critical habitat designation; and (b) the estimated incremental impacts precipitated specifically by the designation of critical habitat for the species. Summed, these two types of impacts comprise the fully co-extensive impacts of Peninsular bighorn sheep conservation in areas considered for critical habitat designation. When considering the economic impacts of a designation under section 4(b)(2) of the Act, we consider only the incremental economic impacts of the proposed designation.

Incremental effects of critical habitat designation are determined using the Service's December 9, 2004, interim guidance on ''Application of the 'Destruction or Adverse Modification' Standard Under Section 7(a)(2) of the Endangered Species Act'' and information regarding what potential consultations and project modifications may potentially occur as a result of critical habitat designation over and above those associated with the listing. In *Gifford Pinchot Task Force* v. *United States Fish and Wildlife Service*, the Ninth Circuit invalidated the Service's regulation defining destruction or adverse modification of critical habitat, and the Service no longer relies 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, the Service determines 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. A detailed description of the methodology used to define baseline and incremental impacts is provided in the ''Economic Analysis'' section of this final rule and the DEA.

Comment 79: One commenter stated that the Service should consider both the revised designation of critical habitat and possible economic exclusions together. Additionally, the commenter asserted that it is very difficult to comment on the impact of the critical habitat designation, either individually or globally, without an understanding of which properties will ultimately be included in critical habitat. The commenter requested that the Service provide an adequate comment period for review of the economic exclusions.

Our Response: We are not excluding any areas from this final critical habitat rule based on economics. Furthermore, we fully articulated our proposed critical habitat designation and presented this proposal to the public in the October 10, 2007, proposed rule (73 FR 57740) and the August 26, 2008 NOA (73 FR 50498). We opened two comment periods to allow the public an adequate opportunity to review and comment on the proposed critical habitat designation and the DEA. The first comment period opened October 10, 2007 (72 FR 57740), and closed December 10, 2007, and was associated with the publication of the proposed revised rule. The second comment period opened August 26, 2008 (73 FR 50498), and closed October 27, 2008, and was associated with the notice of availability of the DEA, announcement of revisions to the proposed critical habitat, and a notice of public hearings that were held September 10, 2008.

Comment 80: Several commenters suggested that if economics are considered in the critical habitat designation, then the Service should consider the economic impact to desert tourism if the Peninsular bighorn sheep become extinct. Another commenter suggested that the economic impacts of potential extinction or reduction in population size be considered as they relate to the tourism industry.

Our Response: The commenters' suggestions are outside the realm of what we are required to consider when evaluating the economic effects of a critical habitat designation. The economic analysis for Peninsular bighorn sheep calculates baseline costs associated with listing and the

incremental costs of critical habitat designation, not the economic effects of a potential population decrease or extinction.

Summary of Changes From the 2001 Critical Habitat Designation to the 2007 Proposed Rule To Revise Critical Habitat

The areas identified in the October 10, 2007 (72 FR 57740), proposed revision constitute a revision of the areas designated as critical habitat for Peninsular bighorn sheep on February 1, 2001 (66 FR 8650). The main differences in areas we designated as critical habitat for the Peninsular bighorn sheep in 2001 and areas we proposed as critical habitat in the 2007 proposed revision include the following:

(1) We re-evaluated and revised the PCEs in light of the Alameda whipsnake court case (*Homebuilder's Ass'n of Northern Cal.* v. *U.S. Fish and Wildlife Service*, 268 F. Supp.2d 1197 (E.D. Cal. 2003)) and other relevant case law, and followed current Service guidelines and policies. The PCEs differ from those in the 2001 critical habitat rule in that they are reorganized into five separate PCEs for clarity. Furthermore, we added specific information on elevational range, plant species used for foraging, and range of slopes required by the DPS. This additional specificity was gained by evaluating the Recovery Plan and examining all recent sheep information, including data from radio collars and GPS collars providing precision to the identification of habitats used and preferred by Peninsular bighorn sheep. Applying the more precise PCEs to the mountain ranges inhabited by Peninsular bighorn sheep allowed us to fine tune the proposed revision to those areas containing preferred habitat for sheep use and remove those areas that we have determined, based on the best scientific data currently available, do not meet the definition of critical habitat for the Peninsular bighorn sheep. For example, the 2001 final rule included high elevation (above 4,600 ft (1,402 m)), densely vegetated, and forested habitat that we now believe to be inappropriate for sheep use in the San Jacinto, Santa Rosa, and Vallecito Mountains, based on the new information.

(2) The 2001 final rule used a generalized methodology for delineating critical habitat that resulted in the designation of one critical habitat unit for Peninsular bighorn sheep totaling 844,897 ac (341,919 ha) (February 1, 2001, 66 FR 8650). The proposed revision was based on a more specific methodology utilizing more current and robust data that resulted in three critical habitat units including approximately 384,410 ac (155,564 ha) of land in Riverside, San Diego, and Imperial Counties, California, a reduction of 460,487 ac (186,355 ha) from the 2001 final rule (February 1, 2001, 66 FR 8650). The areas included in the proposed revised critical habitat were almost entirely within the boundaries of the existing (2001) critical habitat. Approximately 72 ac (29 ha) of BLM land in Unit 3 were outside the boundary of the 2001 critical habitat.

The reduction in total area from the 2001 final critical habitat designation was primarily the result of using the revised criteria to delineate critical habitat. In our 2001 final critical habitat designation, we delineated critical habitat based on the methodology used in the Recovery Plan for Bighorn Sheep in the Peninsular Ranges, California (Service 2000). In developing the 2007 proposed revision, we reexamined the methodology outlined in the 2000 Recovery Plan and the 2001 critical habitat designation, and updated that methodology based on the best available information (including more specific habitat information and additional occurrence data) to identify areas that meet the definition of critical habitat (see ''Criteria Used To Identify Critical Habitat'' section). Upon reevaluation of the data available at the time of the 2001 critical habitat designation, data obtained since, and our revised methodology for delineating critical habitat, we have determined that some areas (*e.g.*, potential connectivity areas and low-elevation areas, and other expanses described below) included in the 2001 designation do not meet the definition of critical habitat because the available data we have for these specific areas do not support such a determination.

Potential connectivity areas were included in the 2001 designation because they were thought to allow sheep movement between ewe subpopulations and maintain genetic diversity in the metapopulation; however, the 2001 designation was overly broad and generalized, and the current available data do not support a determination that specific areas between Units 1 and 2A and Units 2B and 3 contain the physical or biological features essential to the conservation of the DPS. We have radio collar data of two individual rams indicating the rams spent time in both Unit 1 and Unit 2A and that both animals must have traveled through intervening habitat between these units. One ram traveled between the units multiple times between 1993–1996, while the other ram traveled between the units once in 2003. However, we do not have radio collar data of these rams in the intervening habitat. These data suggest that when traveling, the rams travel quickly and likely do not spend much time in the intervening habitat, otherwise animals likely would have been detected in those areas. The available data showing rams traveling in the intervening habitat between Unit 1 and Unit 2A do not support the delineation of a migratory route between these units. Likewise, the available data do not support the accurate identification of specific areas used by the Peninsular bighorn sheep as potential corridors connecting Unit 3 to the remainder of the range.

Based on the current available scientific data, we have determined that some areas of low-elevation habitat, including alluvial fans and washes, that were included in the 2001 designation because of the seasonal abundance of potential resources in those areas do not meet the definition of critical habitat. Based on our evaluation of the available information indicating a lack of current or historical Peninsular bighorn sheep use in these areas, we have determined that these specific areas are not essential for the conservation of the DPS (see ''Criteria Used to Identify Critical Habitat'' section). Additionally, like our methodology for the 2007 proposed revision, the 2001 methodology used a minimum slope criterion of 20 percent to delineate essential habitat; however, a 0.5 mi (0.8 km) buffer was included around slopes of greater than or equal to 20 percent (Service 2000, p. 158). This contributed to the inclusion of expanses of unoccupied low-elevation habitat in the 2001 designation that we have determined are not essential for the conservation of the DPS (see ''Criteria Used to Identify Critical Habitat'' section). The 2007 proposed rule did not include a buffer zone area around habitat determined to be essential to the DPS.

Little consideration was given to the distribution of occurrence data and specific ewe group distributions in the methodology used to delineate the 2001 critical habitat boundary. This resulted in expanses of critical habitat (in addition to the potential connectivity areas and low-elevation habitat) in the 2001 designation in which we had little to no occurrence records that would indicate sheep use those areas. For example, we had occupancy data dating back to 1940, yet extensive areas along the length of the Peninsular Ranges within the boundary of the 2001 designation contained little to no data that would support those areas as meeting the definition of critical habitat.

In general, some of the main areas previously designated as critical habitat that we have now determined are not essential for the conservation of the DPS include the following: The northern and western most portions of the San Jacinto Mountains; the western and eastern most portions of the Santa Rosa Mountains; and portions of the Pinyon, Sawtooth, In-Ko-Pah, Fish Creek, and Coyote mountains.

The Recovery Plan generally used two criteria, the presence of escape terrain and unobstructed view, as key habitat requirements when delineating boundaries of the areas essential to Peninsular bighorn sheep with little consideration of the presence of the PCEs required by this DPS. In the 2007 proposed revision, we considered all five of the revised PCEs in delineating proposed revised critical habitat boundaries, which results in a more precise determination of essential habitat (see ''Primary Constituent Elements for the Peninsular Bighorn Sheep'' and ''Criteria Used to Identify Critical Habitat'' sections). Because a detailed vegetation map was not available at the time of the Recovery Plan, a team of biologists flew the entire western boundary in a helicopter and visually assessed vegetation associations (Service 2000, p. 159). The western boundary was determined by consensus and recorded by GPS from the helicopter position every ten seconds (Service 2000, p. 159). A 0.5 mi (0.8 km) buffer was added to this line to account for the advent of fire suppression (Service 2000, p. 160). This method delineated a general approximation of Peninsular bighorn sheep habitat and resulted in an overbroad designation of critical habitat in these areas. In determining the western boundary of essential habitat in the 2007 proposed revision, we used recent vegetation maps that cover the entire range of the Peninsular bighorn sheep, along with detailed recent aerial photography, expert opinion, and sheep use data to delineate boundaries, which we determined more precisely captures the areas on which are found the physical or biological features essential to the DPS.

In summary, the recent data and methodology considered and used in the 2007 proposed revision and this final rule more accurately delineates the specific areas of Peninsular bighorn sheep habitat that meet the definition of critical habitat. The methods used in the 2000 Recovery Plan and the 2001 critical habitat designation resulted in a more inclusive delineation of essential habitat due to limited data. Application of the revised methodology, based on the best available information, identified 460,487 ac (186,355 ha) of previously designated critical habitat that do not meet the definition of critical habitat, and therefore we are not including these areas in this final revised critical habitat designation.

(3) Approximately 29,924 ac (12,110 ha) of designated critical habitat were vacated in the July 31, 2006, consent decree. A portion of those acres were within the 2007 proposed revised critical habitat. Of the 13,213 ac (5,347 ha) of vacated Agua Caliente Band of Cahuilla Indians tribal lands, approximately 4,512 ac (1,826 ha) were included in the 2007 proposed revision. However, in our proposed revision we proposed to exclude all tribal lands from the final designation. Approximately 16,691 ac (6,756 ha) of mining lands at Ocotillo Mineral Material Sites and Fish Canyon Quarry property were also vacated. In the 2007 proposed revision to critical habitat, we included roughly 50 percent of those vacated lands; specifically, we included lands along the northernmost portion of the Ocotillo Mineral Material Sites property and the middle to southern portion of the Fish Canyon Quarry property. Both of these mining properties contained actively mined lands, but also contained areas in which we have recent documented use by Peninsular bighorn sheep and areas that meet the criteria used to identify critical habitat. The Desert Riders lands vacated in the consent decree (approximately 20 ac (8 ha)) were not included in the proposed revision.

Our 2001 final critical habitat rule included the statement that ''* * * we are not aware of any information suggesting that particular areas within designated critical habitat are currently unsuitable or unused over the generational timeframe needed for the long-term conservation of bighorn sheep in the Peninsular Ranges'' (February 1, 2001, 66 FR 8655). However, we reconsidered the information that was available to us at the time of the 2001 designation in light of additional information currently available to us. We determined that the methodology used in the 2007 proposed revision (and this final rule), which utilized the best available information, provides a more accurate delineation of the specific areas that meet the definition of critical habitat for the Peninsular bighorn sheep than that relied upon in the 2001 critical habitat designation (see ''Criteria Used to Identify Critical Habitat'' section).

Table 1 below outlines the changes in areas in each unit between the 2001 final critical habitat rule, the 2007 proposed revised critical habitat rule, and this 2009 final revised critical habitat rule for Peninsular bighorn sheep. Table 2 provides the approximate area determined to meet the definition of critical habitat for Peninsular bighorn sheep in the 2007 proposed rule, areas added to the proposed rule announced in the NOA published in the **Federal Register** on August 26, 2008, areas excluded from the final revised critical habitat designation under section 4(b)(2) of the Act (please see ''Exclusions Under Section 4(b)(2) of the Act'' for a detailed discussion), and areas being designated as final revised critical habitat.

TABLE 1—CHANGES BETWEEN THE FEBRUARY 1, 2001 (66 FR 8650), CRITICAL HABITAT DESIGNATION, THE OCTOBER 10, 2007 (72 FR 57740), PROPOSED DESIGNATION, AND THIS FINAL REVISED DESIGNATION.

Critical habitat unit in this final rule	County	2001 designation of critical habitat (66 FR 8650) and ac (ha)	2007 Proposed revision to the critical habitat designation (72 FR 57740) and ac (ha)	2009 Final revised critical habitat designation and ac (ha)
1. San Jacinto Mts.	Riverside	Included as part of one large unit; 844,897 ac (341,919 ha).	Included as Unit 1; 15,273 ac (6,180 ha).	Included as Unit 1; 4,597 ac (1,860 ha).
2A. N. Santa Rosa Mts.	Riverside	.....do	Included as Unit 2A; 74,998 ac (30,350 ha).	Included as Unit 2A; 45,100 ac (18,251 ha).
2B. S. Santa Rosa Mts. south to Vallecito Mts.	Riverside, San Diego, Imperial.	.....do	Included as Unit 2B; 226,211 ac (91,545 ha).	Included as Unit 2B; 248,021 ac (100,371 ha).

TABLE 1—CHANGES BETWEEN THE FEBRUARY 1, 2001 (66 FR 8650), CRITICAL HABITAT DESIGNATION, THE OCTOBER 10, 2007 (72 FR 57740), PROPOSED DESIGNATION, AND THIS FINAL REVISED DESIGNATION.

Critical habitat unit in this final rule	County	2001 designation of critical habitat (66 FR 8650) and ac (ha)	2007 Proposed revision to the critical habitat designation (72 FR 57740) and ac (ha)	2009 Final revised critical habitat designation and ac (ha)
3. Carrizo Canyon	San Diego, Imperial	do	Included as Unit 3; 67,928 ac (27,489 ha).	Included as Unit 3; 79,220 ac (32,059 ha).
Totals		844,897 ac (341,919 ha)	384,410 ac (155,564 ha)	376,938 ac. (152,542 ha).

Summary of Changes From the 2007 Proposed Rule To Revise Critical Habitat to This Final Rule To Revise Critical Habitat

The areas identified in this final revised rule constitute a revision of the areas we proposed to designate as critical habitat for Peninsular bighorn sheep on October 10, 2007 (72 FR 57740). In light of substantial public comments and a revision of our criteria used to identify critical habitat, we reevaluated and included in this final rule three general areas that were not included in the 2007 proposed rule. These additions (described below) were announced in the NOA published in the **Federal Register** on August 26, 2008, (73 FR 50498), and include the following: Areas along the eastern edge of the Santa Rosa Mountains in Units 2A and 2B; parts of the San Ysidro, Pinyon, and Vallecito Mountains in Unit 2B; and a portion of the Jacumba Mountains in Unit 3 (approximately 36,240 ac (14,666 ha)). The reduction in total area from the 2007 proposed critical habitat designation is primarily the result of habitat exclusions under section 4(b)(2) of the Act (described below). The main differences between the 2007 proposed critical habitat rule and this final rule include the following:

(1) During the first and second comment periods for the proposed rule, we received significant comments from the public, including biologists familiar with Peninsular bighorn sheep, which led us to reevaluate and revise our criteria used to identify critical habitat. Please see the ''Changes to Proposed Revised Critical Habitat'' section of the August 26, 2008, NOA (73 FR 50498), and the ''Criteria Used To Identify Critical Habitat'' section of this final rule for more information on our revised criteria.

(2) During the first and second comment periods for the proposed rule, we received significant comments from the public, including biologists familiar with Peninsular bighorn sheep, on areas essential to the DPS that should be included in the designation. As a result of these comments, new information received, and revision of the criteria used to identify critical habitat, we reevaluated the following: Areas along the eastern edge of the Santa Rosa Mountains in Units 2A and 2B; parts of the San Ysidro, Pinyon, and Vallecito Mountains in Unit 2B; and a portion of the Jacumba Mountains in Unit 3. Over 98 percent of these areas are currently designated as critical habitat for Peninsular bighorn sheep (see 50 CFR 17.95(a); February 1, 2001, 66 FR 8650); however, we did not propose these areas as critical habitat in the October 10, 2007, proposed revision to critical habitat (72 FR 57740). Below we describe each area we reevaluated, explain why we did not include the areas in the 2007 proposed rule, and explain why we are including these areas in the final revised critical habitat designation.

Eastern Edge of the Santa Rosa Mountains

The eastern edge of the Santa Rosa Mountains stretches along developed and agricultural areas of the Coachella Valley from Palm Desert southeast to the Salton Sea. Along this interface, sheep currently exist near areas of high human activity where habitat is threatened by spreading development. We delineated proposed revised critical habitat along the eastern slope of the Santa Rosa Mountains where occurrence data supported a determination that these areas contained the physical or biological features essential to the conservation of the DPS, in some cases immediately adjacent to the edge of development and the existing critical habitat boundary (66 FR 8650, February 1, 2001). The eastern edge of the Santa Rosa Mountains contains low-elevation alluvial-fan habitat that may be important to Peninsular bighorn sheep. Therefore, we included low-elevation alluvial-fan habitat in the proposed revised designation in cases where occurrence data indicated sheep are using these areas. However, large expanses of currently designated critical habitat (2001) lack occurrence data to indicate current or historical use by sheep of those areas, including some low-elevation alluvial habitat. As such, we did not include all currently designated critical habitat along the eastern edge of the Santa Rosa Mountains in the proposed revised critical habitat designation.

During the first public comment period, we received a number of comments from biologists familiar with Peninsular bighorn sheep that included additional information regarding the importance of low-elevation and alluvial-fan habitat along the eastern edge of the Santa Rosa Mountains. We also received a limited amount of recently collected occurrence data in wash areas along the eastern edge of the south Santa Rosa Mountains. Additionally, we received comments from Peninsular bighorn sheep biologists indicating that our consideration of data since the time of listing (1998 to present) was inadequate. We then revised our criteria used to identify critical habitat to include occurrence data since 1988 (an additional 10 years of data from what we considered in the proposed rule).

In light of the additional information received and the revision of our criteria used to identify critical habitat, we reevaluated and revised our proposed revised critical habitat boundary along the eastern edge of the Santa Rosa Mountains. We believe that low-elevation habitat is important for Peninsular bighorn sheep because these areas can provide seasonal abundance of forage vegetation and water resources. Where occurrence data indicated sheep use, we revised our proposed revision of critical habitat to include four additional areas along the eastern edge of the Santa Rosa Mountains. These areas include approximately 32 ac (13 ha) in two parcels along the urban interface between the cities of Cathedral City and Palm Desert in Unit 2A; 3,009 ac (1,218 ha) on and around Indio Mountain in Unit 2A; and 7,477 ac

(3,026 ha) of low-elevation and wash habitat to the east of the southernmost portion of the Santa Rosa Mountains in Unit 2B.

Approximately 99 percent of these areas are currently designated as critical habitat (66 FR 8650, February 1, 2001); an approximately 77-ac (31-ha) parcel and a 3-ac (1-ha) parcel located near Palm Desert are outside of the area currently designated as critical habitat. Because we determined that these areas contain the features essential to the conservation of the DPS, providing seasonal abundance of forage vegetation and water resources, we are including approximately 10,518 ac (4,257 ha) along the eastern edge of the Santa Rosa Mountains in the final revised critical habitat designation for Units 2A and 2B.

San Ysidro, Pinyon, and Vallecito Mountains

The San Ysidro, Pinyon, and Vallecito Mountains roughly comprise the middle portion of the Peninsular bighorn sheep range in the United States. We included the majority of these mountains in the October 2007 proposed rule to revise critical habitat (October 10, 2007, 72 FR 57740). Although the areas were included in the existing critical habitat designation, we did not include some extreme western portions of the San Ysidro and Pinyon Mountains and the northeastern edge of the Vallecito Mountains in the proposed rule to revise critical habitat because we determined those areas did not meet the definition of critical habitat.

During the first public comment period, we received comments from several species experts who are currently studying the Peninsular bighorn sheep indicating that we did not consider a number of areas along the western San Ysidro and Pinyon Mountains and the northeastern edge of the Vallecito Mountains that are known to be occupied. The commenters indicated that we were provided occurrence data that indicated occupancy of these areas by bighorn sheep prior to publication of the October 10, 2007, proposed rule (72 FR 57740). Upon receiving these comments, we examined the occurrence data used to delineate the proposed revised critical habitat boundary and found that a set of data was missing from our GIS database. We have since included that occurrence data into our GIS database.

In light of this data and our revised criteria used to identify critical habitat to include data since 1988, we reevaluated the western San Ysidro and Pinyon Mountains and the northeastern edge of the Vallecito Mountains and determined that certain areas do meet the definition of critical habitat. We revised our proposed designation of critical habitat to include approximately 6,503 ac (2,632 ha) in five areas along the western San Ysidro Mountains, 5,176 ac (2,095 ha) in the western Pinyon Mountains, and 2,751 ac (1,113 ha) along the northeastern edge of the Vallecito Mountains (all in Unit 2B). Approximately 97 percent of these areas are currently designated as critical habitat (February 1, 2001, 66 FR 8650). An approximately 53 ac (21 ha) parcel located near Parks Canyon and an approximately 360 ac (146 ha) parcel located in the San Ysidro Mountains west of Borrego Springs are outside of the area currently designated as critical habitat. We are including the approximately 14,430 ac (5,840 ha) along the San Ysidro, Pinyon, and Vallecito Mountains in the final revised critical habitat designation for Unit 2B.

Jacumba Mountains

The Jacumba Mountains represent the southernmost portion of the Peninsular Ranges in the United States, and the southernmost extent of Peninsular bighorn sheep's extant range in the United States. Part of the Jacumba Mountains were included in the 2007 proposed revised critical habitat designation, including an area known as the Interstate 8 ''island'' where there were multiple sheep sightings from 2008. However, we had limited data at the time of the proposed critical habitat rule indicating occupancy or sheep use in the rest of the southeast Jacumba Mountains and the rugged terrain extending east and south to the U.S.-Mexico border. Therefore, we included a small amount of the currently designated critical habitat just north of the U.S.-Mexico border in Imperial County in the October 10, 2007, proposed revision to critical habitat (72 FR 57740).

