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WHEN: Tuesday, July 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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Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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 AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2009–0036]

Karnal Bunt; Regulated Areas

Correction

In rule document E9–13051 beginning on page 26774 in the issue of Thursday, June 4, 2009, make the following correction:

§ 301.89–3 [Corrected]

On page 26776, in §301.890–3(g), in the third column, in the tenth line from the bottom of the page, ''–1114.687198'' should read ''–114.687198''

[FR Doc. Z9–13051 Filed 6–9–09; 8:45 am]

BILLING CODE 1505–01–D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AI62

[NRC–2009–0162]

List of Approved Spent Fuel Storage Casks: Standardized NUHOMS® System Revision 10

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its spent fuel storage regulations by revising the Transnuclear, Inc. (TN), Standardized NUHOMS® System listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 10 to Certificate of Compliance (CoC) Number 1004. Amendment No. 10 will modify the cask design to add a dry shielded canister (DSC) designated the NUHOMS® – 61BTH DSC, add a dry shielded canister designated the NUHOMS® – 32PTH1 DSC, add an alternate high-seismic option of the horizontal storage module (HSM) for storing the 32PTH1 DSC, allow storage of Westinghouse 15X15 Partial Length Shield Assemblies in the NUHOMS® – 24PTH DSC, allow storage of control components in the NUHOMS® – 32PT DSC, and add a new Technical Specification, which applies to Independent Spent Fuel Storage Installation sites located in a coastal marine environment, that any load bearing carbon steel component which is part of the HSM must contain at least 0.20 percent copper as an alloy addition.

DATES: The final rule is effective August 24, 2009, unless significant adverse comments are received by July 10, 2009. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

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

Federal e-Rulemaking Portal: Go to *http://www.regulations.gov* and search for documents filed under Docket ID [NRC–2009–0162]. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov*.

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 O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents 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, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*. An electronic copy of the CoC, technical specifications (TS), and preliminary safety evaluation report (SER) can be found under ADAMS Package Number ML090400180.

CoC No. 1004, the TS, the preliminary SER, and the environmental assessment are available for inspection at the NRC PDR, Public File Area O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD. Single copies of these documents may be obtained from Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *Jayne.McCausland@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *Jayne.McCausland@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that ''[t]he Secretary [of the Department of Energy (DOE)] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the NWPA states, in part, that ''[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule in 10 CFR Part 72, which added a new Subpart K within 10 CFR Part 72,

entitled ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new Subpart L within 10 CFR Part 72, entitled ''Approval of Spent Fuel Storage Casks,'' which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on December 22, 1994 (59 FR 65898), that approved the Standardized NUHOMS® System cask design and added it to the list of NRC-approved cask designs in 10 CFR 72.214 as CoC No. 1004.

Discussion

On January 12, 2007, and as supplemented on February 21, March 15, July 3, and November 7, 2007; January 18, May 23, June 25, July 28, and October 8, 2008, the certificate holder (TN) submitted an application to the NRC that requested an amendment to CoC No. 1004. Specifically, TN requested modifications to the cask design to add a DSC designated the NUHOMS®–61BTH DSC, add a dry shielded canister designated the NUHOMS®–32PTH1 DSC, add an alternate high-seismic option of the HSM for storing the 32PTH1 DSC, allow storage of Westinghouse 15X15 Partial Length Shield Assemblies in the NUHOMS®–24PTH DSC, allow storage of control components in the NUHOMS®–32PT DSC, and add a new TS, which applies to Independent Spent Fuel Storage Installation (ISFSI) sites located in a coastal marine environment, that any load bearing carbon steel component which is part of the HSM must contain at least 0.20 percent copper as an alloy addition. As documented in the SER, the NRC staff performed a detailed safety evaluation of the proposed CoC amendment request and found that an acceptable safety margin is maintained. In addition, the NRC staff has determined that there continues to be reasonable assurance that public health and safety and the environment will be adequately protected.

This direct final rule revises the Standardized NUHOMS® System listing in 10 CFR 72.214 by adding Amendment No. 10 to CoC No. 1004. The amendment consists of the changes described above, as set forth in the revised CoC and TS. The particular TS which are changed are identified in the SER.

The amended Standardized NUHOMS® System cask design, when used under the conditions specified in the CoC, the TS, and NRC regulations, will meet the requirements of Part 72; thus, adequate protection of public health and safety will continue to be ensured. When this direct final rule becomes effective, persons who hold a general license under 10 CFR 72.210 may load spent nuclear fuel into Standardized NUHOMS® System casks that meet the criteria of Amendment No. 10 to CoC No. 1004 under 10 CFR 72.212.

Discussion of Amendments by Section

Section 72.214. List of approved spent fuel storage casks.

Certificate of Compliance No. 1004 is revised by adding the effective date of Amendment No. 10.

Procedural Background

This rule is limited to the changes contained in Amendment No. 10 to CoC No. 1004 and does not include other aspects of the Standardized NUHOMSsup® System. The NRC is using the ''direct final rule procedure'' to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The amendment to the rule will become effective on August 24, 2009. However, if the NRC receives any significant adverse comments on this direct final rule by July 10, 2009, then the NRC will publish a document that withdraws this action and will subsequently address any comment received in a final rule as a response to the companion proposed rule published elsewhere in this issue of the **Federal Register**. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the rule, CoC, or TS.