Since the proposed revised critical habitat designation was published, there have been additional sightings and reports of sheep activity around and within the Interstate 8 island, including suitable habitat areas that extend south to the U.S.-Mexico border. Data recently collected by Service biologists and other biologists familiar with the DPS include actual sightings of multiple sheep and reports of sheep scat and tracks throughout the area, indicating that this area is currently occupied by a group of Peninsular bighorn sheep. This area contains rugged habitat with the features essential to Peninsular bighorn sheep conservation and is contiguous with habitat in Mexico. Additionally, the Jacumba Mountains represent the only area of habitat connecting the DPS listed in the United States with other bighorn sheep populations that occupy the Peninsular Ranges in Mexico. Therefore, we revised our proposed designation of critical habitat for Peninsular bighorn sheep to include approximately 11,292 ac (4,570 ha) of habitat in the Jacumba Mountains (Unit 3), which is currently designated as critical habitat (February 1, 2001, 66 FR 8650). This revision was based on recent occurrence data and the need to be consistent with the critical habitat delineation process we used that includes areas of repeated sheep use.

In total, we added approximately 36,240 ac (14,666 ha) of private, Federal, and State land to the October 10, 2007, proposed revised critical habitat designation (72 FR 57740) for Peninsular bighorn sheep (Table 1).

(3) While reevaluating the boundaries of the proposed revised critical habitat designation as described above, we noticed three areas of high-elevation habitat above 4,600 ft (1,400 m) that did not accurately follow the boundaries of the essential features and do not contain suitable habitat. Therefore, we removed approximately 66 ac (28 ha) in proposed Unit 1 and two parcels totaling approximately 97 ac (39 ha) in proposed Unit 2B from the October 10, 2007, proposed revision to critical habitat (72 FR 57740) for the Peninsular bighorn sheep (Table 1) and are not including these areas in the final revised critical habitat designation.

(4) Based on revised ownership data, we announced changes in the August 26, 2008, NOA (73 FR 50498) to the areas considered for exclusion from that which we stated in the 2007 proposed critical habitat rule. With the changes announced in the NOA, the proposed exclusion under section 4(b)(2) of the Act for Agua Caliente Band of Cahuilla Indians lands totaled approximately 4,790 ac (1,938 ha). We determined that the benefits of exclusion outweigh the benefits of inclusion on these lands; therefore, we excluded approximately 4,790 ac (1,938 ha) of Agua Caliente Band of Cahuilla Indians tribal lands in Units 1 and 2 under section 4(b)(2) of the Act (see ''Exclusions Under Section 4(b)(2) of the Act'' section of this final rule for a detailed discussion).

(5) In the proposed rule, we announced that we were considering the exclusion of lands covered under the then-draft Coachella Valley MSHCP under section 4(b)(2) of the Act. The Coachella Valley MSHCP has since been finalized, and we determined that the benefits of exclusion outweigh the benefits of inclusion on these lands; therefore, we excluded approximately 38,759 ac (15,685 ha) of private and

permittee-owned or controlled lands within the Coachella Valley MSHCP under section 4(b)(2) of the Act (see ''Exclusions Under Section 4(b)(2) of the Act'' section of this final rule for a detailed discussion).

As a result of the above additions to the 2007 proposed revised critical habitat designation, removal of areas included in the 2007 proposed revised critical habitat designation, and exclusions under section 4(b)(2) of the Act, we are designating approximately 376,938 ac (152,542 ha) of land in Riverside, San Diego, and Imperial Counties as critical habitat in this final rule.

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) Which 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 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, 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(a)(2) 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 the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by private landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) would apply, but even in the event of a destruction or adverse modification finding, the landowner's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, habitat within the geographical area occupied by the species at the time it was listed must contain the physical and biological features that are essential to the conservation of a species, and be included only if those features may require special management considerations 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 the primary constituent elements laid out in the appropriate quantity and spatial arrangement essential to the conservation of the species).

Under the Act, we can designate an area outside the geographical area occupied by the species at the time of listing as critical habitat only when we determine that the best available scientific data demonstrate that the designation of that area is 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 data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (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 are based on 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 we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process 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.

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 we may eventually determine, based on scientific data not now available to the Service, are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be required for recovery of the species.

Areas that support populations, but are outside the critical habitat designations, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act. They are also subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available scientific information at the time of the Federal agency 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 (HCPs), or other species conservation planning efforts if information available at the time of these planning efforts calls for a different outcome.

Primary Constituent Elements (PCEs)

In accordance with section 3(5)(A)(i) of the Act and the regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical and biological features essential to the conservation of the species that may require special management considerations or protection to be the PCEs laid out in the appropriate quantity and spatial arrangement essential to the conservation of the species. 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 historic, geographical, and ecological distributions of a species.

We derived the specific PCEs required for Peninsular bighorn sheep from its biological needs as described below and in the proposed rule to revise critical habitat published in the **Federal Register** on October 10, 2007 (72 FR 57740). Additionally, information can be found in the final listing rule published in the **Federal Register** on March 18, 1998 (63 FR 13134), and in the original final critical habitat rule published in the **Federal Register** on February 1, 2001 (66 FR 8650).

Space for Individual and Population Growth and Normal Behavior

Peninsular bighorn sheep occur on moderately steep to very steep open slopes, canyons, and washes in hot and dry desert regions where the land is rough and rocky, and sparsely vegetated (February 1, 2001, 66 FR 8650). This DPS is primarily restricted to the east-facing lower elevation slopes (generally below 4,600 ft (1,400 m)) of the Peninsular Ranges along the northwestern edge of the Sonoran Desert (Jorgensen and Turner 1975, p. 51; DeForge *et al.* 1997, p. 11; Rubin *et al.* 1998, p. 541; Ernest *et al.* 2002, p. 76). A wide range of topography provides a diversity of habitats and plant communities across the mountainous slopes, canyons, washes, and alluvial fans within the home range of Peninsular bighorn sheep (Service 2000, p. 156). This diverse topography is necessary to provide shelter from the elements and predators, areas for rearing, areas used to meet thermal requirements, seasonal water and forage sources, and space for mating and movement of this DPS.

Diverse topographic features are especially important because of the extreme temperatures Peninsular bighorn sheep must cope with in this desert region. During hot weather, desert bighorn sheep seek shade under boulders and cliffs, or move to north-facing slopes (Merritt 1974, p. 14; Andrew 1994, p. 52). In the event of inclement weather they may seek protected caves or overhangs, move to sunny, south-facing slopes (Andrew 1994, p. 52), or move to slopes that are protected from strong winds. Desert bighorn sheep are frequently found on, and show a preference for slopes greater than 20 percent (Elenowitz 1983, p. 87; Andrew 1994, p. 53; Dunn 1996, p. 5; Andrew and Bleich 1999, p. 13), and our GIS data and occurrence records confirm this observation for Peninsular bighorn sheep. According to GIS data and occurrence records, Peninsular bighorn sheep largely utilize habitat with 20 to 60 percent slopes, broken by canyons and washes. Nighttime bedding areas are chosen carefully according to the topography of the habitat and may be considered a limiting factor in bighorn sheep distribution (Hansen 1980, p. 78). These bedding areas are usually located along ridges and spurs with long distance visibility where bighorn sheep can escape, if necessary, in a matter of seconds (Hansen 1980, p. 78).

Bighorn sheep primarily rely on their sense of sight to detect predators. They prefer the lower elevations of the Peninsular Ranges where the vegetation associations are less dense and provide better visibility than those at higher elevations. Research shows that bighorn sheep will avoid habitat where dense vegetation reduces visibility and instead prefer to use habitat with vegetative canopy cover less than or equal to 30 percent (Risenhoover and Bailey 1985, p. 799; Etchberger *et al.* 1989, p. 906; Dunn 1996, p. 1). Bighorn sheep in the Peninsular Ranges avoid higher elevations (above 4,600 ft (1,400 m)), likely due to decreased visibility (and therefore increased predation risk) associated with denser vegetation (*i.e.*, chaparral and conifer woodland) found at higher elevations (Service 2000, p. 10).

Along with occupying open habitat, bighorn sheep use steep, rugged terrain for predator evasion (Service 2000, p. 6). Bighorn sheep use their climbing abilities rather than speed to escape from predators, and mountainous slopes of greater than or equal to 60 percent (*i.e.,* escape habitat) are steep enough to provide this function (Andrew 1994, p. 57; Dunn 1996, p. 1; Service 2000, p. 6; McKinney *et al.* 2003, p. 1231).

Steep escape habitat is also used for lambing (Service 2000, p. 6). As parturition approaches, ewes seek isolated sites (escape terrain with slopes 60 percent or greater) with shelter and unobstructed views (Turner and Hansen 1980, p. 148), and seclude themselves from other females while finding sites to give birth (Geist 1971, p. 239; Etchberger and Krausman 1999, p. 358). Ewes usually give birth to one lamb born after an approximately 6-month gestation period (Geist 1971, p. 239; Turner and Hansen 1980, p. 146). These areas of steep terrain are vital to Peninsular bighorn sheep because lambs have increased vulnerability to predation, and these protective slopes are rarely visited by predators (Geist 1971, p. 239). Ewe groups with lambs usually stay close to escape terrain while feeding on lower gradient slopes. Berger (1991, p. 72) reported that when feeding on bajadas or away from escape terrain, ewes and lambs were greater than three times more vulnerable to predation. Predators of Peninsular bighorn sheep include mountain lion, bobcat, coyote, and domestic dogs (Hayes *et al.* 2000, p. 954; February 1, 2001, 66 FR 8650).

Metapopulation Structure

Within desert mountain ranges like the Peninsular Ranges, bighorn sheep habitat is patchy, and the population structure is naturally fragmented (Bleich *et al.* 1990, p. 384). This fragmentation leads to the application of a broad landscape approach to their population ecology, grouping geographically distinct herds into metapopulations, which are networks of interacting ewe groups or subpopulations (Schwartz *et al.* 1986, pp. 182–183; Bleich *et al.* 1990, p. 386). This broad approach considers long-term viability not of individual subpopulations, but rather of entire metapopulations; thus, both genetic and demographic factors are considered. Decreasing population sizes can lead to decreasing levels of heterozygosity that may have negative demographic effects through inbreeding depression (Lande 1988, p. 1,456) and loss of adaptability. A small amount of genetic exchange among herds by movements of males can counteract inbreeding and associated increases in homozygosity that might otherwise develop within small, isolated populations (Schwartz *et al.* 1986, p. 185). Males have larger home ranges and a much greater tendency than females to explore new areas, which they may do in search of females during the mating season. Movement by males occurs readily if no insurmountable barriers exist and geographic distances between female groups within metapopulations are not extreme (greater than 31 mi 50 km (Witham and Smith 1979, p. 24). If movement is precluded by human-constructed obstacles, populations will become isolated and the metapopulation structure dismantled.

A study of Peninsular bighorn sheep distribution and abundance by Rubin *et al.* (1998, p. 545) concludes that ewes exhibit a fragmented distribution within the Peninsular Ranges, making up at least eight ewe groups or

subpopulations. Although the distribution of these ewe groups could be considered naturally fragmented, construction and use of roads through bighorn sheep habitat may have increased fragmentation within the Peninsular Ranges because ewes avoid crossing highways (Rubin *et al.* 1998, p. 547). Ewes show strong gregarious and philopatric behavior (*i.e.,* faithful to natal home range), which limits their dispersal abilities (Boyce *et al.* 1999, p. 99; Service 2000, p. 10). Movement of ewes between ewe groups is infrequent, but direct observation and aerial-telemetry locations and genetic analysis reveal ram movement among at least six ewe groups (Boyce *et al.* 1999, p. 99; Rubin *et al.* 1998, pp. 543–544). Additionally, substructuring can occur within single herds (*i.e.,* ewe groups) of bighorn sheep (Festa-Bianchet 1986, pp. 327–330; Andrew *et al.* 1997, pp. 74–75; Rubin *et al.* 1998, pp. 543–548). Such substructuring is defined by separate home range patterns. Although demonstrated more with females, it can occur in both sexes.

Another important long-term process in metapopulation dynamics is the balance between rates of natural extinction and colonization among subpopulations. Colonization rates must exceed extinction rates for a metapopulation to persist (Hanski and Gilpin 1991, pp. 8–9). In past decades this balance has not occurred for Peninsular bighorn sheep due to fragmentation, disease, predation, and low recruitment (Rubin *et al.* 1998, pp. 545–547; Rubin *et al.* 2002, p. 803–805). The remaining fragmented subpopulations consist of small, isolated groups of bighorn sheep that are more vulnerable to extirpation due to random naturally occurring events, disease, or predation because of their small population size. Local extinction of small subpopulations can be prevented by occasional immigrants from neighboring subpopulations (*i.e.*, the rescue effect) (Brown and Kodric-Brown 1977, p. 445).

Because of the metapopulation structure of the Peninsular bighorn sheep population, it is important for genetic exchange and the conservation of the DPS to ensure space for movement and connectivity between ewe groups. Furthermore, maintaining connectivity within the metapopulation could help safeguard against local extinctions of the remaining subpopulations.

Food

A wide range of forage resources and vegetation associations are required by Peninsular bighorn sheep to meet annual and drought-related variations in forage quality and availability (Hansen 1980, p. 76). Valley floors, rolling hills, and alluvial fans and washes with productive soils provide seasonal vegetation and water resources important to Peninsular bighorn sheep. In a mountainous environment like the Peninsular Ranges, temperature and soil moisture vary widely with slope and elevation. This causes seasonal variation in plant growth throughout this DPS' habitat. Peninsular bighorn sheep must have access to the seasonal abundance of plant life at various elevations to maximize resources and survive in the desert environment.

Berger (1991, p. 70) found that bighorn sheep adjust their feeding ranges to exploit more nutritive portions of their home ranges, such as within bajadas, early in the season when high-protein grasses emerge. Due to high energetic costs of pregnancy and lactation, ewes are especially dependent on areas with nutritious forage to increase success of rearing offspring (Service 2000, p. 8). Berbach (1987, p. 97) reports that, when ewes are confined to an enclosure and prevented from using all vegetation associations during late gestation and early lactation, they and their lambs die of malnutrition. During the reproductive season for Peninsular bighorn sheep, nutritious forages are typically concentrated on specific sites (*e.g.*, alluvial fans, bajadas, washes) where more productive, wetter soils support greater herbaceous growth than steeper, drier, rockier soils (Service 2000, p. 8). There is a tendency for plants that dry out during summer months on the mountain-sides to remain green longer (and thus more nutritious, higher in protein, and more easily digested) in the washes, because groundwater is generally closer to the surface and in greater quantity. Furthermore, the greater soil moisture supports a suite of nutritious plants that do not grow on the dry mountain sides. Therefore, washes and alluvial fans play an important role in providing desert bighorn sheep quality forage during the heat of summer months and through times of drought.

Scott (1986, p. 21) found that Peninsular bighorn sheep diets are dominated by shrub species (64 to 76 percent), with grasses and forbs species making up a smaller portion of the diet (19 to 30 percent and 2 to 6 percent, respectively). In the following section, plant nomenclature is updated to conform to treatments in Hickman (1993). Common names generally conform with those given in Hickman (1993) or Abrams (1993–1960). Cited scientific names are retained in brackets for ease of reference. Foraging studies by Scott (1986, p. 21) and Cunningham (1982, p. 31) note that Peninsular bighorn sheep preferentially feed on different plants seasonally. Shrubs such as *Ambrosia dumosa* (burro bush), *Caesalpinia virgata* [*Hoffmannseggia microphylla*] (small-leaved Hoffmannseggia), *Hyptis emoryi* (desert lavender), *Sphaeralcea* spp. (globemallow), and *Simmondsia chinensis* (joboba) are primary food sources year round; grasses such as *Aristida adscensionis* (sixweeks threeawn) and *Bromus rubens* (red brome) along with cacti *Opuntia* spp. (cholla) are primary food sources in the fall; forbs such as *Plantago* spp. (woolly plantain), *Plantago ovata* [*insularis*] var. *fastigiata* (woolly plantain), and *Ditaxis neomexicana* (common ditaxis) are primary food sources in the spring.

However, Peninsular bighorn sheep are generalist foragers, browsing on a wide variety of plant species depending on seasonal availability. Other plants reportedly consumed by Peninsular bighorn sheep include *Encelia farinose* (brittlebush), *Parkinsonia* spp. (Palo verde), Ephedr*a* spp. (Mormon tea), *Agave deserti* (desert agave), *Quercus* spp. (scrub oak), *Phoradendron californicum* (desert mistletoe), *Eriogonum fasciculatum* (California buckwheat), *Prunus fremontii* (desert apricot), *Acacia greggii* (catclaw), *Prosopis juliflora* (mesquite), *Krameria grayi* (ratany), and *Malosma laurina* (laurel-leaf sumac) (Browning and Monson 1980, p. 88).

Water

In the Peninsular Ranges, the presence of perennial water is known to be a limiting factor only during prolonged droughts or summers without significant thunderstorm activity (Service 2000, p. 156). Water sources are most valuable to bighorn sheep if they occur in proximity to escape terrain with good visibility (Service 2000, p. 9). However, according to historical Peninsular bighorn sheep occurrence data, sheep are known to travel at least 10 mi (16 km) from sources of perennial water (Service 2000, p. 156). According to Service biologists familiar with the DPS, bighorn sheep usually visit a water source every 2 to 3 days, but it is not unusual for them to drink more often. During hot summer months, desert bighorn sheep typically stay close to reliable sources of water and drink large quantities at each visit. Some research has suggested that desert bighorn sheep can survive without a permanent water source (Krausman *et al.* 1985), although this view is not widely accepted (Turner and Weaver 1980, p. 104). In desert

ranges like the Peninsular Ranges, rainwater can accumulate in natural collection tanks and potholes in the rock and provide seasonal or perennial water sources. Additionally, natural springs provide a reliable source of water for Peninsular bighorn sheep. Desert bighorn sheep also rely on consuming vegetation, including cacti, to meet water requirements when standing water sources are scarce (Turner and Weaver 1980, p. 102). Water sources contribute greatly to Peninsular bighorn sheep's ability to survive the hot and dry summer months.

Primary Constituent Elements for Peninsular Bighorn Sheep

Within the geographical area occupied by Peninsular bighorn sheep at the time of listing, we must identify the physical or biological features essential to the conservation of the DPS that may require special management considerations or protection. Based on the above needs and our current knowledge of the life-history, biology, and ecology of Peninsular bighorn sheep, we determined the Peninsular bighorn sheep PCEs are:

(1) Moderate to steep, open slopes (20 to 60 percent) and canyons, with canopy cover of 30 percent or less (below 4,600 ft (1,402 m) elevation in Peninsular Ranges) that provide space for sheltering, predator detection, rearing of young, foraging and watering, mating, and movement within and between ewe groups;

(2) Presence of a variety of forage plants, indicated by the presence of shrubs (*e.g., Ambrosia* spp., *Caesalpinia* spp., *Hyptis* spp., *Sphaeralcea* spp., *Simmondsia* spp.), that provide a primary food source year round, grasses (*e.g., Aristida* spp., *Bromus* spp.) and cacti (*e.g., Opuntia* spp.) that provide a source of forage in the fall, and forbs (*e.g.*, *Plantag*o spp., *Ditaxis* spp.) that provide a source of forage in the spring;

(3) Steep, rugged, slopes (60 percent slope or greater) (below 4,600 ft (1,402 m) elevation in Peninsular Ranges) that provide secluded space for lambing and terrain for predator evasion;

(4) Alluvial fans, washes, and valley bottoms that provide important foraging areas where nutritious and digestible plants can be more readily found during times of drought and lactation, and that provide and maintain habitat connectivity by serving as travel routes between and within ewe groups, adjacent mountain ranges, and important resource areas (*e.g.*, foraging areas and escape terrain); and

(5) Intermittent and permanent water sources that are available during extended dry periods and provide relatively nutritious plants and drinking water.

This final revised critical habitat designation encompasses those areas containing the PCEs necessary to support one or more of the species' life history functions and laid out in the appropriate quantity and spatial arrangement essential to the conservation of the species. All units in this designation contain the PCEs and support multiple life processes. As stated in the ''Criteria Used To Identify Critical Habitat'' section of this rule, we believe that we can conserve Peninsular bighorn sheep within its extant range and are not including any areas outside of the geographical area occupied by the species.

Special Management Considerations or Protection

When designating critical habitat within the geographical area that is occupied at the time of listing, we identify the features that are essential to the conservation of the DPS and assess whether those features may require special management considerations or protection.

Peninsular bighorn sheep habitat and the features essential to their conservation are threatened by the direct and indirect effects of: development and expansion of urban areas; human disturbance related to recreation; construction of roadways and power lines; and mineral extraction and mining operations.

Habitat loss (especially in canyon bottoms), degradation, and fragmentation associated with the proliferation of residential and commercial development, roads and highways, water projects, and vehicular and pedestrian recreational uses threaten Peninsular bighorn sheep and its habitat throughout its range (March 18, 1998, 63 FR 13134). Cities that occur along the eastern boundary of proposed revised critical habitat, from the base of the San Jacinto and Santa Rosa Mountains to the Salton Sea area (Units 1 and 2A), continue to grow. Development adjacent to and within Peninsular bighorn sheep habitat affects the quality and quantity of lower elevation habitat and associated vegetation, alluvial fans, and water sources (PCEs 1, 2, 4, and 5). By 2000, at least 18,500 ac (7,490 ha) of suitable Peninsular bighorn sheep habitat had been lost to urbanization and agriculture along the urban interface between the cities of Palm Springs and La Quinta (Service 2000, p. 38). Much of the lost habitat consisted of low-elevation alluvial fans and washes that provided important sources of nutrients to ewes when they were rearing their lambs (PCE 2 and 4) (February 1, 2001, 66 FR 8650). Moreover, in the northern Santa Rosa Mountains, from 1991 to 1996, 34 percent of Peninsular bighorn sheep adult mortalities were directly caused by urbanization (February 1, 2001, 66 FR 8650): five were killed by cars; five died from feeding on toxic, nonnative ornamental plants; and one was strangled in a wire fence (DeForge and Ostermann 1997, p. 1).

Continued urban and commercial development within the range of Peninsular bighorn sheep could fragment the metapopulation into isolated groups too small to maintain long-term viability. Maintenance of genetic diversity allows small ewe groups like those in the Peninsular Ranges to persist. The inability of rams and occasional ewes to move between groups erodes the genetic fitness of isolated groups (PCE 1 and 4) (March 18, 1998, 63 FR 13134). Special management considerations or protection may be needed to maintain the physical and biological features essential to the conservation of the Peninsular bighorn sheep and alleviate the effects of development on Peninsular bighorn sheep habitat, especially lower elevation habitat, alluvial fans, and areas of ewe group connectivity near urban areas. This management or protection could be accomplished by controlling the expansion of urban, industrial, and agricultural development into these areas.

In the Peninsular Ranges (Units 1, 2 and 3), increased human activity and disturbance adjacent to, and within Peninsular bighorn sheep habitat may threaten bighorn sheep by altering their normal behavior. This altered behavior can lead to bighorn sheep abandoning their habitat and preventing use of preferred habitat, including lambing areas, water sources, and foraging areas, and cause negative physiological effects (PCE 1, 2, 3, 4, and 5) (February 1, 2001, 66 FR 8650; March 18, 1998, 63 FR 13134). A variety of human activities (*e.g.*, hiking, mountain biking, horseback riding, camping, hunting, livestock grazing, use of aircraft and off-road vehicles) have the potential to disrupt normal bighorn sheep social behaviors. Special management considerations or protection of the physical and biological features essential to the conservation of the DPS may be needed to alleviate the effects of human activity and disturbance to Peninsular bighorn sheep and ensure that the essential features remain available for use by Peninsular bighorn

sheep. Restricting human use of trail systems and natural areas during lambing season, re-routing trails, and establishing exclusionary fencing around urban areas may reduce human effects on Peninsular bighorn sheep behavior.

Roads and highways may permanently fragment bighorn sheep habitat or impede the movement of bighorns across the landscape, thus isolating subpopulations and disrupting the metapopulation structure of the DPS. Two major highways run through the Peninsular Ranges and fragment bighorn sheep habitat. In the northern portion of the Peninsular Ranges, State Route 74 runs through the Santa Rosa Mountains (Unit 2A). Further south, State Route 78 cuts through habitat between the San Ysidro Mountains and Pinyon Mountains (Unit 2B). These roadways have degraded habitat and generally impeded the movement of Peninsular bighorn sheep (especially ewes) between ewe groups in the surrounding areas (PCE 1, 2, 3, 4, and 5) (Rubin *et al.* 1998, p. 547), which can erode the genetic fitness of isolated groups (March 18, 1998, 63 FR 13134). However, some movement has been documented across State Route 74 (Service 2004, pp. 1–2).

Epps *et al.* (2005, p. 1035) showed that genetic diversity of desert bighorn sheep populations was negatively correlated with the presence of human-made barriers (in this case fenced highways), and suggested that anthropogenic barriers constitute a severe threat to the persistence of naturally fragmented populations (such as Peninsular bighorn sheep). Additionally, roads and highways represent an unnatural source of mortality. Collisions with automobiles can be a significant cause of Peninsular bighorn sheep mortality within portions of the DPS range (DeForge and Ostermann 1997, p. 1). Future construction of roadways should be avoided in critical habitat, and if unavoidable, should be constructed to minimize habitat effects and allow continued connectivity among ewe groups.

Degradation and fragmentation of bighorn sheep habitat may occur during the construction phase of power lines and their associated structures. Currently, a large power line (Sunrise Powerlink) is approved for construction through Peninsular bighorn sheep critical habitat. Special management considerations and protection of the physical and biological features essential to the conservation of the DPS will be implemented to alleviate the effects of power line structures and their construction on Peninsular bighorn sheep and their habitat. Future construction of major infrastructure, such as power lines, should be avoided in critical habitat, and if unavoidable, should be constructed to minimize habitat effects and allow continued connectivity among ewe groups.

Mining operations occur within southern portions of Peninsular bighorn sheep habitat in Units 2B and 3. Mining activities and associated facilities negatively impact Peninsular bighorn sheep by causing the loss of vegetation structure required for foraging activities and destroying habitats used for escape, bedding, lambing, or connectivity between ranges (PCE 1, 2, 3, 4, and 5). Disturbance could modify the sheep's behavior or cause bighorn sheep to flee an area. Special management considerations or protection of the physical and biological features essential to the conservation of the DPS may be needed to alleviate the effects of mining operations on Peninsular bighorn sheep habitat. Further mining operations should avoid (to the maximum extent possible) areas identified as meeting the definition of critical habitat for Peninsular bighorn sheep.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available in determining within the geographical area occupied at the time of listing the specific areas on which are found the features essential to the conservation of the DPS which may require special management considerations or protection, as well as in determining if any specific areas outside the geographical area occupied by the DPS are essential for the conservation of the DPS. We only designate areas outside the geographical area occupied by a species when a designation limited to its present range would be inadequate to ensure the conservation of the species (50 CFR 424.12(e)). We are designating critical habitat for the Peninsular bighorn sheep within areas that we determined were occupied at the time of listing and that contain the physical and biological features essential to the conservation of the DPS. Lands are designated based on sufficient essential features being present to support the life processes.

Based on the criteria used to identify critical habitat for the Peninsular bighorn sheep, we believe those areas designated as critical habitat within the geographical area occupied by the DPS at the time of listing are sufficient to conserve Peninsular bighorn sheep. The most recent estimate from 2006 puts the population at approximately 800 individuals (Torres 2007, p. 1). Delisting criterion 2 in the Recovery Plan for this DPS states that the rangewide population must average 750 individuals (adults and yearlings) with a stable or increasing population trend over 12 consecutive years (Service 2000, p. 66). The occupied areas identified as containing the features essential to the conservation of the DPS in this designation accurately represent the areas inhabited by the current population which is at a size approaching recovery levels. We believe that conservation of Peninsular bighorn sheep would be achieved if threats to this DPS, as described in the ''Special Management Considerations or Protection'' section of this rule, were reduced or removed due to management and protection of areas delineated as critical habitat in this rule. Although the current population trend is promising, it should be noted that the time horizon for the delisting criterion mentioned above has not been met and other downlisting and delisting criteria described in the Recovery Plan (such as the minimum number of ewes (25) present in each recovery region for six consecutive years) are yet to be achieved.

For areas outside the geographical area occupied by the DPS at the time of listing, there are no data on file to suggest any such areas are essential for the conservation of the DPS. We recognize this finding is different than what is outlined as essential habitat in the 2000 Recovery Plan and what was designated as critical habitat in the 2001 designation (which largely adopted the boundary delineated in the Recovery Plan). The Recovery Plan and 2001 critical habitat rule note that allowing for ram movement between ewe groups is important for maintaining genetic variation in the Peninsular bighorn sheep metapopulation, and alluvial fans can provide important resources for sheep. While we believe connectivity areas and additional low-elevation areas (alluvial-fan habitat) are important for the Peninsular bighorn sheep's recovery, we have significantly more data available today than when the Recovery Plan and 2001 critical habitat were finalized. We have utilized the currently available data to more precisely identify areas meeting the definition of critical habitat; in particular, areas related to connectivity and low-elevation habitat. Such areas are included in this designation where the data support the determination that such areas contain the physical and biological features

essential to the conservation of the DPS. For other potential connectivity and low-elevation areas that were included in the 2001 designation, the available movement and occurrence data we have for those areas do not support the identification of specific areas that provide a movement corridor, or a determination that the broad expanse of low-elevation areas with no evidence of current or historical sheep use are essential for the conservation of the DPS.

We believe it is important to note that critical habitat designation is a different process than development of a recovery plan. A critical habitat designation is a specific regulatory action that defines specific areas as critical habitat in accordance with the statutory definition. A recovery plan is a guidance document developed in cooperation with partners, which provides a roadmap with detailed site-specific management actions to help conserve listed species and their ecosystems. The term ''essential,'' as used in the recovery plan, is not necessarily used in the same manner as it is used in the definition of critical habitat. The recovery plan provides important information about the species and the actions that are needed to bring about its recovery, while critical habitat identifies specific areas that are essential for the species' conservation.

The deviation from the Recovery Plan boundary and the 2001 final critical habitat designation is primarily the result of using a revised methodology to delineate critical habitat. Our revised methodology incorporates new information to best identify areas that meet the definition of critical habitat (see ''Summary of Changes From the 2001 Critical Habitat Designation To the 2007 Proposed Rule To Revise Critical Habitat'' section for more discussion). As a result, the final revised critical habitat boundary does not include areas the Recovery Plan identified as necessary for the conservation of the Peninsular bighorn sheep that we since determined (based on the best available data at this time) are not essential for the conservation of this DPS. Therefore, we believe the final revised critical habitat boundary more precisely maps the physical and biological features that occur within the geographical area occupied by the Peninsular bighorn sheep at the time of listing, which includes those areas containing preferred habitat for sheep use.

There are likely additional areas outside of the final revised critical habitat boundary that contain some of the PCEs, including areas identified in the Recovery Plan and 2001 critical habitat. We recognize that areas outside of the critical habitat boundary are likely utilized by Peninsular bighorn sheep (primarily for movement of rams between ewe groups). However, as stated above, the data available at this time do not support the identification of specific areas containing the essential features that provide a movement corridor between Units 1 and 2A or between Units 2B and 3. Additionally, Unit 2A is continuous with Unit 2B and these units contain a large contiguous portion of the Peninsular Ranges allowing for movement between six ewe groups with these units. Furthermore, although we do not have information to identify specific movement corridors, the areas between Units 1 and 2A or between Units 2B and 3 are steep, rugged, and remote and there are no perceived threats in these areas. Therefore, we are confident that these areas will still be available for any natural sheep movements between units allowing for genetic connectivity. We also recognize that some areas below 20 percent slope (low-elevation areas such as alluvial fans, washes, and valley bottoms) may be used by sheep; however, available data do not support a determination that the broad expanse of low-elevation areas with no evidence of current or historical sheep use are essential for the conservation of the DPS (low-elevation areas on which are found features essential to the conservation of the DPS are included in this designation). Areas outside the final revised critical habitat designation will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and regulatory protections afforded by the section 7(a)(2) jeopardy standard and the prohibitions of section 9 of the Act if actions occurring in these areas may affect sheep; these protections and conservation tools will continue to contribute to recovery of the DPS.

We utilize the best scientific and commercial data available to develop criteria that (at this point in time) identifies the PCEs laid out in the appropriate quantity and spatial arrangement essential to the conservation of the DPS. The PCEs incorporate those features needed by the Peninsular bighorn sheep as outlined in the Recovery Plan, including (1) Open slopes and canyons with minimal canopy cover; (2) presence of forage plants; (3) steep, rugged slopes; (4) foraging areas within alluvial fans, washes, and valley bottoms; and (5) intermittent and permanent water sources.

We used the following data to delineate critical habitat: (1) Areas that contain the PCEs required by the DPS as determined from aerial imagery and Geographic Information System (GIS) data on vegetation, elevation, and slope; (2) areas within the ewe group distribution (i.e., subpopulations) boundaries identified by Rubin *et al.* (1998); (3) areas with occupancy data indicating they are currently occupied or areas with occupancy data indicating they were occupied at some point between 1988 (i.e., the time of listing (1998) less 10 years, which is the average lifespan of Peninsular bighorn sheep) and 2008 (present time); and (4) areas where occupancy data points indicate repeated Peninsular bighorn sheep use, but which were not captured within the ewe group distribution boundaries identified by Rubin *et al.* (1998). Additionally, we gathered information from our files, staff biologists, the California Department of Fish and Game, the Bighorn Institute, known bighorn sheep experts, and the public. Our revision to critical habitat is designed to capture ewe groups; lambing areas; foraging areas, including alluvial fans; water sources; and areas used for natural sheep movements.

To determine the criteria used to identify critical habitat in this critical habitat designation, we identified areas we believe contain the PCEs essential to the conservation of Peninsular bighorn sheep and coupled this information with Peninsular bighorn sheep ewe group distribution and occurrence data that have been available since the time of listing. We believe this is the most appropriate way to accurately delineate the areas containing the PCEs laid out in the appropriate quantity and spatial arrangement essential to the conservation of the DPS. The broad-based methodology used to delineate critical habitat in the 2001 critical habitat rule (and 2000 Recovery Plan) included large expanses (hundreds of thousands of acres) of habitat (including very general connectivity areas and low-elevation habitat) which were determined to be essential at that time. However, upon reevaluation of the data available at that time, data obtained since, and our revised methodology for delineating critical habitat, we find that areas were included in the 2001 designation that do not meet the definition of critical habitat. Given the more detailed nature of the currently available scientific information, it is not appropriate to continue to use the broad-based methodology used in the 2001 designation. Incorporating the available updated occupancy data allowed us to examine sheep use during a period documented to exhibit large

fluctuations in the DPS population levels. As a result, we identified those areas that exhibit substantial sheep activity at a broad spatial distribution. In other words, the availability of sheep occurrence data provided us the opportunity to use this information as a proxy to better define and capture in the final revised critical habitat boundary those areas containing the physical and biological features essential to the conservation of the Peninsular bighorn sheep.

We delineated critical habitat boundaries using the following steps:

(1) We mapped areas that contain the PCEs required by the DPS as determined from aerial imagery and Geographic Information System (GIS) data on vegetation, elevation, and slope, and delineated our revised units to ensure that they capture the PCEs. Where appropriate, we expanded the boundaries to capture the extent of an alluvial fan or water source (PCE 4 or 5, respectively). We also removed areas that we determined do not contain PCEs or otherwise do not contain suitable Peninsular bighorn sheep habitat, such as areas above 4,600 ft (1,400 m) elevation (PCE 1), areas containing conifer woodland with canopy cover greater than 30 percent (PCE 1), and slopes less than 20 percent (PCE 1), unless those areas overlapped specifically with Rubin *et al.*'s (1998, pp. 539–561) ewe group distributions and had documented use by Peninsular bighorn sheep as evidenced by occurrence data, as further described in the following steps.

(2) We mapped ewe group areas from Rubin *et al.* (1998) over GIS imagery of the Peninsular Ranges to delineate the distribution of ewe groups in the proposed revised critical habitat. We consider Rubin *et al.* (1998) to be the best available data on Peninsular bighorn sheep ewe group distribution. The ewe group delineations presented in Rubin *et al.* (1998) were based on data collected during 1993 to 1996, when the population of Peninsular bighorn sheep was at historically low levels. Therefore, the ewe group delineations present a minimum distribution of bighorn sheep in the Peninsular Ranges. This is the only data we are aware of that identifies the distribution of ewe groups and subgroups within the Peninsular Ranges. Furthermore, we believe that the ewe groups presented in Rubin *et al.* (1998) accurately depict the general locations of the known ewe groups in these ranges, providing a logical proxy to help identify those areas containing the physical and biological features essential to the conservation of the Peninsular bighorn sheep.

(3) We compared the ewe group delineation from Rubin *et al.* (1998, pp. 539–561) with all occupancy data collected since 1988 on GIS imagery maps to: (1) Ensure that Rubin *et al.* (1998, pp. 539–561) accurately represents the boundaries of the ewe groups at larger population levels; (2) capture possible ram movement; and (3) capture other areas used by bighorn sheep in recent years. Subsequently, we expanded the delineated ewe group areas to include areas where occupancy data points indicate repeated Peninsular bighorn sheep use and sheep movements (pre- and post-Rubin *et al.* 1998, pp. 539–561), and to include areas that contain the PCEs for Peninsular bighorn sheep. We delineated the critical habitat boundaries at these locations to capture the majority of occurrence points while still following the boundaries of the PCEs, such as elevations below 4,600 ft (1,400 m) (PCE 1), areas with 30 percent canopy cover or less (PCE 1), escape terrain (PCE 3), slopes of 20 percent or greater (PCE 1), alluvial fans (PCE 4), washes (PCE 4), and water sources (PCE 5) immediately adjacent to the identified ewe groups. When it was not possible to follow boundaries of the PCEs, we delineated the border around occurrence points to follow natural breaks in the terrain such as ridgelines, canyon bottoms, and toe of slope.

Specifically, we expanded the area representing the northernmost ewe group delineation (*i.e.*, San Jacinto Mountains) to include the area north of Chino Canyon where (1) We have evidence of recent ewe and ram movements; and (2) the Bighorn Institute has released, and continues to release, captive-born sheep to help recover this DPS. We also expanded the area representing the southernmost ewe group delineation (*i.e.*, Carizzo Canyon area) to the southeast to capture water sources (PCE 5), including habitat near the Interstate 8 island southwest of Ocotillo, California, south towards the U.S.-Mexico border where there are consistent, recent sightings of uncollared Peninsular bighorn sheep. Finally, we expanded ewe group delineations to include areas of occupied habitat between the ewe groups in the Santa Rosa Mountains continuing south along the Peninsular Ranges to the Vallecito Mountains ewe group. Documented Peninsular bighorn sheep use of these intervening habitat areas is consistent with the Rubin *et al.* (1998, pp. 539–561) demographic study, which indicated possible connectivity between ewe groups through this area.

(4) We examined all pre-listing occurrence data in our files to determine if our revised critical habitat missed any areas of historical repeated Peninsular bighorn sheep use. As a result, we identified an area of historical repeated use that was occupied at the time of listing between two ewe subgroups documented in Rubin *et al.* (1998, pp. 539–561) as (1) Santa Rosa Mountains east of State Route 74 (Martinez Canyon); and (2) Santa Rosa Mountains east of State Route 74 (south)). Documented Peninsular bighorn sheep use of these intervening habitat areas is consistent with the Rubin *et al.* (1998, pp. 539–561) demographic study, which indicated possible connectivity between these subgroups through this area. This area is important in light of genetic findings by Boyce *et al.* (1999, pp. 99–106) that indicate ewe groups within these ranges maintain genetic connectivity, probably through male-mediated nuclear gene flow. Based on the importance of this area for connectivity between subgroups, we expanded the critical habitat boundaries to include areas where occupancy data points indicate historically occupied habitat. Since the number of occurrence data points in historically occupied areas is relatively small, likely due to minimal survey effort in those remote areas, we delineated the unit boundaries in these areas to follow the boundaries of the PCEs, such as elevations below 4,600 ft (1,400 m) (PCE 1), areas with 30 percent canopy cover or less (PCE 1), escape terrain (PCE 3), alluvial fans (PCE 4), washes (PCE 4), and water sources (PCE 5) immediately adjacent to the identified ewe groups.

When determining the critical habitat boundaries within this final revised rule, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, mining pits, and other structures because such lands lack essential features for the Peninsular bighorn sheep. 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 lands. Any such structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this final revised critical habitat are excluded by text in this final rule. Therefore, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no destruction or adverse modification unless the specific action may affect adjacent critical habitat.

Final Critical Habitat Designation

We are designating approximately 376,938 ac (152,542 ha) of critical habitat for Peninsular bighorn sheep in four units that were proposed as revised critical habitat. Table 2 provides the approximate area determined to meet the definition of critical habitat for Peninsular bighorn sheep in the 2007 proposed rule, areas added to the proposed rule announced in the NOA published in the **Federal Register** on August 26, 2008, areas excluded from the final revised critical habitat designation under section 4(b)(2) of the Act (please see ''Exclusions Under Section 4(b)(2) of the Act'' for a detailed discussion), and areas being designated as final revised critical habitat.

TABLE 2—CRITICAL HABITAT UNITS FOR PENINSULAR BIGHORN SHEEP IN RIVERSIDE, SAN DIEGO, AND IMPERIAL COUNTIES, CALIFORNIA; LAND OWNERSHIP AND EVOLUTION OF FINAL SIZE IN ACRES (HECTARES)

[Area estimates reflect all land within proposed critical habitat unit boundaries]

Critical habitat unit	Land ownership	2007 Proposed critical habitat (72 FR 57740) [10]		2008 NOA changes to proposed critical habitat (73 FR 50498) [11]		Areas excluded under section 4(b)(2) of the Act		Final critical habitat	
1. San Jacinto Mts.	Tribal [1]	4,323	(1,749)	0	.....	4,323	(1,749)	0	.....
	BLM [2]	3,135	(1,269)	0	.....	0	.....	3,135	(1,269)
	USFS [3]	1,237	(501)	−66	(27)	0	.....	1,171	(474)
	State [4]	276	(112)	0	.....	276	(112)	0	.....
	Private [5]	6,302	(2,322)	0	.....	6,011	(2,433)	291	(118)
Subtotal		15,273	(6,181)	−66	(27)	10,610	(4,294)	4,597	(1,860)
2A. N. Santa Rosa Mts.	Tribal [1]	467	(189)	0	.....	467	(189)	0	.....
	BLM	44,485	(18,003)	613	(248)	0	.....	45,098	(18,251)
	State [6]	17,547	(7,101)	1,490	(603)	19,037	(7,704)	0	.....
	Private [5]	12,499	(5,058)	938	(380)	13,435	(5,437)	2	(1)
Subtotal		74,998	(30,350)	3,041	(1,231)	32,939	(13,330)	45,100	(18,251)
2B. S. Santa Rosa Mts.. south to Vallecito Mts.	BLM	16,266	(6,583)	0	.....	0	.....	16,266	(6,583)
	State [7]	197,509	(79,929)	19,697	(7,971);	0	.....	217,206	(87,901)
	.....	.....	.....	−97	(39)				
	Private	12,436	(5,033)	2,113	(855)	0	.....	14,549	(5,888)
Subtotal		226,211	(91,545)	21,810	(8,826)	0	.....	248,021	(100,371)
3. Carrizo Canyon	BLM	27,762	(11,235)	9,985	(4,041)	0	.....	37,747	(15,276)
	State [8]	35,475	(14,356)	58	(23)	0	.....	35,533	(14,380)
	Private	4,177	(1,690)	1,249	(505)	0	.....	5,426	(2,196)
	Local [9]	514	(208)	0	.....	0	.....	514	(208)
Subtotal		67,928	(27,489)	11,292	(4,570)	0	.....	79,220	(32,059)
Total		384,410	(155,564)	36,077	(14,600)	43,549	(17,624)	376,938	(152,542)

[1] Tribal = Agua Caliente Band of Cahuilla Indians Reservation and tribal lands.
[2] BLM = Bureau of Land Management.
[3] USFS = United States Forest Service.
[4] State = Coachella Valley Mountains Conservancy (CVMC), California Department of Fish and Game (CDFG) and California State Lands Commission (CSLC).
[5] Private = Private or Coachella Valley MSHCP permittee.
[6] State = University of California Natural Reserve System, CVMC, Wildlife Conservation Board, and State unpermitted.
[7] State = CDFG, CSLC, and California Department of Parks and Recreation (CDPR).
[8] State = CDPR.
[9] Local = City/County Park.
[10] Proposed critical habitat acreages for ownership types reported in this column do not match those reported in the October 10, 2007, proposed rule (72 FR 57740) because they are revised to reflect updated ownership information obtained since the proposed rule published.
[11] Minus (−) symbols in this column indicate areas removed from proposed revised critical habitat.

Below, we present brief descriptions of the units designated as critical habitat for Peninsular bighorn sheep. For more information about the areas excluded from critical habitat, please see the ''Exclusions Under Section 4(b)(2) of the Act'' section of this final rule.

Unit 1: San Jacinto Mountains

Unit 1 consists of approximately 4,597 ac (1,860 ha) in the San Jacinto Mountains, Riverside County. Unit 1 is generally located within an area bounded on the east by the city of Palm Springs, bounded on the north by Windy Point and Snow Canyon, and extends south to the northern Palm Canyon area. Land ownership within the unit includes approximately 3,135 ac (1,269 ha) of BLM land; 1,171 ac (474 ha) of USFS land; and 291 ac (118 ha) of Desert Water Authority (DWA) land (Table 2).

Unit 1 begins at a low-elevation of about 450 ft (137 m) on the eastern slope and rises to about 4,600 ft (1,400 m) to the west. It is the northernmost unit of revised critical habitat for Peninsular bighorn sheep. This unit was occupied at the time of listing and is currently occupied. Unit 1 contains the physical and biological features essential to the

conservation of Peninsular bighorn sheep including a range of vegetation types (PCE 2), foraging and watering areas including alluvial fans (PCE 4 and 5), and steep rocky terrain with elevations and slopes that provide for sheltering, lambing, mating, movement among and between ewe groups (PCE 1), and predator evasion (PCE 3).

The physical and biological features essential to the conservation of Peninsular bighorn sheep in Unit 1 may require special management considerations or protection to ameliorate the threats of urban and industrial development (particularly in lower elevation areas) due to the proximity of this unit to the Palm Springs area, and to decrease the direct and indirect effects of human disturbance to Peninsular bighorn sheep and its habitat. Please see the ''Special Management Considerations or Protection'' section of this final rule for a detailed discussion of the threats to Peninsular bighorn sheep habitat and potential management considerations.

We excluded approximately 4,323 ac (1,749 ha) of tribal land that meets the definition of critical habitat for Peninsular bighorn sheep from the final revised designation. We believe the designation of critical habitat would adversely impact our working relationship with the Tribe, and that Federal regulation through critical habitat designation would be viewed as an unwarranted and unwanted intrusion into tribal natural resource programs. Furthermore, the approximately 4,323 ac (1,749 ha) of tribal land within critical habitat are currently managed in a manner that provides conservation benefits to Peninsular bighorn sheep through implementation of a Tribal Council-approved management plan currently being implemented (2001 Tribal Conservation Strategy; MBA, 2001). The Tribe is also implementing a number of smaller scale habitat- and activity-specific plans that provide some benefit to Peninsular bighorn sheep: Indian Canyons Master Plan, 2002; Tahquitz Canyon Wetland Conservation Plan, 2000; Trail Plan, 2000; and the draft Tribal Fire Management Plan. Furthermore, the 4,323 ac (1,749 ha) of tribal land are within the plan area of the 2007 draft Tribal HCP (Helix Environmental Planning, 2007) that will incorporate additional conservation measures once finalized. See the ''Application of Section 4(b)(2)—Other Relevant Impacts—Conservation Partnerships'' section of this final rule for a detailed discussion of the tribal management plans.

We also excluded lands within the plan area for the Coachella Valley MSHCP from Unit 1. In both the 2007 proposed revised rule and NOA published in the **Federal Register** on August 26, 2008, we stated we would consider the possible exclusion of approximately 6,287 ac (2,544 ha) of private land and Coachella Valley MSHCP permittee-owned land from the final critical habitat designation in Unit 1. We are excluding these areas from this final revised designation based on partnerships developed during the development of the Coachella Valley MSHCP that was finalized on October 1, 2008 (see the ''Application of Section 4(b)(2)—Other Relevant Impacts—Conservation Partnerships'' section for a detailed discussion).

Unit 2A: North Santa Rosa Mountains

Unit 2A consists of approximately 45,100 ac (18,251 ha) in the northern Santa Rosa Mountains, Riverside County. Unit 2A is generally located on the east-facing slopes of the northern Santa Rosa Mountains, and extends from near the City of Rancho Mirage in the north to Martinez Canyon in the south, limited to the east by the communities of the northern Coachella Valley. Land ownership within the unit includes approximately 45,098 ac (18,251 ha) of BLM land and 2 ac (1 ha) of DWA land (Table 2).

Unit 2A begins at a low-elevation of about 50 ft (15 m) on the eastern slope and rises to about 4,600 ft (1,400 m) to the west. This unit was occupied at the time of listing and remains occupied. Unit 2A contains the physical and biological features that are essential to the conservation of the Peninsular bighorn sheep including a range of vegetation types (PCE 2), foraging and watering areas including alluvial fans (PCE 4 and 5), and steep to very steep, rocky terrain with elevations and slopes that provide for sheltering, lambing, mating, movement among and between ewe groups (PCE 1), and predator evasion (PCE 3).

The physical and biological features essential to the conservation of Peninsular bighorn sheep in Unit 2A may require special management considerations or protection to ameliorate the threats of urban, industrial, and agricultural development, and to decrease the direct and indirect effects of human disturbance to Peninsular bighorn sheep and its habitat, due to the proximity of this unit to the highly developed northern Coachella Valley. In particular, the essential features in this unit may require special management considerations or protection to alleviate threats to Peninsular bighorn sheep and its habitat associated with roadways, such as State Route 74 that cuts through the midsection of this unit and may impede movement between ewe groups. Please see the ''Special Management Considerations or Protection'' section of this final rule for a detailed discussion of the threats to Peninsular bighorn sheep habitat and potential management considerations.

We excluded approximately 467 ac (189 ha) of Agua Caliente Band of Cahuilla Indians tribal lands meeting the definition of critical habitat for Peninsular bighorn sheep from the final revised designation. As stated above under the description of Unit 1, the designation of critical habitat would likely adversely impact our working relationship with the Tribe, and we believe that Federal regulation through critical habitat designation would be viewed as an unwarranted and unwanted intrusion into tribal natural resource programs. Furthermore, these approximately 467 ac (189 ha) of tribal land within critical habitat are currently managed in a manner that provides conservation benefits to Peninsular bighorn sheep through implementation of a Tribal Council-approved management plan currently being implemented (2001 Tribal Conservation Strategy; MBA, 2001). The 467 ac (189 ha) of tribal land are within the plan area of the 2007 draft Tribal HCP (Helix Environmental Planning, 2007) that will incorporate additional conservation measures once finalized. See the ''Application of Section 4(b)(2)—Other Relevant Impacts—Conservation Partnerships'' section of this final revised rule for a detailed discussion of the tribal management plans.

We also excluded lands within the plan area for the Coachella Valley MSHCP from Unit 2A. In the 2007 proposed revised rule and the NOA published in the **Federal Register** on August 26, 2008, we stated we would consider the possible exclusion of approximately 32,472 ac (13,141 ha) of private land and Coachella Valley MSHCP permittee-owned land from the final critical habitat designation in Unit 2A. We are excluding these areas from this final revised designation based on partnerships developed during the development of the Coachella Valley MSHCP that was finalized on October 1, 2008 (see the ''Application of Section 4(b)(2)—Other Relevant Impacts—Conservation Partnerships'' section for a detailed discussion).

Unit 2B: South Santa Rosa Mountains South to Vallecito Mountains

Unit 2B consists of approximately 248,021 ac (100,371 ha) in the southern Santa Rosa Mountains, Coyote Canyon,

San Ysidro Mountains, Pinyon Mountains, and Vallecito Mountains, in Riverside, San Diego, and Imperial Counties. Unit 2B is generally located on the east-facing slopes of the above ranges, loosely bounded on the east by the Coachella Valley floor, and extends from the southern Santa Rosa Mountains in the north to the Fish Creek Mountains in the south. Land ownership within the unit includes approximately 16,266 ac (6,583 ha) of BLM land; 217,206 ac (87,901 ha) of land owned by the State of California (including portions of Anza-Borrego Desert State Park); and 14,549 ac (5,888 ha) of private land (Table 2).

Unit 2B begins at a low-elevation of about 150 ft (45 m) on the eastern slope and rises to about 4,600 ft (1,400 m) to the west. This unit was occupied at the time of listing and remains occupied. This unit contains the physical and biological features that are essential to the conservation of Peninsular bighorn sheep including a range of vegetation types (PCE 2), foraging and watering areas including alluvial fans (PCE 4 and 5), and steep to very steep, rocky terrain with elevations and slopes that provide for sheltering, lambing, mating, movement among and between ewe groups (PCE 1), and predator evasion (PCE 3).

The physical and biological features essential to the conservation of Peninsular bighorn sheep in Unit 2B may require special management considerations or protection to: (1) Ameliorate threats of urban, industrial, and agricultural development due to the proximity of this unit to the Coachella Valley, especially the lower elevation areas in the northeastern portions of this unit; (2) decrease the direct and indirect effects of human disturbance to Peninsular bighorn sheep and its habitat due to recreational activity, since most of this unit includes lands within Anza-Borrego Desert State Park, which is open to recreational activities; (3) alleviate threats to Peninsular bighorn sheep and its habitat associated with State Route 78, which cuts through the southern portion of this unit and may impede movement between ewe groups; and (4) alleviate threats to Peninsular bighorn sheep and its habitat associated with mining operations at Fish Canyon Quarry and various mining claims in the unit. Please see the ''Special Management Considerations or Protection'' section of this final rule for a detailed discussion of the threats to Peninsular bighorn sheep habitat and potential management considerations.

Unit 3: Carrizo Canyon

Unit 3 consists of approximately 79,220 ac (32,059 ha) in the Carrizo Canyon area of San Diego and Imperial Counties, extending south to the U.S.-Mexico border. Unit 3 is generally located in Carrizo Canyon and the surrounding In-Ko-Pah Mountains, Jacumba Mountains, Coyote Mountains, and Tierra Blanca Mountains; it is loosely bounded on the north, east, and west by the Coachella Valley floor. Land ownership within the unit includes approximately 37,747 ac (15,276 ha) of BLM land; 35,533 ac (14,380 ha) of land owned by the State of California (including portions of Anza-Borrego Desert State Park); 5,426 ac (2,196 ha) of private land; and 514 ac (208 ha) of local park land (Table 2).

Unit 3 begins at a low-elevation of about 400 ft (122 m) on the eastern slope and rises to about 4,600 ft (1,400 m) to the west. This unit was occupied at the time of listing and is currently occupied. This unit contains the physical and biological features that are essential to the conservation of Peninsular bighorn sheep including a range of vegetation types (PCE 2), foraging and watering areas including alluvial fans (PCE 4 and 5), and steep to very steep, rocky terrain with elevations and slopes that provide for sheltering, lambing, mating, movement among and between ewe groups (PCE 1), and predator evasion (PCE 3).

The physical and biological features essential to the conservation of Peninsular bighorn sheep in Unit 3 may require special management considerations or protection to: (1) Decrease the direct and indirect effects of human disturbance to Peninsular bighorn sheep and its habitat due to recreational activity, since most of this unit includes lands within Anza-Borrego Desert State Park, which is open to recreational activities; (2) alleviate threats to Peninsular bighorn sheep and its habitat associated with Interstate 8, which cuts through the southern portion of this unit and may impede movement between ewe groups; and (3) alleviate threats to Peninsular bighorn sheep and its habitat associated with mining operations at Ocotillo Mineral Material Site and other mining claims that may occur in the unit. Please see the ''Special Management Considerations or Protection'' section of this final rule for a detailed discussion of the threats to Peninsular bighorn sheep habitat and potential management considerations.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, 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 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:

(1) Can be implemented in a manner consistent with the intended purpose of the action;

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction;

(3) Are economically and technologically feasible; and

(4) 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 a new species is listed or critical habitat is subsequently designated that may be affected and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, Federal agencies may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions may affect subsequently listed species or designated critical habitat.

Federal activities that may affect Peninsular bighorn sheep or its 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 U.S. Army Corps of Engineers 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 remain functional to serve its intended conservation role for the species. 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 Peninsular bighorn sheep. Generally, the conservation role of Peninsular bighorn sheep critical habitat units is to support viable core area populations.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or 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 Peninsular bighorn sheep include, but are not limited to:

(1) Actions that would significantly reduce ongoing management and conservation efforts that benefit Peninsular bighorn sheep on public lands. Such activities could include, but are not limited to, the sale, exchange, or lease of lands managed by BLM or other Federal agencies, and the State of California. These activities could reduce the amount of space that is available for individual and population growth and normal behavior, as well as reduce or eliminate the number and extent of sites for foraging, watering, breeding, reproduction, and rearing of offspring. These activities could also reduce the opportunities available to Federal agencies to exercise their section 7(a)(1) of the Act responsibilities to carry out programs to conserve listed species.

(2) Actions that would significantly reduce the availability of or accessibility to seasonal ranges. Such activities could include, but are not limited to, grazing, mining, and power line and road construction activities. These activities could degrade, reduce, fragment, or eliminate available foraging resources or alter current foraging activities of Peninsular bighorn sheep.

(3) Actions that would result in the significant expansion of dense vegetation communities within Peninsular bighorn sheep habitat. Such activities could include, but are not limited to, fire suppression. These activities could allow expansion of vegetation cover such that movement patterns of bighorn sheep are altered by avoidance of these areas. Tall, dense vegetation decreases visibility for bighorn sheep and provides cover for predators such as the mountain lion, a common predator of Peninsular bighorn sheep.

(4) Actions that would create significant barriers to movement. Such activities could include, but are not limited to, road construction, residential development, and resort or campground facility development or expansion. These activities could interfere with movement within and between habitats, thereby reducing the availability of habitat for foraging, watering, breeding, reproduction, sheltering, and rearing of offspring. These activities could also reduce opportunities for movement between existing populations, dispersal, and genetic interchange between ewe groups.

(5) Actions that would significantly degrade habitat or cause a disturbance to Peninsular bighorn sheep. Such activities could include, but are not limited to, recreational activities, such as off-road vehicle use, hiking, camping, rock climbing, horseback riding, and outfitter guided activities. These activities could displace animals from foraging areas, water sources, and escape terrain, and could impact the quality and quantity of forage.

Exemptions

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 resources 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.''

There are no Department of Defense lands with a completed INRMP within the critical habitat designation.

Exclusions Under Section 4(b)(2) of the Act

Application of 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 legislative history is clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor. In the following sections, we address a number of general issues that are relevant to our analysis under section 4(b)(2) of the Act.

Economic Analysis

Following the publication of the proposed revised critical habitat designation, we conducted an economic analysis to estimate the potential economic effect of the designation. The draft economic analysis (DEA; dated June 9, 2008) was made available for public review and comment from August 26, 2008, to October 27, 2008 (73 FR 50498). Substantive comments and information received on the DEA are summarized above in the ''Public Comment'' section and are incorporated into the final analysis, as appropriate. Taking any relevant new information into consideration, the Service completed a final economic analysis (FEA) (dated November 25, 2008) of the designation that updates the DEA by removing impacts that were not considered probable or likely to occur.

The primary purpose of the economic analysis is to estimate the potential incremental economic impacts associated with the designation of critical habitat for Peninsular bighorn sheep. This information is intended to assist the Secretary in making decisions about whether the benefits of excluding particular areas from the designation outweigh the benefits of including those areas in the designation. The economic analysis considers the economic efficiency effects that may result from the designation. 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 (such as lost economic opportunities associated with restrictions on land use).

The economic analysis 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 government agencies, private businesses, and individuals. The economic analysis measures lost economic efficiency associated with residential and commercial development and public projects and activities, such as economic impacts on water management and transportation projects, Federal lands, small entities, and the energy industry. This information can be used by the Secretary to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, the economic analysis looks retrospectively at costs that have been incurred since the date we listed the Peninsular bighorn sheep as endangered (March 18, 1998, 63 FR 13134), and considers those costs that may occur in the years following the revised designation of critical habitat, with the timeframes for this analysis varying by activity.

The economic analysis focuses on the direct and indirect costs of the rule. However, economic impacts to land use activities can exist in the absence of critical habitat. These impacts may result from, for example, local zoning laws, State and natural resource laws, and enforceable management plans and best management practices applied by other State and Federal agencies. Economic impacts that result from these types of protections are not included in the analysis as they are considered to be part of the regulatory and policy baseline.

The economic analysis examines activities taking place both within and adjacent to the designation. It estimates impacts based on activities that are ''reasonably foreseeable'' including, but not limited to, activities that are currently authorized, permitted, or funded, or for which proposed plans are currently available to the public. Accordingly, the analysis bases estimates on activities that are likely to occur within a 20-year timeframe, from when the proposed rule became available to the public (October 10, 2007, 72 FR 57740). The 20-year timeframe was chosen for the analysis because, as the time horizon for an economic analysis is expanded, the assumptions on which the projected number of projects and cost impacts associated with those projects are based become increasingly speculative.

The economic analysis is intended to quantify the baseline and incremental economic impacts of all potential conservation efforts for Peninsular bighorn sheep associated with the following activities: (1) Habitat management; (2) development; (3) mining; (4) recreation; (5) transportation; and (6) utility construction. Baseline impacts include the potential economic impacts of all actions relating to the conservation of the Peninsular bighorn sheep, including costs associated with sections 7, 9, and 10 of the Act. Baseline impacts also include the economic impacts of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation in the area evaluated in the DEA. In other words, those impacts associated with the listing of the species and not associated with critical habitat. Incremental impacts are those potential future economic impacts of conservation actions relating to the designation of critical habitat; these impacts would not be expected to occur without the designation of critical habitat.

Baseline economic impacts are those impacts that result from listing and other conservation efforts for Peninsular bighorn sheep. Conservation efforts related to development activities constitute the majority of total baseline costs to areas proposed for critical habitat (more than 70 percent). Mining-related impacts comprise 20 percent of the impacts; these impacts result from potential conservation effort costs associated with mine operations. Recreation and habitat management related impacts comprise about 9 percent of the impacts. Post-designation baseline impacts are estimated to be approximately $92.5 million in present value terms using a 3 percent discount rate ($6.22 million annualized) over the next 20 years (2008 to 2027) in areas proposed as critical habitat (not including areas proposed or considered for exclusion under section 4(b)(2) of the Act). Stated in other terms, these post-designation baseline impacts are estimated to be approximately $67.4 million ($6.36 million annualized) in

present value terms using a 7 percent discount rate.

Post-designation baseline impacts for areas proposed for exclusion are calculated separately from areas proposed as critical habitat. These impacts are related to continued habitat management practices within areas managed by the Agua Caliente Band of Cahuilla Indians Tribe and are estimated to be approximately $499,000 ($33,500 annualized) using a 3 percent discount rate. Stated in present value terms using a 7 percent discount rate, these impacts are estimated at $369,000 ($34,800 annualized). Additionally, post-designation baseline impacts for areas considered for exclusion were calculated separately from areas proposed as critical habitat. These impacts are related to habitat management, development, and transportation, and are estimated to be approximately $86.3 million ($4.95 million annualized) using a 3 percent discount rate. Assuming a 7 percent discount rate, post-designation baseline impacts are estimated at $59.7 million ($5.15 million annualized).

The majority of potential incremental impacts attributed to the proposed revised critical habitat designation are related to habitat management conservation efforts. The economic analysis estimates potential incremental economic impacts in areas proposed as revised critical habitat over the next 20 years to be $411,000 ($27,600 annualized) assuming a 3 percent discount rate (not including areas proposed or considered for exclusion under section 4(b)(2) of the Act). Assuming a 7 percent discount rate, these impacts were estimated to be approximately $306,000 ($28,900 annualized).

Incremental impacts for the tribal lands proposed for exclusion in the proposed revised critical habitat rule were calculated separately from other areas proposed as critical habitat. These impacts are related to habitat management and development and were estimated to be approximately $11.3 million ($758,000 annualized) assuming a 3 percent discount rate. Assuming a 7 percent discount rate, incremental impacts for areas proposed for exclusion are estimated at $8.31 million ($785,000 annualized). Additionally, incremental impacts for areas considered for exclusion (Coachella Valley MSHCP) in the proposed revised critical habitat rule were also calculated separately from areas proposed as critical habitat. These impacts are related to forecast section 7 consultations and were estimated to be approximately $8,850 ($595 annualized) assuming a 3 percent discount rate. Assuming a 7 percent discount rate, incremental impacts for areas considered for exclusion were estimated at $7,920 ($747 annualized).

The economic analysis 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 (such as lost economic opportunities associated with restrictions on land use). The economic analysis 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 government agencies, private businesses, and individuals. The analysis measures lost economic efficiency associated with residential and commercial development and public projects and activities, such as economic impacts on water management and transportation projects, Federal lands, small entities, and the energy industry. This information can be used by decision-makers to assess whether the effects of the revised designation might unduly burden a particular group or economic sector.

The Service completed a final economic analysis (FEA) (November 25, 2008) of the proposed designation that updates the DEA by removing impacts that were not considered probable or likely to occur. The FEA estimates that the potential economic effects of actions relating to the conservation of this DPS, including costs associated with sections 4, 7, and 10 of the Act (baseline costs, not attributable to critical habitat), over the next 20 years will be $92.5 million applying a 3 percent discount rate, or $67.4 million using a discount rate of 7 percent. The FEA also estimates total costs attributable solely to the designation of critical habitat for Peninsular bighorn sheep (incremental costs) to be $411,000 (present value at a 3 percent discount rate). After consideration of the impacts under section 4(b)(2) of the Act, we have not excluded any areas from the final critical habitat designations based on the identified economic impacts.

The final economic analysis is available at *http://www.regulations.gov* or upon request from the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Benefits of Designating Critical Habitat

The process of designating critical habitat as described in the Act requires that the Service identify those lands within the geographical area occupied by the species at the time of listing on which are found the physical or biological features essential to the conservation of the species that may require special management considerations or protection, and those areas outside the geographical area occupied by the species at the time of listing that are essential for the conservation of the species. In identifying those lands, the Service must consider the recovery needs of the species, such that, on the basis of the best scientific data available at the time of designation, the habitat that is identified, if protected or managed appropriately, could provide for the survival and recovery of the species.

The identification of areas that contain features essential to the conservation of the species that can, if managed or protected, provide for the recovery of a species, is beneficial. The process of proposing and finalizing a critical habitat rule provides the Service with the opportunity to determine the physical and biological features essential to the conservation of the species within the geographical area occupied by the species at the time of listing, as well as to determine other areas essential for the conservation of the species. The designation process includes peer review and public comment on the identified physical and biological features and areas. This process is valuable to land owners and managers in developing conservation management plans for identified areas, as well as any other occupied habitat or suitable habitat that may not be included in the areas the Service identifies as meeting the definition of critical habitat.

The consultation provisions under section 7(a)(2) of the Act constitute the regulatory benefits of critical habitat. As discussed above, Federal agencies must consult with the Service on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Federal agencies must also consult with us on actions that may affect a listed species and refrain from undertaking actions that are likely to jeopardize the continued existence of such species. The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. For some species, and in some locations, the outcome of these analyses will be similar, because effects to habitat will often result in effects to the species. However, the regulatory standard is different, as the jeopardy

analysis investigates the action's impact on survival and recovery of the species, while the adverse modification analysis investigates the action's effects to the designated habitat's contribution to conservation. This will, in many instances, lead to different results and different regulatory requirements. Thus, critical habitat designations may provide greater benefits to the recovery of a species than would listing alone.

There are two limitations to the regulatory effect of critical habitat. First, a consultation is only required where there is a Federal nexus (an action authorized, funded, or carried out by any Federal agency)—if there is no Federal nexus, the critical habitat designation of private lands itself does not restrict any actions that destroy or adversely modify critical habitat. Second, the designation only limits destruction or adverse modification. By its nature, the prohibition on adverse modification is designed to ensure that the conservation role and function of those areas that contain the physical and biological features essential to the conservation of the species or of unoccupied areas that are essential for the conservation of the species are not appreciably reduced. Critical habitat designation alone, however, does not require private property owners to undertake specific steps toward recovery of the species.

Once an agency determines that consultation under section 7(a)(2) of the Act is necessary, the process may conclude informally when the Service concurs in writing that the proposed Federal action is not likely to adversely affect critical habitat. However, if we determine through informal consultation that adverse impacts are likely to occur, then formal consultation is initiated. Formal consultation concludes with a biological opinion issued by the Service on whether the proposed Federal action is likely to result in destruction or adverse modification of critical habitat.

For critical habitat, a biological opinion that concludes in a determination of no destruction or adverse modification may contain discretionary conservation recommendations to minimize adverse effects to primary constituent elements, but it would not suggest the implementation of any reasonable and prudent alternative. We suggest reasonable and prudent alternatives to the proposed Federal action only when our biological opinion results in an adverse modification conclusion.

As stated above, the designation of critical habitat does not require that any management or recovery actions take place on the lands included in the designation. Even in cases where consultation is initiated under section 7(a)(2) of the Act, the end result of consultation is to avoid jeopardy to the species and adverse modification of its critical habitat, but not necessarily to manage critical habitat or institute recovery actions on critical habitat. Conversely, voluntary conservation efforts implemented through management plans institute proactive actions over the lands they encompass and are put in place to remove or reduce known threats to a species or its habitat and, therefore, implement recovery actions.

We believe that in many instances the regulatory benefit of critical habitat is minimal when compared to the conservation benefit that can be achieved through implementing Habitat Conservation Plans (HCPs) under section 10 of the Act or other habitat management plans. The conservation achieved through such plans is typically greater than what we achieve through multiple site-by-site, project-by-project, section 7(a)(2) consultations involving consideration of critical habitat. Management plans commit resources to implement long-term management and protection to particular habitat for at least one and possibly other listed or sensitive species. Section 7(a)(2) consultations only commit Federal agencies to preventing adverse modification of critical habitat caused by the particular project, and they are not committed to provide conservation or long-term benefits to areas not affected by the proposed action. Thus, implementation of an HCP or management plan that incorporates enhancement or recovery as the management standard may often provide as much or more benefit than a consultation for critical habitat designation.

Another benefit of including lands in critical habitat is that designation of critical habitat serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. This helps focus and promote conservation efforts by other parties by clearly delineating areas of high conservation value for Peninsular bighorn sheep. In general, critical habitat designation always has educational benefits; however, in some cases, they may be redundant with other educational effects. For example, HCPs have significant public input and may largely duplicate the educational benefits of a critical habitat designation. Including lands in critical habitat also would inform State agencies and local governments about areas that could be conserved under State laws or local ordinances.

Conservation Partnerships on Non-Federal Lands

Most federally listed species in the United States will not recover without cooperation of non-Federal landowners. More than 60 percent of the United States is privately owned (National Wilderness Institute 1995), and at least 80 percent of endangered or threatened species occur either partially or solely on private lands (Crouse *et al.* 2002, p. 720). Stein *et al.* (1995, p. 400) found that only about 12 percent of listed species were found almost exclusively on Federal lands (90 to 100 percent of their known occurrences restricted to Federal lands) and that 50 percent of federally listed species are not known to occur on Federal lands at all.

Given the distribution of listed species with respect to land ownership, conservation of listed species in many parts of the United States is dependent upon working partnerships with a wide variety of entities and the voluntary cooperation of many non-Federal landowners (Wilcove and Chen 1998, p. 1407; Crouse *et al.* 2002, p. 720; James 2002, p. 271). Building partnerships and promoting voluntary cooperation of landowners are essential to understanding the status of species on non-Federal lands, and are necessary to implement recovery actions such as reintroducing listed species, habitat restoration, and habitat protection.

Many non-Federal landowners derive satisfaction from contributing to endangered species recovery. We promote these private-sector efforts through the Department of the Interior's Cooperative Conservation philosophy. Conservation agreements with non-Federal landowners (HCPs, safe harbor agreements, other conservation agreements, easements, and State and local regulations) enhance species conservation by extending species protections beyond those available through section 7 consultations. In the past decade, we encouraged non-Federal landowners to enter into conservation agreements, based on a view that we can achieve greater species conservation on non-Federal land through such partnerships than we can through regulatory methods (December 2, 1996, 61 FR 63854).

Many private landowners, however, are wary of the possible consequences of encouraging endangered species to their property, and there is mounting evidence that some regulatory actions by the Federal Government, while well-intentioned and required by law, can

(under certain circumstances) have unintended negative consequences for the conservation of species on private lands (Wilcove *et al.* 1996, pp. 5–6; Bean 2002, pp. 2–3; Conner and Mathews 2002, pp. 1–2; James 2002, pp. 270–271; Koch 2002, pp. 2–3; Brook *et al.* 2003, pp. 1639–1643). Many landowners fear a decline in their property value due to real or perceived restrictions on land-use options where threatened or endangered species are found. Consequently, harboring endangered species is viewed by many landowners as a liability. This perception results in anti-conservation incentives because maintaining habitats that harbor endangered species represents a risk to future economic opportunities (Main *et al.* 1999, pp. 1264–1265; Brook *et al.* 2003, pp. 1644–1648).

According to some researchers, the designation of critical habitat on private lands significantly reduces the likelihood that landowners will support and carry out conservation actions (Main *et al.* 1999, p. 1263; Bean 2002, p. 2; Brook *et al.* 2003, pp. 1644–1648). The magnitude of this negative outcome is greatly amplified in situations where active management measures (such as reintroduction, fire management, and control of invasive species) are necessary for species conservation (Bean 2002, pp. 3–4). We believe that the judicious exclusion of specific areas of non-federally owned lands from critical habitat designations can contribute to species recovery and provide a superior level of conservation than critical habitat alone.

The purpose of designating critical habitat is to contribute to the conservation of threatened and endangered species and the ecosystems upon which they depend. The outcome of the designation, triggering regulatory requirements for actions funded, authorized, or carried out by Federal agencies under section 7(a)(2) of the Act, can sometimes be counterproductive to its intended purpose on non-Federal lands. Thus the benefits of excluding areas that are covered by partnerships or voluntary conservation efforts can often be high.

Benefits of Excluding Lands With HCPs or Other Approved Management Plans

The benefits of excluding lands with HCPs or other approved long-term management plans from critical habitat designation include relieving landowners, communities, and counties of any additional regulatory burden that might be imposed as a result of the critical habitat designation. Most HCPs and other conservation plans take many years to develop, and upon completion, are consistent with the recovery objectives for listed species that are covered within the plan area. Many also provide conservation benefits to unlisted sensitive species. Imposing an additional regulatory review as a result of the designation of critical habitat may undermine our efforts and partnerships as well. Our experience in implementing the Act has found that designation of critical habitat within the boundaries of management plans that provide conservation measures for a species is a disincentive to many entities which are either currently developing such plans, or contemplating doing so in the future, because one of the incentives for undertaking conservation is greater ease of permitting where listed species are affected. Addition of a new regulatory requirement would remove a significant incentive for undertaking the time and expense of management planning.

A related benefit of excluding lands covered by approved HCPs and management plans that cover listed species from critical habitat designation is the unhindered, continued ability it gives us to seek new partnerships with future plan participants, including States, counties, local jurisdictions, conservation organizations, and private landowners, which together can implement conservation actions that we would be unable to accomplish otherwise. Designating lands within approved management plan areas as critical habitat would likely have a negative effect on our ability to establish new partnerships to develop these plans, particularly plans that address landscape-level conservation of species and habitats. By excluding these lands, we preserve our current partnerships and encourage additional conservation actions in the future.

Both HCPs and Natural Communities Conservation Plan (NCCP)–HCP applications require consultation, which would review the effects of all HCP-covered activities that might adversely impact the species under a jeopardy standard, including possibly significant habitat modification, even without the critical habitat designation. Additionally, all other Federal actions that may affect the listed species still require consultation under section 7(a)(2) of the Act, and we review these actions for possibly significant habitat modification in accordance with the jeopardy standard under section 7(a)(2) of the Act.

Information provided in the previous sections applies to all the following discussions of benefits of inclusion or exclusion of critical habitat.

Application of Section 4(b)(2)—Other Relevant Impacts—Conservation Partnerships

Section 4(b)(2) of the Act allows the Secretary to exclude areas from critical habitat for other relevant impacts if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of 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. As discussed above in the ''Conservation Partnerships on Non-Federal Lands'' section, we believe that designation can negatively impact the working relationships and conservation partnerships we have formed with private landowners. The Service recognizes that 80 percent of endangered or threatened species occur either partially or solely on private lands (Crouse *et al.* 2002) and we will only achieve recovery of federally listed species with the cooperation of private landowners.

In making the following exclusions, we evaluated the benefits of designating these non-Federal lands that may not have a Federal nexus for consultation while considering if our existing partnerships have resulted, or will result, in greater conservation benefits to the Peninsular bighorn sheep and the physical or biological features essential to its conservation than a critical habitat designation. As discussed in the ''Benefits of Designating Critical Habitat'' section above, conservation partnerships that result in implementation of an HCP or other management plan that considers enhancement or recovery as the management standard often provide as much or more benefit than consultation for critical habitat designation (the primary benefit of a designation).

In considering the benefits of including lands in a designation that are covered by a current HCP or other management plan, we evaluate a number of factors to help us determine if the plan provides equivalent or greater conservation benefit than would likely result from consultation on a designation:

(1) Whether the plan is complete and provides protection from destruction or adverse modification;

(2) Whether there is a reasonable expectation the conservation management strategies and actions will be implemented for the foreseeable future, based on past practices, written guidance, or regulations; and

(3) Whether the plan provides conservation strategies and measures

consistent with currently accepted principles of conservation biology.

We balance the benefits of inclusion against the benefits of exclusion by considering the benefits of preserving partnerships and encouraging development of additional HCPs and other conservation plans in the future.

Exclusion of Agua Caliente Band of Cahuilla Indians Tribal Lands

The Agua Caliente Band of Cahuilla Indian's Reservation encompasses over 31,400 acres (12,707 ha) of land in the Coachella Valley, Riverside County, California (MBA 2001, p. 1–6). The Reservation contains tribal trust land, allotted trust land, and both tribal and non-Indian fee land, which is in a checkerboard pattern and interspersed among public lands owned or under the control of various Federal and state agencies, and privately owned land under the jurisdiction of the County of Riverside or one of three municipalities (the cities of Palm Springs, Cathedral City, and Rancho Mirage) (MBA 2001, p. 1–6). The reservation includes 19,200 ac (7,770 ha), or 15 percent, of modeled Peninsular bighorn sheep habitat within the Coachella Valley (MBA 2001, p. 4–4). The Tribe regularly coordinates and works with the Service to ensure maximum protection of tribal trust resources, managing activities in such a way as to ensure compliance with the Act (MBA 2001, p. ES–2). This cooperative relationship provides the Tribe an opportunity to acknowledge the Service's duty and authority while preserving tribal sovereignty and honoring traditional tribal land management practices.

The Tribe identified 16 sensitive wildlife species (including Peninsular bighorn sheep) and two sensitive plant species that are covered by the conservation recommendations included in the 2001 Tribal Conservation Strategy (MBA 2001, p. ES–4). This conservation strategy includes: (1) Establishment of two Conservation Areas from which a Habitat Preserve shall either be created or funded; and (2) conservation measures for covered species (MBA 2001, p. ES–4). One of the conservation areas is the Mountains and Canyons Conservation Area (MCCA) from which a multiple species Habitat Preserve will be created, the main component of the 2001 Tribal Conservation Strategy (MBA 2001, p. 5–1). The MCCA includes core habitat for Peninsular bighorn sheep in the San Jacinto and Santa Rosa Mountains, including undeveloped canyon mouths and alluvial fans (MBA 2001, p. 5–2). The other conservation area is the Valley Floor Conservation Area, which applies a development mitigation fee program to fund acquisition of a Habitat Preserve benefitting species known to exist on the valley floor (MBA 2001, p. 5–1). The conservation measures include avoidance and minimization measures, assurances for establishment of the Habitat Preserve, adaptive management and monitoring, implementation and funding, amendment procedures, and conditions for changed and unforeseen circumstances (MBA 2001, p. ES–4).

Habitat conservation within the MCCA has, to some extent, already been established by the Tribe with the creation of the Indian Canyons Heritage Park and controlled access to Tahquitz Canyon (MBA 2001, p. 5–2). Existing tribal conservation programs for Indian Canyons Heritage Park and Tahquitz Canyon (the Indian Canyons Master Plan and Tahquitz Canyon Wetland Conservation Plan, respectively) reflect the importance of natural resources to the Tribe and the Tribe's intent and ability to manage these resources (MBA 2001, p. 5–2). The Tribe will continue to manage these areas for their habitat values, including protection of covered species (MBA 2001, p. 5–2). Peninsular bighorn sheep, several of the covered species, and natural communities protected within the 2001 Tribal Conservation Strategy are known to occur in these canyon areas (MBA 2001, p. 5–2). Together these protected canyon areas provide over 2,600 ac (1,052 ha) of habitat to covered species (MBA 2001, p. 5–2).

The primary goal of the Indian Canyons Heritage Park is to provide for long-term preservation of major natural and cultural resources (MBA 2001, p. 5–9). Secondary objectives are to preserve the ecological setting for the unique palm oases, and to preclude any development in the park that could have negative impacts (MBA 2001, p. 5–9). Other objectives are to restore the oases to their pristine ecological condition; provide adequate interpretation of the cultural resources; and provide adequate vehicular, foot, and equestrian access to the area (MBA 2001, p. 5–9). The management plan developed for the Indian Canyons Heritage Park (Dangermond Group, 2002) emphasizes the preservation of the following key habitats: wetland and riparian habitats found in canyons; desert scrub communities at the mouth of the Palm Canyon in the northern reaches of the Indian Canyons Heritage Park boundaries; and the Peninsular bighorn sheep migration corridor that runs east-west between the San Jacinto and Santa Rosa Mountains (MBA 2001, p. 5–9).

Tahquitz Canyon is located in the San Jacinto Mountains north of Indian Canyon Heritage Park (MBA 2001, p. 5–10). The Tribe owns approximately 500 ac (202 ha) that includes Tahquitz Canyon and the alluvial fan at the mouth of the canyon (MBA 2001, p. 5–11). In the 1990's, the Tribe commissioned a program aimed at the restoration of Tahquitz Creek (MBA 2001, p. 5–10). Litter and other debris were removed, the effects of vandalism were mitigated, and human access to the area was controlled by gating the entrance to the canyon and implementing regular patrols by Tribal Rangers (MBA 2001, p. 5–10). To ensure the continued protection and restoration of the Tahquitz Canyon area, the Tribe prepared a Wetlands Conservation Plan (Connolly and Associates, 2000). With the plan's adoption, the Tribe formalized its goals toward the maintenance and preservation of Tahquitz Canyon, including utilizing various measures to control the influx of exotic plant species (MBA 2001, p. 5–10).

The 2001 Tribal Conservation Strategy provides adequate certainty that the Habitat Preserve will provide sufficient mitigation for species impacts and provide for conservation of the covered species and their habitat by meeting the following objectives: (1) Protecting a minimum of 90 percent of the habitat in the MCCA for each of the covered species and natural communities addressed in the 2001 Tribal Conservation Strategy; (2) maintaining the viability of essential ecological processes; and (3) maintaining the viability of linkages within conservation areas (MBA 2001, p. 5–13). Species specific avoidance and minimization measures for Peninsular bighorn sheep include the following:

(1) Construct fences for projects adjacent to Peninsular bighorn sheep habitat to exclude sheep from urban areas where they might otherwise use urban sources of food and water;

(2) Avoid the use of non-native vegetation along unfenced habitat interfaces where it may attract or concentrate bighorn sheep;

(3) Promote the use of locally native vegetation and limit the planting of exotic species to areas not accessible by bighorn sheep;

(4) Discourage the use of plants known to invade and degrade Peninsular bighorn sheep habitat;

(5) Prohibit the use of any known toxic plants where they may be accessible to sheep or may potentially invade bighorn sheep habitat;

(6) Prohibit illumination of mountain slopes with artificial lighting; and

(7) Eliminate bluetongue and other vector-carried diseases by complying with the University of California guidelines for water features in new projects (MBA 2001, p. 5–28 and 5–29). Additionally, the Tribe commits to cooperating with State and Federal land management agencies to develop and implement a trails management program that reduces or eliminates trail-related activities that are detrimental to Peninsular bighorn sheep habitat (MBA 2001, p. 5–28 and 5–29).

The Draft Agua Caliente Band of Cahuilla Indians Trail Plan (Trails Management Plan), dated October 1, 2000, is currently being implemented and was developed by the Tribe to provide trails use throughout the Reservation, including Peninsular bighorn sheep habitat. The Trails Management Plan is compatible with bighorn sheep conservation goals as well as affording a reasonable level of access to the public (MBA 2001, p. 4–4). Management of trails on tribal lands may include trail re-routings, limitations on trail use, and seasonal closures for some areas to benefit Peninsular bighorn sheep and other wildlife by decreasing human impact on habitat and disturbance to wildlife (MBA 2001, p. 4–4).

The Tribe is currently cooperating with the Service to finalize the 2007 draft Tribal HCP, which encompasses and updates the existing 2001 Tribal Conservation Strategy, as well as includes all of the other existing management plans described above that provide conservation to Peninsular bighorn sheep and their habitat. The 2007 draft Tribal HCP covers approximately 36,720 ac (14,860 ha) of tribal lands (compared to 31,400 acres (12,707 ha) in the 2001 Tribal Conservation Strategy, an increase of 5,320 acres (2,153 ha)), and includes conservation for 23 sensitive and federally listed species (''covered species'') (Helix Environmental Planning 2007, p. ES–4). The primary conservation mechanism provided by the 2007 draft Tribal HCP is the protection of significant areas of covered species habitat through creation of a habitat preserve and adoption of new development standards (Helix Environmental Planning 2007, p. ES–1).

The Tribe's purposes in adopting the 2007 draft Tribal HCP are to: (1) Continue to exercise its long-standing tradition as a land use manager and steward of the natural resources in and around the Reservation by assuming a role as the primary manager of such resources and the land uses that impact them; and (2) establish consistency and streamline permitting requirements with respect to protected species by establishing one process that the Tribe oversees and implements (Helix Environmental Planning 2007, p. ES–1). In summary, the 2007 draft Tribal HCP will streamline the conservation for Peninsular bighorn sheep and other covered species by incorporating and updating the conservation and management practices identified in the existing management plans that have been implemented throughout the reservation to date.

We are currently processing the Tribe's application for a section 10(a)(1)(B) permit based on the 2007 draft Tribal HCP. We published a Notice of Availability for public review and comment in the **Federal Register** on October 12, 2007, with the public comment period closing January 10, 2008. The approximately 4,790 ac (1,938 ha) of tribal lands in critical habitat Units 1 (4,323 ac (1,749 ha)) and 2A (467 ac (189 ha)) fall within the 2007 draft Tribal HCP area. The Tribe's goals for conservation of Peninsular bighorn sheep are: (1) Conserving habitat within the 2007 draft Tribal HCP plan area (PCEs 1, 2, 3, 4, and 5); (2) maintaining connectivity, preventing fragmentation, and allowing movement within key linkage areas (PCEs 1 and 4); and (3) adaptively managing habitat quality and subpopulations/ewe groups to alleviate threats in the 2007 draft Tribal HCP plan area (Helix Environmental Planning 2007, p. 4–8).

The 2007 draft Tribal HCP and associated implementing agreement, when finalized, will impose minimization and mitigation requirements in order to facilitate assembly of the habitat preserve and assure minimization and mitigation for impacts to covered species, including Peninsular bighorn sheep. This will provide for significant preservation and management of the physical and biological features essential to the conservation of Peninsular bighorn sheep and will help reach the recovery goals for this DPS. The 2007 draft Tribal HCP is comprehensive and addresses a broad range of management needs at the preserve and species levels that are intended to reduce the threats to Peninsular bighorn sheep.

Peninsular bighorn sheep are primarily threatened by the direct and indirect effects of development and expansion of urban areas; human disturbance related to recreation; construction of roadways and power lines; and mineral extraction and mining operations. In order to remove or reduce threats to Peninsular bighorn sheep and the physical and biological features essential to the conservation of this DPS, conservation objectives of the 2007 Draft Tribal HCP for Peninsular bighorn sheep include the following:

(1) Ensure implementation of the 2007 draft Tribal HCP is consistent with the recovery plan (Service 2000);

(2) Conserve a minimum of 17,692 ac (7,160 ha) of habitat within the plan area;

(3) Conserve 100 percent of Use Areas (areas defined by the 2007 draft Tribal HCP to have high functional value);

(4) Conserve land necessary to maintain linkages/connectivity;

(5) Minimize direct and indirect impacts from covered activities by ensuring implementation of development standards, including avoidance and minimization measures;

(6) Minimize impacts from recreational activities;

(7) Alleviate threat of disease transfer from livestock or nonnative wildlife;

(8) Monitor population size and mortality rates;

(9) Fund or undertake additional studies regarding this DPS;

(10) Ensure that management action thresholds are routinely assessed;

(11) Implement adaptive management; and

(12) Conserve habitat quality through plan implementation (Helix Environmental Planning 2007, p. 4–9).

The Tribe continues to work with the Service in a coordinated fashion in the context of government-to-government consultation, in part due to the development and finalization of the 2007 draft Tribal HCP. This cooperation will ensure maximum protection of the trust resources of the Tribe and its members, allowing for an approach that acknowledges the duty and authority of the Service with respect to the Act while preserving tribal sovereignty and honoring traditional tribal land management practices (Helix Environmental Planning 2007, p. ES–2). The Tribe has provided assurances that adequate funding is available for implementation of the 2007 draft Tribal HCP throughout the duration of the proposed Section 10(a)(1)(B) permit and that conservation, mitigation, and management measures will be carried out as proposed (Helix Environmental Planning 2007, p. ES–11). The Tribe will provide administrative support to accomplish management responsibilities as well as funding to support the Tribe's baseline assessment, inventory, and monitoring efforts defined in the plan (Helix Environmental Planning 2007, p. ES–11). Acquisition and management of the habitat preserve will be funded primarily through obligations of covered projects, with an endowment fund

established that provides funding for the Tribe's ongoing costs to administer, manage, and monitor the habitat preserve in perpetuity (Helix Environmental Planning 2007, p. ES–11).

The 1998 final listing rule for Peninsular bighorn sheep identified habitat loss (especially in canyon bottoms), degradation, and fragmentation associated with the proliferation of residential and commercial development, roads and highways, water projects, and vehicular and pedestrian recreational uses as primary threats to the Peninsular bighorn sheep. As described above, the Tribe's ongoing management and conservation efforts provide enhancement of habitat by removing or reducing threats to this DPS and the physical and biological features essential to the conservation of the DPS. The tribal preserve encompasses habitat that supports identified core populations of this DPS and therefore provides for recovery. Based on the reasoning provided below, we excluded from Unit 1 and Unit 2A approximately 4,790 ac (1,938 ha) of Agua Caliente Band of Cahuilla Indians tribally-owned or controlled lands from the Peninsular bighorn sheep final revised critical habitat designation under section 4(b)(2) of the Act.

Benefits of Inclusion—Agua Caliente Band of Cahuilla Indians Tribal Lands

The inclusion of the approximately 4,790 ac (1,938 ha) of tribally-owned or controlled lands in the final designation could be beneficial because it identifies lands that require management for conservation of Peninsular bighorn sheep. The process of proposing and finalizing the revised critical habitat rule provided the Service with the opportunity to evaluate and refine the features essential to the conservation of the DPS within the geographical area occupied by the Peninsular bighorn sheep at the time of listing, as well as to evaluate whether there are other areas essential for the conservation of the DPS. The designation process included peer review and public comment on the identified features and areas. This process is valuable to land owners and managers in developing conservation management plans for identified areas, as well as any other occupied habitat or suitable habitat that may not have been included in the Service's determination of essential habitat.

The educational benefits of designation are small and largely redundant to those derived through conservation efforts currently being implemented on tribal lands under the 2001 Tribal Conservation Strategy, as well as those being planned and implemented in the approximately 4,790 ac (1,938 ha) of tribally-owned or controlled lands within the 2007 draft Tribal HCP. The educational benefits of critical habitat designation derived through informing our tribal partners and other members of the public of areas important for the long-term conservation of the Peninsular bighorn sheep have already been and continue to be achieved through: (1) Development of the 2001 Tribal Conservation Strategy and 2007 draft Tribal HCP; (2) the original critical habitat designation process in 2001; and (3) publication of the proposed revisions to critical habitat in 2007 and 2008, along with notices of public comment periods, and the public hearing.

The consultation provisions under section 7(a) of the Act constitute the regulatory benefits of inclusion for critical habitat. As discussed above, Federal agencies must consult with us on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. There is the potential for future activities within the lands being excluded having a Federal nexus for the Peninsular bighorn sheep as a result of actions by the BLM (*i.e.*, land exchange) and the Bureau of Indian Affairs (BIA). Therefore, including this area may provide some regulatory benefits under section 7(a) of the Act.

However, the habitat management provided by the Agua Caliente Band of Cahuilla Indians through the 2001 Tribal Conservation Strategy and the management measures it has memorialized in the 2007 draft Tribal HCP address conservation issues from a coordinated, integrated perspective rather than a piecemeal, project-by-project approach and will achieve more Peninsular bighorn sheep conservation on these tribal lands than we would likely achieve through section 7 consultations involving consideration of critical habitat. The PCEs required by the Peninsular bighorn sheep benefit from the conservation measures implemented by the Tribe and outlined in the 2001 Tribal Conservation Strategy and 2007 draft Tribal HCP. In summary (and as identified above), the conservation measures currently being implemented by the Tribe through the 2001 Tribal Conservation Strategy, and consistent with management actions memorialized in the draft 2007 Tribal HCP, include:

(1) Ensure management measures are consistent with the recovery plan (Service 2000);

(2) Conserve a minimum of 17,692 ac (7,160 ha) of habitat on tribal lands;

(3) Conserve 100 percent of Use Areas (areas defined by the 2007 draft Tribal HCP to have high functional value);

(4) Conserve land necessary to maintain linkages/connectivity;

(5) Minimize direct and indirect impacts from covered activities by ensuring implementation of development standards, including avoidance and minimization measures;

(6) Minimize impacts from recreational activities;

(7) Alleviate threat of disease transfer from livestock or nonnative wildlife;

(8) Monitor population size and mortality rates;

(9) Fund or undertake additional studies regarding this DPS;

(10) Ensure management action thresholds are routinely assessed;

(11) Implement adaptive management; and

(12) Conserve habitat quality (Helix Environmental Planning 2007, p. 4–9).

Such measures will remove or reduce known threats to Peninsular bighorn sheep and its PCEs in Units 1 and 2A. The Tribe is committed to implementing conservation and management actions that would not generally result from the critical habitat designation (see ''Benefits of Designating Critical Habitat'' section above). For example, critical habitat designation does not ensure: Habitat enhancement and restoration; functional connections to adjoining habitat; or monitoring of the Peninsular bighorn sheep (see discussion above).

The Agua Caliente Band of Cahuilla Indians highly values its wildlife and natural resources, and is charged to preserve and protect these resources under the Tribal Constitution. Consequently, the Tribe historically has been committed to managing the habitat of wildlife on its lands, including the habitat of endangered and threatened species. In light of the demonstrated commitment by the Tribe to manage Peninsular bighorn sheep habitat to provide for the conservation of the DPS, the preferable regional scale of conservation planning utilized in the development of the 2001 Tribal Conservation Strategy and 2007 draft Tribal HCP, and the conservation that has been achieved through implementation of the 2001 Tribal Conservation Strategy and will occur through implementation of the 2007 draft Tribal HCP, we conclude that the potential regulatory benefit of designating these areas in Units 1 and 2A as critical habitat is minimal.

Benefits of Exclusion—Agua Caliente Band of Cahuilla Indians Tribal Lands

In accordance with the Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (June 5, 1997); the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951); Executive Order 13175; and the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2), we believe that fish, wildlife, and other natural resources on tribal lands are better managed under tribal authorities, policies, and programs than through Federal regulation wherever possible and practicable. Based on this philosophy, we believe that, in most cases, designation of tribal lands as critical habitat provides very little additional benefit to threatened and endangered species. Conversely, such designation is often viewed by tribes as unwarranted and an unwanted intrusion into tribal self governance, thus compromising the government-to-government relationship essential to achieving our mutual goals of managing for healthy ecosystems upon which the viability of threatened and endangered species populations depend.

This is supported by the following statement from the Tribe received during the comment period for the proposed rule: ''Contrary to the requirements of the ESA, Executive Order 13,175, and the Secretarial Order, the proposed rule fails to defer to the Tribe's own established standards, it discourages the Tribe from developing its own policies, and it intrudes on tribal management of its lands. Designation of critical habitat could delay approval of the [2007 draft] Tribal HCP, thus adding to the costs of preparing the Tribal HCP and undermining significant protections for the bighorn sheep. Designation of critical habitat also can be expected to increase the amount of time and financial resources necessary to undertake covered activities described in the [2007 draft] Tribal HCP, yet it is unlikely to yield material benefits for the bighorn sheep.''

We developed a close partnership with the Agua Caliente Band of Cahuilla Indians through the development of the 2001 Tribal Conservation Strategy and 2007 draft Tribal HCP, which incorporate appropriate protections and management for Peninsular bighorn sheep, its habitat, and the features essential to the conservation of this DPS. These protections are consistent with statutory mandates under section 7 of the Act to avoid destroying or adversely modifying critical habitat, and go beyond that prohibition by including active management and protection of connected habitat areas. By excluding 4,790 ac (1,938 ha) of lands in Units 1 and 2A from designation, we would (1) Eliminate an essentially redundant layer of regulatory review for projects covered by the 2001 Tribal Conservation Strategy and 2007 draft Tribal HCP; (2) help preserve our ongoing partnership with the Agua Caliente Band of Cahuilla Indians; (3) demonstrate our commitment and responsibilities in accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and Secretarial Order 3206; and (4) encourage new partnerships with other tribes, landowners, and jurisdictions. These partnerships with HCP participants are critical for the conservation of Peninsular bighorn sheep.

The Benefits of Exclusion Outweigh the Benefits of Inclusion—Agua Caliente Band of Cahuilla Indians Tribal Lands

In accordance with the Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (June 5, 1997); the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951); Executive Order 13175; and the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2), we recognize the importance of tribal self-governance and the fundamental rights of tribes to set their own priorities and make decisions affecting their resources and distinctive ways of life. Because of the unique government-to-government relationship between Indian tribes and the United States, it is important for us to establish and maintain an effective working relationship and mutual partnership with the Agua Caliente Band of Cahuilla Indians to promote the conservation of the Peninsular bighorn sheep and other sensitive species. As stated above, we believe that fish, wildlife, and other natural resources on tribal lands are better managed under tribal authorities, policies, and programs than through Federal regulation wherever possible and practicable. Based on this philosophy, we believe that, in most cases, designation of tribal lands as critical habitat provides very little additional benefit to threatened and endangered species.

Furthermore, as discussed in the ''Benefits of Inclusion'' section above, we believe the regulatory benefit of designating critical habitat on tribally-owned or controlled lands would be low. The management plans that were developed by the Tribe in cooperation with the Service currently implement the Tribe's conservation strategies and address conservation issues from a coordinated, integrated perspective rather than a piecemeal project-by-project approach. As a result, current management efforts and future management (as demonstrated through coordination to finalize the 2007 draft Tribal HCP) will achieve more Peninsular bighorn sheep conservation than we would achieve through multiple site-by-site, project-by-project, section 7 consultations involving consideration of critical habitat.

Conservation and management of Peninsular bighorn sheep habitat is essential to the survival and recovery of this DPS. Such conservation needs are typically not addressed through the application of the statutory prohibition on destruction or adverse modification of critical habitat. The specific conservation actions, avoidance and minimization measures, and management for Peninsular bighorn sheep and the features essential to its conservation provided by the Tribe's management actions, and outlined in the 2001 Tribal Conservation Strategy and 2007 draft Tribal HCP, exceed any conservation value provided as a result of regulatory protections that may be afforded through a critical habitat designation.

The Tribe's conservation strategies provide as much or more benefit than a consultation for critical habitat designation conducted under the standards required by the Ninth Circuit in the *Gifford Pinchot* decision. The benefits for the conservation of Peninsular bighorn sheep that would occur as a result of designating critical habitat (*e.g.*, protection afforded through the section 7(a)(2) consultation process) are minimal compared to the overall conservation benefits for the DPS that have been realized through the implementation of the 2001 Tribal Conservation Strategy and will be realized through implementation of the 2007 draft Tribal HCP. Furthermore, educational benefits that may be derived from a critical habitat designation are minimal and largely redundant to the educational benefits achieved through significant public, State, and local government input during the development of the tribal plans.

While it is likely that at least some future activities occurring on the lands being excluded would have a Federal nexus as a result of actions by the BLM (*i.e.*, land exchange) and the BIA, we believe the benefits of including these lands in the designation are small. The Tribe currently implements the 2001 Tribal Conservation Strategy that requires conservation of at least 85 percent of Peninsular bighorn sheep habitat and 100 percent of bighorn sheep use areas and habitat linkages identified on tribal lands. Specifically, 85 percent of the Peninsular bighorn sheep habitat is proposed for conservation, with 100 percent of the bighorn sheep use areas and habitat linkages proposed for conservation. Furthermore, the Tribe has demonstrated considerable efforts to work cooperatively with the Service to develop both the 2001 Tribal Conservation Strategy and 2007 draft Tribal HCP, implementation of which is to be consistent with the recovery strategy delineated in the Recovery Plan for Peninsular bighorn sheep.

At least 17,692 ac (7,160 ha) of existing Peninsular bighorn sheep habitat in the plan area are to be conserved. Development projects that may occur in areas not identified for conservation within the boundaries of the 2007 draft Tribal HCP must still avoid impacts to Peninsular bighorn sheep to the maximum extent practicable. Additionally, educational benefits of critical habitat designation are already in place as a result of material provided on our Web site, and through the public notice-and-comment procedures required to establish the 2007 draft Tribal HCP, and by our inclusion of these lands in the proposed rule to revise critical habitat.

In contrast, the benefits of excluding these areas from critical habitat are more significant. The exclusion of these lands from critical habitat will help preserve the partnership we developed with the Tribe through the development of the 2001 Tribal Conservation Strategy and 2007 draft Tribal HCP that incorporate protections and management of this DPS's essential physical and biological features, and promote tribal self-governance. The habitat protections provided by the Tribe's management of its resources are consistent with the mandates under section 7 of the Act to avoid destruction or adverse modification of critical habitat and go beyond that prohibition by including active management and protection of essential habitat areas. Designation of critical habitat alone does not achieve recovery or require management of those lands identified in the critical habitat rule.

Additionally, this established partnership demonstrates a continued commitment to conservation by the Tribe and aids in fostering additional partnerships for the benefit of all sensitive species on both tribally-owned or controlled lands and other private lands. Furthermore, we believe the exclusion of these tribal lands is consistent with the Act and all applicable policies and guidance (Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (June 5, 1997); the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951); Executive Order 13175; and the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2).

In summary, in making our final decision with regard to these approximately 4,790 ac (1,938 ha) of tribal lands, we considered several factors including (1) The importance of our government-to-government relationship with the Agua Caliente Band of Cahuilla Indians; (2) our effective, ongoing conservation partnership with the Tribe; (3) the sustained commitment by the Tribe to manage its lands in a manner consistent with the conservation of the DPS, as evidenced by the Tribe's ongoing management of Peninsular bighorn sheep habitat (as set forth in the 2001 Tribal Conservation Strategy (MBA 2001), formally adopted by the Tribe through its Tribal Council on November 12, 2002); and (4) the Tribe's continued commitment and cooperation with us in the finalization of the first tribal multiple-species HCP in the United States (i.e., 2007 draft Tribal HCP).

The importance of tribal self-governance and the fundamental rights of tribes to set their own priorities and make decisions affecting their resources and distinctive ways of life weighs heavily in favor of excluding these tribal lands from the final designation of critical habitat for the Peninsular bighorn sheep. We believe the benefits of including these lands in the final critical habitat designation are minimal because the Tribe's management of these lands provides substantial conservation benefits for the DPS, and we believe existing and future management will continue to provide preservation and management for, and features essential to, the conservation of Peninsular bighorn sheep, which will collectively help reach the recovery goals for this DPS. Additionally, the educational benefits of designation are small and largely redundant to those derived through the process of working with the Tribe to develop its conservation management plans and the identification of those areas most important to the DPS. By excluding these lands from designation, we would eliminate a largely redundant layer of regulatory review for a limited set of projects, and help preserve our ongoing, critical partnership with the Tribe while encouraging new partnerships with other tribes, landowners, and jurisdictions. Therefore, pursuant to section 4(b)(2) of the Act, we are excluding from Unit 1 and Unit 2A approximately 4,790 ac (1,938 ha) of tribally-owned or controlled lands that meet the definition of critical habitat from this final revised critical habitat designation.

Exclusion Will Not Result in Extinction of the Species—Agua Caliente Band of Cahuilla Indians Tribal Lands

The Agua Caliente Band of Cahuilla Indians has demonstrated its commitment to manage Peninsular bighorn sheep habitat in a manner consistent with the conservation of the DPS. The 2001 Tribal Conservation Strategy, other ongoing tribal resource management, and 2007 draft Tribal HCP, when final, have provided and will provide protection and management, in perpetuity, of lands that meet the definition of critical habitat for Peninsular bighorn sheep in Units 1 and 2A. Additionally, the jeopardy standard of section 7 of the Act and routine implementation of conservation measures through the section 7 process provide assurances that the DPS will not go extinct as a result of this exclusion. Therefore, we determined that the exclusion of 4,790 ac (1,938 ha) of tribally-owned or controlled lands from the final designation of critical habitat for the Peninsular bighorn sheep will not result in extinction of the DPS.

Exclusion of Coachella Valley Multiple Species Habitat Conservation Plan (Coachella Valley MSHCP) Lands

The Coachella Valley MSHCP is a large-scale, multi-jurisdictional habitat conservation plan encompassing about 1.1 million ac (445,156 ha) in the Coachella Valley of Riverside County (Units 1 and 2A). The Coachella Valley MSHCP addresses 27 listed and unlisted ''covered species,'' including Peninsular bighorn sheep. Participants in the Coachella Valley MSHCP include eight cities (Cathedral City, Coachella, Indian Wells, Indio, La Quinta, Palm Desert, Palm Springs, and Rancho Mirage); the County of Riverside, including the

Riverside County Flood Control and Water Conservation District, Riverside County Parks and Open Space District, Riverside County Waste Management District; the Coachella Valley Association of Governments; Coachella Valley Water District; Imperial Irrigation District; California Department of Transportation; California Department of Parks and Recreation; Coachella Valley Mountains Conservancy; and the Coachella Valley Conservation Commission (the created joint powers regional authority). The Coachella Valley MSHCP was designed to establish a multiple species habitat conservation program that minimizes and mitigates the expected loss of habitat and the incidental take of covered species. On October 1, 2008, the Service issued a single incidental take permit (TE–104604–0) under section 10(a)(1)(B) of the Act to 19 permittees under the Coachella Valley MSHCP for a period of 75 years.

Implementation of the Coachella Valley MSHCP will establish an approximately 721,457 ac (291,964 ha) Reserve System comprised of 557,100 ac (225,451 ha) of Existing Conservation Lands, up to 29,990 ac (12,137 ha) of Complementary Conservation, and up to 8,777 ac (3,552 ha) of Public and Quasi-Public lands. The permittees will mitigate for the impacts of the incidental take of covered species by conserving 96,400 ac (39,012 ha) [7,500 ac (3,035 ha) of existing local permittee lands and 88,900 ac (35,977 ha) of new conservation] of habitat and perpetually managing 125,590 ac (50,825 ha) within the Reserve System. The location and configuration of the 88,900 ac (35,977 ha) of new local permittee mitigation lands and the 21,390 ac (8,656 ha) that will be acquired through State and Federal contributions are not precisely mapped, but will be assembled from the 21 conservation areas identified in the Coachella Valley MSHCP. Within each conservation area, 90 percent of each natural community within each jurisdiction will be conserved and no more than 10 percent of the habitat will be lost.

In general, the design of the overall Reserve System was intended to capture core habitats, ecological processes, and biological corridors/linkages. The permittees collection and use of development mitigation fees, landfill tipping fees, and other funding specified in the Coachella Valley MSHCP and related documents will be used to acquire, protect, and manage the Reserve System in perpetuity. The permittees, the State, and Service will work cooperatively to enter into a Memorandum of Understanding or other appropriate agreements with Federal, State, and non-governmental-organization land managers to cooperatively manage the Existing Conservation Lands in conformance with the MSHCP. Additionally, the Coachella Valley MSHCP includes measures to avoid and minimize impacts on covered species resulting from covered activities.

The Coachella Valley MSHCP Reserve System includes about 165,856 ac (67,120 ha) of Peninsular bighorn sheep habitat of which 38,759 ac (15,685 ha) meet the definition of critical habitat. Approximately 135,630 ac (54,888 ha) of the Peninsular bighorn sheep habitat in the Reserve System are Existing Conservation Lands that are expected to be managed consistent with the Coachella Valley MSHCP, of this approximately 38,477 ac (15,571 ha) meet the definition of critical habitat. Specific conservation goals, conservation objectives, and required measures for Peninsular bighorn sheep in the Coachella Valley MSHCP include providing a total of 18,619 ac (7,535 ha) of occupied or suitable habitat within the Santa Rosa and San Jacinto Mountains, Snow Creek/Windy Point, and Cabazon Conservation Areas. This acreage goal is proposed to be attained through the conservation of private lands in the three conservation areas within the Coachella Valley MSHCP Plan Area boundary. When completed, the proposed Coachella Valley MSHCP Reserve System will protect core habitat areas and provide critical linkages for Peninsular bighorn sheep in perpetuity.

The Coachella Valley MSHCP contains conservation goals, conservation objectives, and required measures that will ameliorate the negative effects of development on Peninsular bighorn sheep habitat. The required measures include criteria for locating development, conditional provisions regarding unauthorized trails, areas where 10 percent of the private land may be developed, special provision areas, parcels subject to the Habitat Evaluation and Acquisition Negotiation Strategy (HANS), Major Amendment areas, and special disturbance areas relating to water and flood control agencies. Collectively, these measures provide a basis for evaluating, restricting, and configuring development and related activities to ensure that such projects are consistent with the Coachella Valley MSHCP.

The Coachella Valley MSHCP also contains a number of avoidance, minimization, and mitigation measures as follows: (1) Proposed covered activities in Peninsular bighorn sheep habitat will be prohibited during the lambing season (January 1 though June 30) unless otherwise authorized through a Minor Amendment with concurrence from the State and Service; (2) landscaping with toxic plants will be prohibited in Peninsular bighorn sheep habitat, and existing facilities with toxic plants must complete a plan and schedule for removing or preventing access to toxic plants within one year of permit issuance; and (3) all water tank construction and operation and maintenance will require 1:1 mitigation by acreage, no public access, native landscaping, and location away from sensitive areas. Additionally, the Coachella Valley MSHCP also provides for the implementation of land use agency guidelines to avoid and minimize the direct and indirect effects associated with development.

The Coachella Valley MSHCP (Section 7.3.3.2) addressed the Public Use and Trails Management on Reserve Lands within the Santa Rosa and San Jacinto Mountains Conservation Area. The Santa Rosa and San Jacinto Mountains Conservation Area includes trails that cross both Federal and non-Federal land. The Coachella Valley MSHCP addresses impacts to Peninsular bighorn sheep for the construction of specified trails and for the use of identified trails on non-Federal land. The BLM is pursuing a section 7 consultation for the components of the coordinated Plan on Federal lands within the Reserve System. The U.S. Forest Service will determine whether public use and trails management will require consultation with the Service pursuant to section 7 of the Act. Impacts to Peninsular bighorn sheep associated with the public use and trails management plan are addressed in the Coachella Valley MSHCP. The Coachella Valley MSHCP describes the implementation of a focused research program to evaluate the effects of recreational trail use on Peninsular bighorn sheep health, behavior, habitat selection, and long-term population dynamics.

The Desert Water Authority is not a permittee and its lands are not subject to the conservation requirements of the Coachella Valley MSHCP through any discretionary authority of the permittees. Therefore, 293 ac (119 ha) of lands within Unit 1 and Unit 2A owned by DWA have not been excluded from the final revised critical habitat designation under the Coachella Valley MSHCP.

The 1998 final listing rule for Peninsular bighorn sheep identified habitat loss (especially in canyon bottoms), degradation, and fragmentation associated with the

proliferation of residential and commercial development, roads and highways, water projects, and vehicular and pedestrian recreational uses as primary threats to Peninsular bighorn sheep. As described above, the Coachella Valley MSHCP management and conservation efforts provide enhancement of habitat by removing or reducing threats to Peninsular bighorn sheep and the physical and biological features essential to the conservation of this DPS. The Coachella Valley MSHCP Plan Area encompasses habitat that supports identified core populations of this DPS and therefore provides for recovery. The implementation of the conservation goals, conservation objectives, and required measures; avoidance and minimization measures; and management for Peninsular bighorn sheep provided for in the Coachella Valley MSHCP exceed any conservation value provided as a result of regulatory protections that have been or may be afforded through critical habitat designation.

Based on the reasoning provided below, we excluded from Unit 1 and Unit 2A approximately 38,759 ac (15,685 ha) of private and permittee-owned or controlled lands or lands under the jurisdiction of the permittees within the Santa Rosa and San Jacinto Mountains, Snow Creek/Windy Point, and Cabazon Conservation Areas within Coachella Valley MSHCP Plan Area boundary (see Coachella Valley MSHCP, Volume 1, Sections 4.3.1, 4.3.3, and 4.3.21) from the Peninsular bighorn sheep final revised critical habitat designation under section 4(b)(2) of the Act. Covered activities conducted or approved by the Coachella Valley MSHCP permittees are subject to the conservation requirements of the Coachella Valley MSHCP. Of the 38,759 ac (15,685 ha) excluded under the Coachella Valley MSHCP, approximately 38,477 ac (15,571 ha) are anticipated to be conserved under the plan. Approximately 282 ac (114 ha) or 0.7 percent of the acres excluded under the Coachella Valley MSHCP are permitted for development consistent with the MSHCP.

Benefits of Inclusion—Coachella Valley MSHCP

The inclusion of approximately 38,759 ac (15,685 ha) of private and permittee-owned or controlled lands within the Coachella Valley MSHCP could be beneficial because it identifies lands that require management for conservation of Peninsular bighorn sheep. The process of proposing and finalizing the revised critical habitat rule provided the Service with the opportunity to evaluate and refine the features essential to the conservation of the DPS within the geographical area occupied by Peninsular bighorn sheep at the time of listing, as well as to evaluate whether there are other areas essential for the conservation of the DPS. The designation process included peer review and public comment on the identified features and areas. This process is valuable to land owners and managers in developing conservation management plans for identified areas, as well as any other occupied habitat or suitable habitat that may not have been included in the Service's determination of essential habitat.

The educational benefits of designation are small and largely redundant to those derived through conservation efforts currently being planned and implemented in the approximately 38,759 ac (15,685 ha) of private and permittee-owned or controlled lands within the Coachella Valley MSHCP. As described above, the process of developing the Coachella Valley MSHCP has involved several partners including (but not limited to) the eight participating local jurisdictions, Riverside County, California Department of Fish and Game, and Federal agencies. The educational benefits of critical habitat designation derived through informing Coachella Valley MSHCP partners and other members of the public of areas important for the long-term conservation of this DPS have already been and continue to be achieved through: (1) Development and implementation of the Coachella Valley MSHCP; (2) the original designation process in 2001; and (3) publication of the proposed revisions to critical habitat in 2007 and 2008, including notices of public comment periods, and the public hearings.

The consultation provisions under section 7 of the Act constitute the regulatory benefits of inclusion for critical habitat. As discussed above, Federal agencies must consult with us on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. There is the potential for future activities within the lands being excluded having a Federal nexus for Peninsular bighorn sheep as a result of actions by Agua Caliente Band of Cahuilla Indians, BLM, Army Corps of Engineers, and the Federal Highway Administration. Therefore, including this area may provide some regulatory benefits under section 7 of the Act.

However, the Coachella Valley MSHCP addresses conservation issues from a coordinated, integrated perspective rather than a piecemeal, project-by-project approach (as would occur on these lands under sections 7 and 10 of the Act absent this regional plan) and will arguably achieve more Peninsular bighorn sheep conservation within the Coachella Valley MSHCP Plan Area than through section 7 consultations involving consideration of critical habitat. The PCEs required by Peninsular bighorn sheep will benefit by the conservation objectives and required measures outlined in the Coachella Valley MSHCP.

In summary, these conservation measures include but are not limited to: preservation and protection of core Peninsular bighorn sheep habitat in perpetuity, maintenance of water sources, criteria for locating development to minimize effects to Peninsular bighorn sheep, implementation of minimization and mitigation measures and land use agency guidelines, conditional provisions regarding unauthorized trails, and monitoring the effects of trails and population monitoring. Such measures will remove or reduce known threats to Peninsular bighorn sheep and its PCEs in Unit 1 and Unit 2A. The Coachella Valley MSHCP will ensure that conservation and management actions take place that are not required by critical habitat designation (see ''Benefits Of Designating Critical Habitat'' section above). For example, critical habitat designation does not ensure habitat protection; enhancement and restoration; maintenance of water sources; functional linkages to adjoining habitat; or monitoring of Peninsular bighorn sheep (see discussion above).

In light of the preferable regional scale of conservation planning used in the development of the Coachella Valley MSHCP and the conservation that will occur under the Coachella Valley MSHCP, we conclude that the potential regulatory benefit of designating these areas in Unit 1 and Unit 2A as critical habitat is minimal. We acknowledge that a very small portion of the area we are excluding from critical habitat is not anticipated to be conserved under the Coachella Valley MSHCP, approximately 282 ac (114 ha) or 0.7 percent of the area excluded. Therefore, the benefits of inclusion of these lands within designated critical habitat are higher than for those lands anticipated for conservation under the Coachella Valley MSHCP.

Benefits of Exclusion—Coachella Valley MSHCP

Regional and subregional HCPs foster an ecosystem-based approach to habitat conservation planning, and once

developed, conservation issues are addressed through a coordinated approach. However, these large and often costly regional plans are voluntary for the local jurisdiction(s) that pursue this approach, in the sense that they could require landowners (e.g., homeowners, developers) to consult with the Service individually for a section 10 permit. As a result, the local jurisdiction would incur no costs associated with the landowner's need for a section 10 permit, requiring the landowner to obtain this permit prior to issuance of a building permit. However, this approach would result in uncoordinated, ''patchy'' conservation that would likely not further the recovery of federally listed species. Rather, by voluntarily developing these regional plans (versus individual landowner HCPs), the coordinated landscape-scale conservation results in preservation of interconnected linkage areas and populations that support recovery of listed species.

We recognize that once an HCP is permitted, implementation of the conservation measures is not voluntary in order for permittees to receive incidental take coverage. However, the benefits of excluding lands under the scenario described above are: (1) Retaining and fostering the existing partnership and working relationship with all stakeholders; and (2) encouraging future regional HCP development or development of other species/habitat conservation plans. Additionally, exclusion of an HCP (such as the Coachella Valley MSHCP) demonstrates our good faith effort and working relationships, which should encourage initiation and completion of other HCPs.

We developed close partnerships with all participating entities through the development of the Coachella Valley MSHCP, which incorporates appropriate protections and management for Peninsular bighorn sheep, its habitat, and the features essential to the conservation of this DPS. By excluding 38,759 ac (15,685 ha) of lands in Unit 1 and Unit 2A from designation, we are eliminating an essentially redundant layer of regulatory review for projects covered by the Coachella Valley MSHCP, helping to preserve our ongoing partnership with the plan participants, and encouraging new partnerships with other landowners and jurisdictions. These partnerships with the Coachella Valley MSHCP participants are critical for the conservation of Peninsular bighorn sheep.

Benefits of Exclusion Outweigh the Benefits of Inclusion—Coachella Valley MSHCP

As discussed in the ''Benefits of Inclusion—Coachella Valley MSHCP'' section above, we believe the regulatory benefit of designating critical habitat on private lands, permittee-owned or controlled lands covered by the Coachella Valley MSHCP would be low. The Coachella Valley MSHCP addresses conservation issues from a coordinated, integrated perspective rather than a piecemeal project-by-project approach and will achieve more Peninsular bighorn sheep conservation than we would achieve through multiple site-by-site, project-by-project, section 7 consultations involving consideration of critical habitat.

Conservation and management of Peninsular bighorn sheep habitat is essential to the survival and recovery of this DPS. Such conservation needs are typically not addressed through the application of the statutory prohibition on destruction or adverse modification of critical habitat. Even considering the small percentage of lands meeting the definition of critical habitat that may be developed in the future, the specific conservation actions (conservation goal, conservation objectives, and required measures); avoidance and minimization measures; and monitoring and management for Peninsular bighorn sheep and the features essential to its conservation provided by the Coachella Valley MSHCP exceed any conservation value provided as a result of regulatory protections that may be afforded through a critical habitat designation. The Coachella Valley MSHCP provides as much or more conservation benefit than a consultation for critical habitat designation conducted under the standards required by the Ninth Circuit in the *Gifford Pinchot* decision. The benefits for the conservation of Peninsular bighorn sheep that would occur as a result of designating these lands as critical habitat (*e.g.*, protection afforded through the section 7(a)(2) consultation process) are minimal compared to the overall conservation benefits for the DPS that will be realized through the implementation of the Coachella Valley MSHCP. Furthermore, educational benefits that may be derived from a critical habitat designation are minimal and largely redundant to the educational benefits achieved through significant public, State, and local government input during the development and implementation of the Coachella Valley MSHCP.

We developed close partnerships with the 19 Coachella Valley MSHCP permittees through the development of this regional HCP that incorporates appropriate protections and management of this DPS's essential physical and biological features. Those protections are consistent with the mandates under section 7 of the Act to avoid destruction or adverse modification of critical habitat and go beyond that prohibition by including active management and protection of essential habitat areas. Designation of critical habitat alone does not achieve recovery or require management of those lands identified in the critical habitat rule. We believe the conservation benefits for Peninsular bighorn sheep that would occur as a result of designating those 38,759 ac (15,685 ha) in Unit 1 and Unit 2A as critical habitat (e.g., protection afforded through the section 7(a)(2) consultation process) is minimal compared to the overall conservation benefits for the DPS that will be realized through the implementation of the Coachella Valley MSHCP.

Furthermore, the benefits to recovery of inclusion primarily have already been met through the identification of those areas most important to the DPS. By excluding these lands from critical habitat, we are eliminating a largely redundant layer of regulatory review for a limited set of projects on non-Federal lands that are addressed by the MSHCP and we are helping to preserve our ongoing partnerships with the permittees and to encourage new partnerships with other landowners and jurisdictions. Those partnerships, and the landscape-level, multiple-species conservation planning efforts they promote, are critical for the conservation of Peninsular bighorn sheep. Designating critical habitat on non-Federal lands within the Coachella Valley MSHCP could have a detrimental effect to our partnerships with the 19 Coachella Valley MSHCP permittees and could be a significant disincentive to the establishment of future partnerships and HCPs with other landowners.

We reviewed and evaluated the exclusion of 38,759 ac (15,685 ha) of private and permittee-owned or controlled lands within the Coachella Valley MSHCP plan area from the final revised critical habitat designation for Peninsular bighorn sheep and determined that the benefits of excluding these lands in Unit 1 and Unit 2A outweigh the benefits of including them. As discussed above, the MSHCP will provide for significant preservation and management of habitat for and features essential to the conservation of Peninsular bighorn

sheep and will help reach the recovery goals for this DPS.

Exclusion Will Not Result in Extinction of the Subspecies—Coachella Valley MSHCP

In keeping with our analysis and conclusion detailed in our biological opinion for the Coachella Valley MSHCP (Service 2008, pp. 643–644), we determined that the exclusion of 38,759 ac (15,685 ha) of private lands and permittee-owned or controlled lands within the Coachella Valley MSHCP Plan Area from the final designation of critical habitat for Peninsular bighorn sheep will not result in the extinction of the DPS. The Coachella Valley MSHCP provides protection and management, in perpetuity, of lands that meet the definition of critical habitat for the DPS in Unit 1 and Unit 2A. We acknowledge that some lands excluded within the Coachella Valley MSHCP are permitted for development (approximately 0.7 percent); however, the potential loss of this habitat will not result in the extinction of Peninsular bighorn sheep. Additionally, the jeopardy standard of section 7 of the Act and routine implementation of conservation measures through the section 7 process provide assurances that the DPS will not go extinct as a result of this exclusion.

Required Determinations

Takings—Executive Order 12630

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 Peninsular bighorn sheep in a takings implications assessment. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. The takings implications assessment concludes that this final revised designation of critical habitat for Peninsular bighorn sheep does not pose significant takings implications.

Regulatory Planning and Review—Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant under E.O. 12866. OMB bases its determination upon the following four criteria:

(1) 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.

(2) Whether the rule will create inconsistencies with other Federal agencies' actions.

(3) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(4) Whether the rule raises novel legal or policy issues.

Civil Justice Reform—Executive Order 12988

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 are designating critical habitat in accordance with the provisions of the Act. This final rule uses standard property descriptions and identifies the physical and biological features essential to the conservation of the DPS within the designated areas to assist the public in understanding the habitat needs of the Peninsular bighorn sheep.

Federalism—Executive Order 13132

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, these final critical habitat designations with appropriate State resource agencies in California. During the public comment periods, we contacted appropriate State and local agencies and jurisdictions, and invited them to comment on the proposed revised critical habitat designation for the Peninsular bighorn sheep. In total, we responded to 3 letters received during these comment periods from local governments (see ''Summary of Comments and Recommendations'' section). The designations may have some benefit to these governments in that the areas that contain the features essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat essential to the conservation 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).

Energy Supply, Distribution, Or Use—Executive Order 13211

E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This revision to critical habitat for the Peninsular bighorn sheep is not considered a significant regulatory action under E.O. 12866. OMB has provided guidance for implementing this Order that outlines nine outcomes that may constitute ''a significant adverse effect'' when compared without the regulatory action under consideration. The economic analysis finds that none of these criteria are relevant to this analysis. Thus, based on information in the economic analysis (Appendix A), energy-related impacts associated with Peninsular bighorn sheep conservation activities within the areas included in the final designation of critical habitat are not expected.

Sunrise Powerlink is the only entity involved in the production of energy. Although Sunrise Powerlink is likely to incur incremental Peninsular bighorn sheep conservation costs, these costs are not expected to be sufficient to be noted as a ''significant adverse effect.'' Over the next 20 years, Sunrise Powerlink is forecast to incur total expenses of $4,030, discounted at seven percent. These impacts are not sufficient to reduce electricity production appreciably, or to increase the cost of energy production or delivery by more than one percent. Thus, the incremental impacts associated with critical habitat designation for Peninsular bighorn sheep are unlikely to be of sufficient magnitude to affect energy production or delivery. As such, the final designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use, and a Statement of Energy Effects is not required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act, the Service makes the following findings:

(1) This rule does 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; Aid to Families with Dependent Children 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 section 7 of the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat. Non-Federal entities that receive Federal funding, assistance, permits, or otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat. However, 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 on to State governments.

(2) We do not believe that this rule would significantly or uniquely affect small governments because it would not 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. The FEA concludes that there are no incremental impacts resulting from this rulemaking that may be borne by small entities. Potential incremental impacts stemming from the Sunrise Powerlink project will be borne by San Diego Gas and Electric and a mine owned by Creole Corporation, a subsidiary of Texas Industries, Inc.; however, both of these entities are also not small governments.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The Small Business Regulatory Enforcement Fairness Act amended the Regulatory Flexibility Act to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. In this final rule, we are certifying that the critical habitat designation for Peninsular bighorn sheep 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, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the revised designation of critical habitat for the Peninsular bighorn sheep would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as residential and commercial development. 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 thus 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.

In areas where the DPS is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect Peninsular bighorn sheep (see ''Section 7 Consultation'' section) or their critical habitat. Future consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process. In the case of completed consultations for ongoing Federal activities, however, the Federal agency may be required to reinitiate consultation (see ''Application of the 'Adverse Modification' Standard'' section). Designation of critical habitat, in that case, could result in an additional economic impact on small entities.

In our DEA of the proposed revision of critical habitat, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the proposed revision of critical habitat for the Peninsular bighorn sheep. The analysis is based on the estimated incremental impacts associated with the rulemaking as described in section 2 of the analysis. In the DEA, we evaluated the potential economic effects on small business entities resulting from implementation of conservation actions related to the proposed revision to critical habitat for the Peninsular bighorn sheep. The economic analysis identifies the estimated incremental impacts associated with the proposed rulemaking as described in chapters 2 through 7, and evaluates the potential

for economic impacts related to activity categories including species management, development, mining, recreation, transportation, and utilities construction and management. The analysis concludes that there are no incremental impacts resulting from this rulemaking that may be borne by small entities. The FEA confirms this conclusion.

In summary, we considered whether the final rule to revise critical habitat would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C 801 et seq.)

Under the Small Business Regulatory Enforcement Fairness Act, this rule is not a major rule. Our detailed assessment of the economic effects of this designation is described in the economic analysis. Based on the effects identified in the economic analysis, we believe that this rule will not have an annual effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final economic analysis for a discussion of the effects of this determination (see **ADDRESSES** for information on obtaining a copy of the final economic analysis).

National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the Circuit Court of the United States for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA 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 in the courts of the Ninth Circuit Court of Appeals (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995. 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.

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), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized 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 identified tribal lands that meet the definition of critical habitat for the Peninsular bighorn sheep, and we are excluding all tribal lands from the final revised critical habitat designation under section 4(b)(2) of the Act (see ''Exclusion of Agua Caliente Band of Cahuilla Indians Tribal Lands'' section for a detailed discussion).

References Cited

A complete list of all references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and *http://www.fws.gov/carlsbad/*.

Author(s)

The primary authors of this rulemaking are staff at the Carlsbad Fish and Wildlife Office, Carlsbad, California.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

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

PART 17—[AMENDED]

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

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

■ 2. In § 17.11(h), revise the entry for ''Sheep, bighorn'' under ''MAMMALS'' in the List of Endangered and Threatened 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						
MAMMALS							
*	*	*	*	*	*		*
Sheep, Peninsular bighorn.	*Ovis canadensis nelsoni*	U.S.A. (western conterminous States), Canada (southwestern), Mexico (northern).	U.S.A. (CA) Peninsular Ranges.	E	634	17.95(a)	NA
*	*	*	*	*	*		*

■ 3. In § 17.95(a), revise the entry for ''Bighorn Sheep (Peninsular Ranges) (*Ovis canadensis)*'' to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

(a) *Mammals*.

* * * * *

Peninsular Bighorn Sheep, a Distinct Population Segment of Desert Bighorn Sheep (*Ovis canadensis nelsoni*)

(1) Critical habitat units are depicted for Riverside, San Diego, and Imperial Counties, California, on the maps below.

(2) The primary constituent elements of critical habitat for the Peninsular bighorn sheep are:

(i) Moderate to steep, open slopes (20 to 60 percent) and canyons, with canopy cover of 30 percent or less (below 4,600 ft (1,402 m) elevation in Peninsular Ranges) that provide space for sheltering, predator detection, rearing of young, foraging and watering, mating, and movement within and between ewe groups;

(ii) Presence of a variety of forage plants, indicated by the presence of shrubs (e.g., *Ambrosia* spp., *Caesalpinia* spp., *Hyptis* spp., *Sphaeralcea* spp., *Simmondsia* spp.), that provide a primary food source year round, grasses (e.g., *Aristida* spp., *Bromus* spp.) and cacti (e.g., *Opuntia* spp.) that provide a source of forage in the fall, and forbs (e.g., *Plantago* spp., *Ditaxis* spp.) that provide a source of forage in the spring;

(iii) Steep, rugged slopes (60 percent slope or greater) (below 4,600 ft (1,402 m) elevation in Peninsular Ranges) that provide secluded space for lambing and terrain for predator evasion;

(iv) Alluvial fans, washes, and valley bottoms that provide important foraging areas where nutritious and digestible plants can be more readily found during times of drought and lactation, and that provide and maintain habitat connectivity by serving as travel routes between and within ewe groups, adjacent mountain ranges, and important resource areas (*e.g.*, foraging areas and escape terrain); and

(v) Intermittent and permanent water sources that are available during extended dry periods and provide relatively nutritious plants and drinking water.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, 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 1:24,000 maps, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(5) Note: Index map of critical habitat units for the Peninsular bighorn sheep follows:

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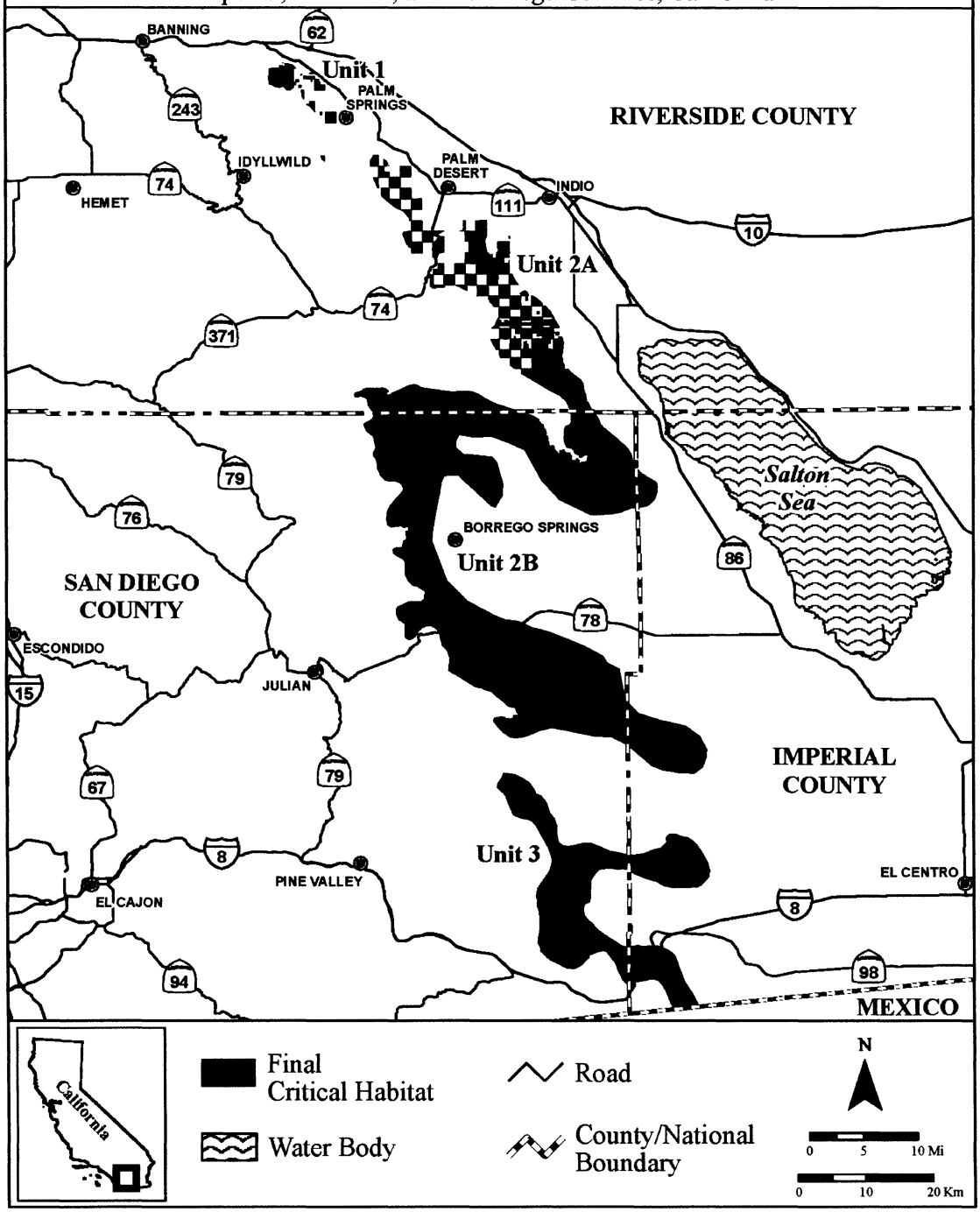
Index Map
Critical Habitat for Peninsular bighorn sheep (*Ovis canadensis nelsoni*)
Imperial, Riverside, and San Diego Counties, California



BILLING CODE 4310–55–C

(6) Unit 1: San Jacinto Mountains, Riverside County, California.

(i) From USGS 1:24,000 quadrangles Desert Hot Springs, Palm Springs, and San Jacinto Peak, and White Water. Land bounded by the following Universal Transverse Mercator (UTM) North American Datum of 1927 (NAD27) coordinates (E, N): 534134, 3750021; 534465, 3749681; 534495, 3749651; 534495, 3749651; 534495, 3749651; 534495, 3749651; 534572, 3749621; 534997, 3749456; 534792, 3749102; 534885, 3748934; 535128, 3748785; 535310, 3748807; 535426, 3748822; 535471, 3748798; 535663, 3748697; 535706, 3748674; 535706, 3748652; 535713, 3748654; 535739, 3748650; 535777, 3748637; 535816, 3748627; 535834, 3748623; 535944, 3748624; 535999, 3748624; 536000, 3748624; 536000, 3748624; 536056, 3748624; 536056, 3748656; 536499, 3748909; 536927, 3749153; 537308, 3748794; 538009, 3748134; 538064, 3748082; 538535, 3747726; 538535, 3747703; 538566, 3747702; 538901, 3747449; 539106, 3747293; 539235, 3746550; 539240, 3746463; 539240, 3746455; 539254, 3746181; 539088, 3745848; 539244, 3745133; 539265, 3745144; 539562, 3745200; 539802, 3745192; 540194, 3745168; 540512, 3745097; 540512, 3744900; 540511, 3744851; 540512, 3744847; 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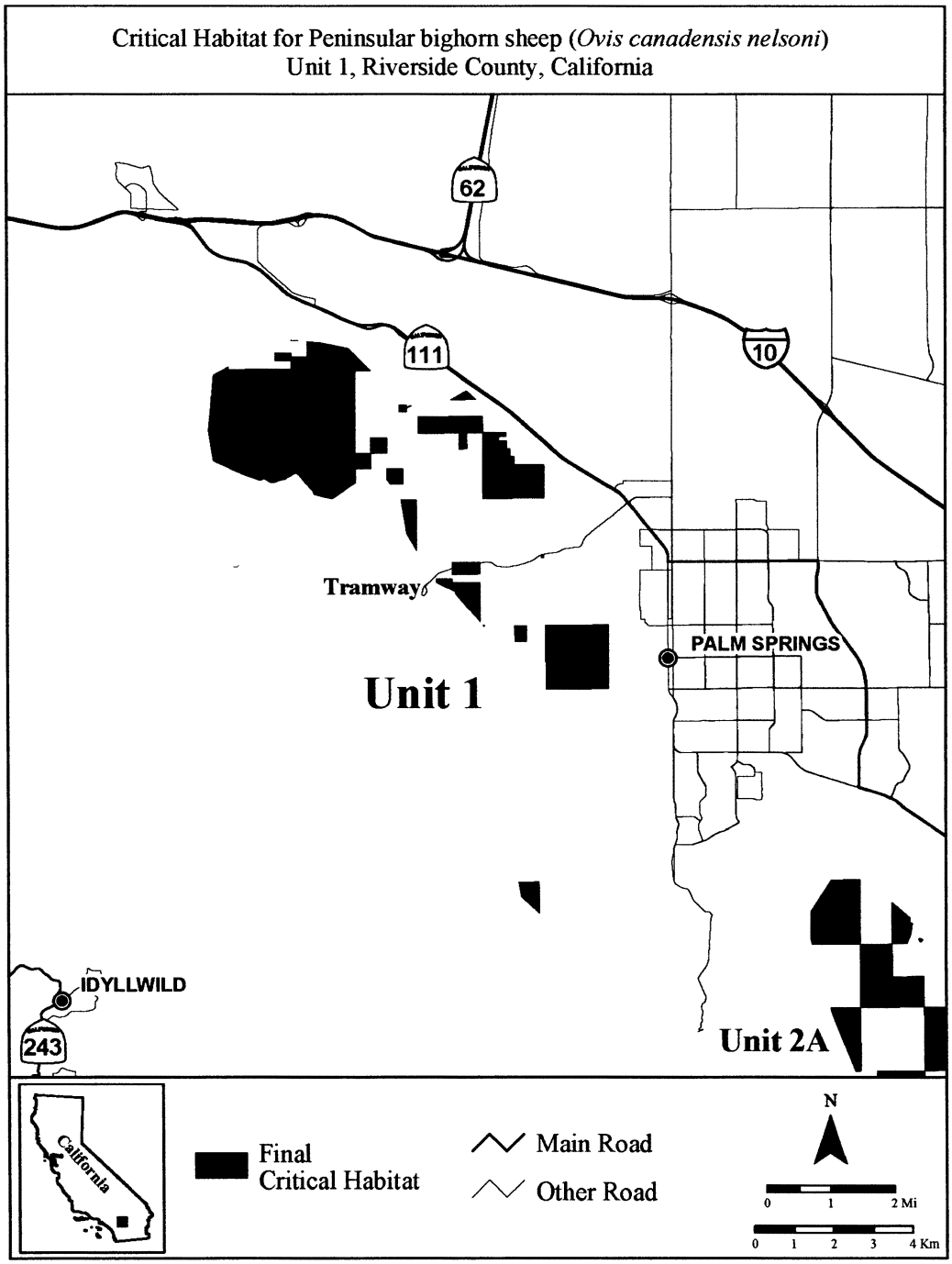
(ii) *Note*: Map of Unit 1, San Jacinto Mountains (Map 2) follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(7) Unit 2A: North Santa Rosa Mountains, Riverside County, California.

(i) From USGS 1:24,000 quadrangles Cathedral City, Clark Lake NE, La Quinta, Martinez Mountain, Palm Springs, Palm View Peak, Rabbit Peak, Rancho Mirage, Toro Peak, and Valerie. Land bounded by the following Universal Transverse Mercator (UTM) North American Datum of 1927 (NAD27) coordinates (E, N): 548200, 3735505; 548200, 3735500; 548211, 3735500; 548229, 3735493; 548242, 3735488; 548253, 3735483; 548278, 3735474; 548285, 3735471; 548300, 3735465; 548300, 3735400; 548400, 3735400; 548500, 3735400; 548500, 3735480; 548515, 3735478; 548523, 3735478; 548560, 3735481; 548580, 3735488; 548591, 3735491; 548607, 3735496; 548608, 3735496; 548608, 3735496; 548644, 3735490; 548659, 3735497; 548673, 3735503; 548690, 3735520; 548716, 3735546; 548720, 3735550; 548736, 3735569; 548768, 3735606; 548773, 3735615; 548783, 3735631; 548778, 3735657; 548778, 3735659; 548799, 3735678; 548821, 3735687; 548825, 3735689; 548844, 3735682; 548868, 3735674; 548874, 3735672; 548890, 3735664; 548892, 3735663; 548909, 3735654; 548955, 3735628; 549021, 3735590; 549038, 3735580; 549075, 3735551; 549085, 3735544; 549101, 3735534; 549131, 3735513; 549131, 3735526; 549125, 3735553; 549111, 3735581; 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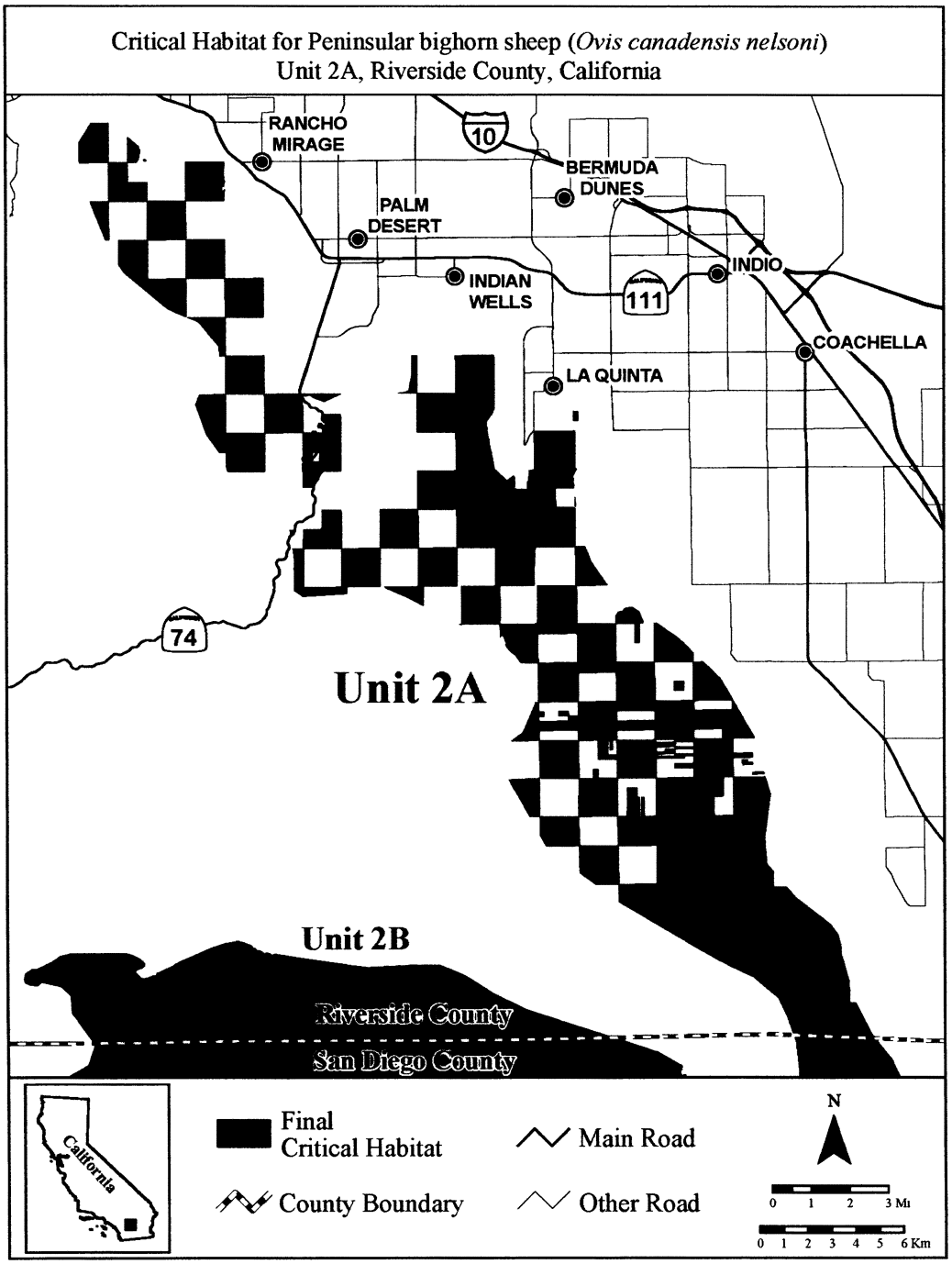
(ii) *Note:* Map of Unit 2A, North Santa Rosa Mountains follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(8) Unit 2B: South Santa Rosa Mountains south to Vallecito Mountains, Riverside, San Diego, and Imperial Counties, California.

(i) From USGS 1:24,000 quadrangles Agua Caliente Hot Springs, Arroyo Tapiado, Borrego Mountain, Borrego Mountain SE, Borrego Palm Canyon, Borrego Sink, Bucksnort Mountain, Carrizo Mountain NE, Clark Lake, Clark Lake NE, Collins Valley, Earthquake Valley, Fonts Point, Harper Canyon, Plaster City NW, Rabbit Peak, Seventeen Palms, Tubb Canyon, and Whale Peak. Land bounded by the following Universal Transverse Mercator (UTM) North American Datum of 1927 (NAD27) coordinates (E, N): 552772, 3702586; 552772, 3702567; 552801, 3702567; 552801, 3702539; 552829, 3702539; 552829, 3702511; 552914, 3702511; 552914, 3702482; 552943, 3702482; 552943, 3702454; 552971, 3702454; 552971, 3702426; 552999, 3702426; 552999, 3702397; 553113, 3702397; 553113, 3702369; 553170, 3702369; 553170, 3702340; 553198, 3702340; 553198, 3702312; 553255, 3702312; 553255, 3702284; 553311, 3702284; 553311, 3702255; 553340, 3702255; 553340, 3702284; 553368, 3702284; 553368, 3702312; 553453, 3702312; 553453, 3702284; 553538, 3702284; 553538, 3702255; 553567, 3702255; 553567, 3702227; 553624, 3702227; 553624, 3702199; 553652, 3702199; 553652, 3702227; 553709, 3702227; 553709, 3702255; 553717, 3702255; 554616, 3702119; 556163, 3701891; 557619, 3701709; 559531, 3701800; 560669, 3701800; 561670, 3701390; 562899, 3700617; 564310, 3699934; 569738, 3698190; 570758, 3697602; 570758, 3697546; 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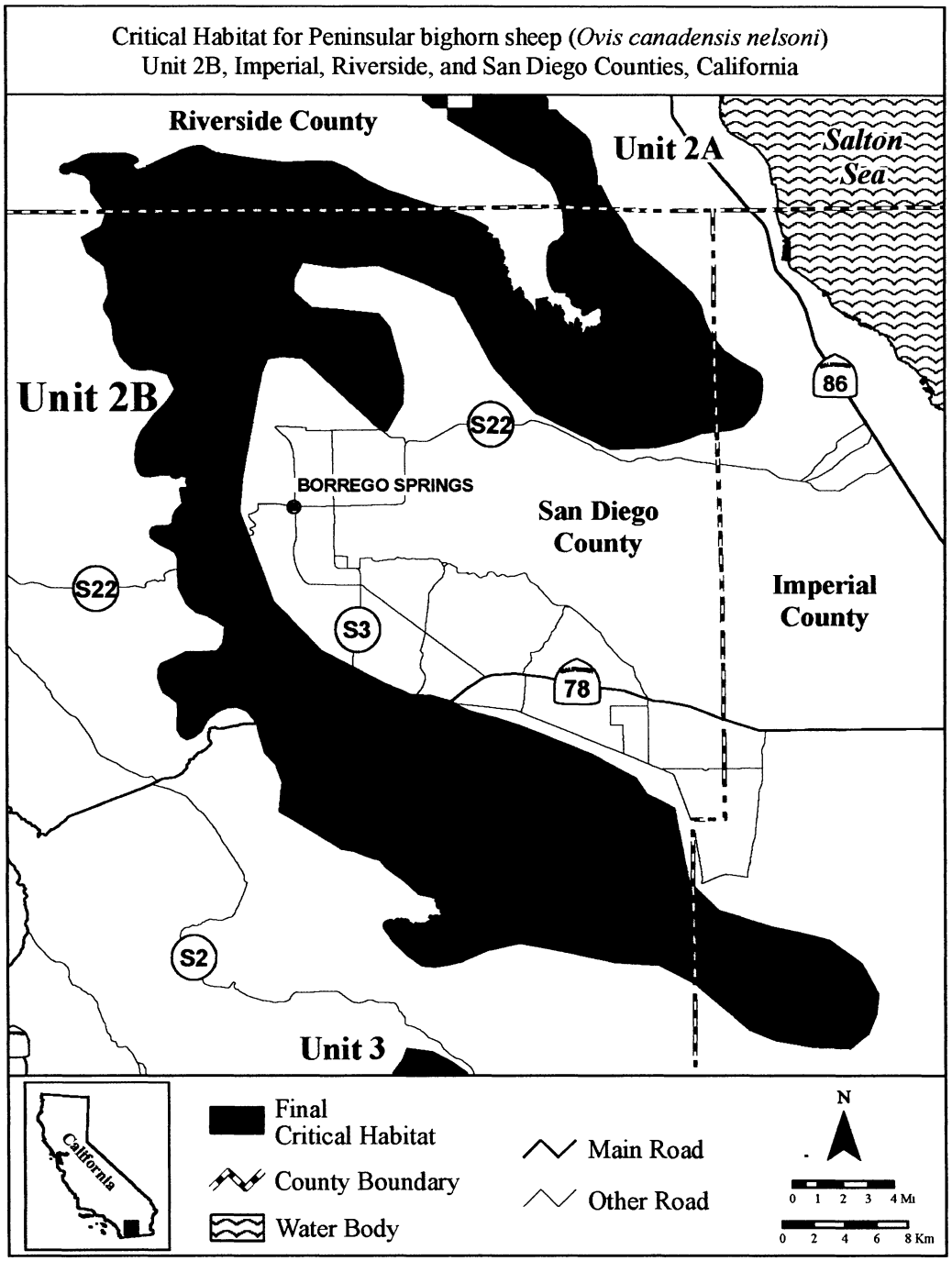
(ii) Note: Map of Unit 2B, South Santa Rosa Mountains south to Vallecito Mountains follows:

BILLING CODE 4310–55–P


Critical Habitat for Peninsular bighorn sheep (*Ovis canadensis nelsoni*)
Unit 2B, Imperial, Riverside, and San Diego Counties, California
Riverside County
Unit 2A
Salton Sea
Unit 2B
86
S22
BORREGO SPRINGS
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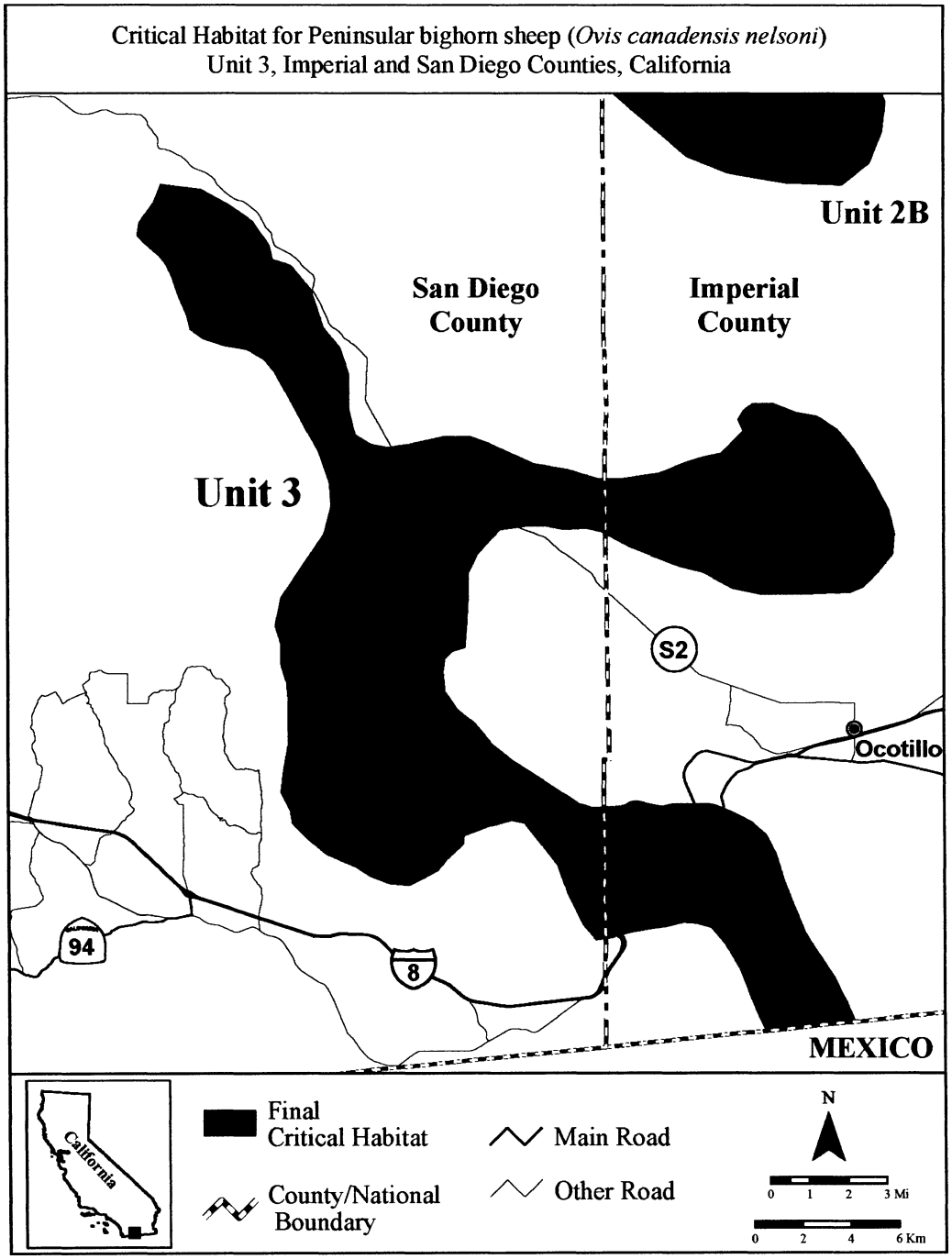
Unit 3
California
Final Critical Habitat
County Boundary
Water Body
Main Road
Other Road
N
0 1 2 3 4 Mi
0 2 4 6 8 Km

(9) Unit 3: Carrizo Canyon, San Diego and Imperial Counties, California.

(i) From USGS 1:24,000 quadrangles Agua Caliente Hot Springs, Arroyo Tapiado, Carrizo Mountain, In-Ko-Pah Gorge, Jacumba, Painted Gorge, Sombrero Peak, and Sweeney Pass. Land bounded by the following Universal Transverse Mercator (UTM) North American Datum of 1927 (NAD27) coordinates (E, N): 574159, 3634261; 574922, 3634108; 575915, 3634261; 577290, 3634566; 578359, 3634566; 579199, 3634261; 580039, 3633879; 581032, 3633421; 582406, 3633192; 583705, 3632810; 584697, 3632810; 586225, 3633039; 587370, 3633497; 588134, 3633726; 588821, 3633879; 589738, 3634795; 589508, 3635253; 589738, 3635635; 590119, 3635941; 590959, 3635941; 591952, 3635559; 592792, 3635406; 593632, 3634871; 594320, 3634031; 595083, 3632810; 595771, 3631511; 596000, 3630519; 595923, 3629679; 595312, 3628915; 594702, 3628304; 594167, 3628075; 592411, 3627998; 591189, 3627998; 590425, 3627998; 589280, 3628228; 588058, 3628915; 587141, 3629144; 586301, 3629449; 585003, 3629984; 583857, 3630595; 583170, 3630748; 582330, 3630671; 581566, 3630824; 580650, 3630824; 579581, 3630671; 578664, 3629679; 578283, 3628915; 578283, 3628151; 578206, 3626700; 578130, 3625784; 577595, 3625631; 577290, 3625326; 577214, 3624791; 577290, 3623951; 577825, 3623187; 578512, 3622653; 579275, 3621736; 580039, 3621126; 583136, 3619091; 585446, 3617261; 585698, 3616826; 585744, 3615522; 585561, 3614538; 584920, 3613898; 584193, 3613692; 583552, 3613600; 583021, 3614241; 582399, 3615485; 581960, 3616712; 580596, 3618451; 580070, 3618565; 579046, 3618300; 578054, 3617918; 578061, 3617609; 577347, 3616950; 576981, 3616492; 576221, 3616085; 575763, 3615856; 574923, 3615933; 574159, 3616238; 573548, 3616620; 573013, 3616849; 572326, 3617154; 571562, 3617765; 570875, 3618453; 570799, 3618987; 570417, 3619751; 570493, 3620515; 570722, 3621813; 570722, 3622500; 570722, 3623493; 570646, 3624333; 570417, 3625097; 570417, 3625937; 570188, 3626700; 570417, 3627846; 572249, 3630519; 572555, 3631664; 572478, 3632657; 572020, 3633955; 571486, 3634872; 570951, 3635864; 570187, 3637239; 569729, 3637774; 569042, 3638156; 568125, 3638308; 567209, 3638614; 566674, 3638996; 566522, 3639606; 566216, 3640294; 565911, 3641134; 565681, 3641668; 565376, 3642050; 564841, 3642508; 564460, 3642890; 564536, 3643425; 565147, 3644265; 565452, 3645029; 567132, 3644799; 568278, 3644189; 569271, 3643501; 569958, 3642508; 570111, 3641897; 570874, 3641668; 571715, 3640676; 572249, 3639072; 572937, 3638232; 573318, 3637086; 573318, 3635635; 573548, 3634643; thence returning to 574159, 3634261.

(ii) Note: Map of Unit 3, Carrizo Canyon follows:



* * * * *

Dated: March 31, 2009.

Will Shafroth,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E9–7767 Filed 4–13–09; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Tuesday,
April 14, 2009

Part III

The President

Proclamation 8360—National Former Prisoner of War Recognition Day, 2009

Federal Register
Vol. 74, No. 70
Tuesday, April 14, 2009

Presidential Documents

Title 3—

The President

Proclamation 8360 of April 9, 2009

National Former Prisoner of War Recognition Day, 2009

By the President of the United States of America

A Proclamation

American prisoners of war exemplify the courage and sacrifice that define our men and women in uniform. These brave warriors have paid a massive share of the costs of freedom, and our Nation will be forever in their debt. Today we honor all prisoners of war by recognizing the tremendous sacrifices made and the hardships endured by those who fight for our freedom.

American prisoners of war have experienced extreme conditions across the world and many have made the ultimate sacrifice. Sixty-seven years ago, in the midst of World War II, nearly 12,000 Americans and 76,000 Filipinos were captured while defending positions on the Bataan Peninsula in the Philippines. As prisoners of war, they endured the Bataan Death March, suffering starvation, torture, and unspeakable conditions. Thousands were randomly executed and many perished on this journey. During the Korean War, more than 1,600 Americans died under grave conditions at the Pyok Tong camp. In Vietnam's Hoa Lo Prison—the infamous Hanoi Hilton—Americans endured torture and other forms of inhumane treatment.

There are countless tales of the bravery of American prisoners of war—of the burdens borne, of the acts of heroism. These individuals have made great sacrifices and have demonstrated an enduring faith in themselves and in the United States. Their commitment calls out to all Americans to live up to our Nation's highest ideals and to serve our fellow citizens with equal selflessness and honor. We will never forget their sacrifices. Their spirit of service will inspire the American people for generations to come.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 9, 2009, as National Former Prisoner of War Recognition Day, and I urge all Americans to observe this day of remembrance with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of April, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-third.

[FR Doc. E9–8703
Filed 4–13–09; 11:15 am]
Billing code 3195–W9–P

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