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC will revise the Standardized NUHOMS® System cask design listed in § 72.214 (List of NRC-approved spent fuel storage cask designs). This action does not constitute the establishment of a standard that contains generally applicable requirements.

Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws but does not confer regulatory authority on the State.

Plain Language

The Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883), directed that the Government's documents be in clear and accessible language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES**, above.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in Subpart A of 10 CFR Part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and therefore, an environmental impact statement is not required. The NRC has prepared an environmental assessment and, on the basis of this environmental assessment, has made a finding of no significant impact. This rule will amend the CoC for the Standardized NUHOMS® System cask design within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license.

The amendment will add a dry shielded canister designated the NUHOMS®–61BTH DSC, add a dry shielded canister designated the NUHOMS®–32PTH1 DSC, add an alternate high-seismic option of the HSM for storing the 32PTH1 DSC, allow storage of Westinghouse 15X15 Partial Length Shield Assemblies in the NUHOMS®–24PTH DSC, allow storage of control components in the NUHOMS®–32PT DSC, and add a new TS, which applies to ISFSI sites located in a coastal marine environment, that any load bearing carbon steel component which is part of the HSM must contain at least 0.20 percent copper as an alloy addition.

The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, Public File Area O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD. Single copies of the environmental assessment and finding of no significant impact are available from Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *Jayne.McCausland@nrc.gov.*

Paperwork Reduction Act Statement

This direct final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150–0132.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR Part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, the spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in 10 CFR 72.214. On December 22, 1994 (59 FR 65898), the NRC issued an amendment to Part 72 that approved the Standardized NUHOMS® System cask design by adding it to the list of NRC-approved cask designs in 10 CFR 72.214. On January 12, 2007, and as supplemented on February 21, March 15, July 3, and November 7, 2007; January 18, May 23, June 25, July 28, and October 8, 2008, the certificate holder (TN) submitted an application to the NRC to amend CoC No. 1004 to add a dry shielded canister designated the NUHOMS®-61BTH DSC, add a dry shielded canister designated the NUHOMS®-32PTH1 DSC, add an alternate high-seismic option of the HSM for storing the 32PTH1 DSC, allow storage of Westinghouse 15X15 Partial Length Shield Assemblies in the NUHOMS®-24PTH DSC, allow storage of control components in the NUHOMS®-32PT DSC, and add a new TS, which applies to ISFSI sites located in a coastal marine environment, that any load bearing carbon steel component which is part of the HSM must contain at least 0.20 percent copper as an alloy addition.

The alternative to this action is to withhold approval of Amendment No. 10 and to require any Part 72 general licensee, seeking to load fuel into Standardized NUHOMS® System casks under the changes described in Amendment No. 10, to request an exemption from the requirements of 10 CFR 72.212 and 72.214. Under this alternative, each interested Part 72 licensee would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee.

Approval of the direct final rule is consistent with previous NRC actions. Further, as documented in the SER and the environmental assessment, the direct final rule will have no adverse effect on public health and safety. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on this regulatory analysis, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only nuclear power plant licensees and TN. These entities do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 72.62) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined in 10 CFR Chapter I. Therefore, a backfit analysis is not required.

Congressional Review Act

Under the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Hazardous Waste, Nuclear materials, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR Part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–10 (42 U.S.C. 2014, 2021, 2021b, 2111).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

■ 2. In § 72.214, Certificate of Compliance 1004 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1004.

Initial Certificate Effective Date: January 23, 1995.

Amendment Number 1 Effective Date: April 27, 2000.

Amendment Number 2 Effective Date: September 5, 2000.

Amendment Number 3 Effective Date: September 12, 2001.

Amendment Number 4 Effective Date: February 12, 2002.

Amendment Number 5 Effective Date: January 7, 2004.

Amendment Number 6 Effective Date: December 22, 2003.

Amendment Number 7 Effective Date: March 2, 2004.

Amendment Number 8 Effective Date: December 5, 2005.

Amendment Number 9 Effective Date: April 17, 2007.

Amendment Number 10 Effective Date: August 24, 2009.

SAR Submitted by: Transnuclear, Inc.

SAR Title: Final Safety Analysis Report for the Standardized NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel.

Docket Number: 72–1004.

Certificate Expiration Date: January 23, 2015.

Model Number: NUHOMS®–24P, –24PHB, –24PTH, –32PT, –32PTH1, –52B, –61BT, and –61BTH.

* * * * *

Dated at Rockville, Maryland, this 28th day of May, 2009.

For the Nuclear Regulatory Commission.

R.W. Borchardt,

Executive Director for Operations.

[FR Doc. E9–13579 Filed 6–9–09; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

American Recovery and Reinvestment Act: America's Recovery Capital (Business Stabilization) Loan Program

AGENCY: U.S. Small Business Administration.

ACTION: Notice of ARC loan program interest rate.

SUMMARY: SBA has published an interim final rule implementing section 506 of the American Recovery and Reinvestment Act of 2009. The rule establishes a temporary program to guarantee loans to viable small business concerns that have a qualifying small business loan, and are experiencing immediate financial hardship. Loans made under this program, referred to as ''America's Recovery Capital Loan Program'' (ARC Loan Program) can be used to make principal and interest payments on existing qualifying small business loans. ARC Loans are interest free to the borrower with SBA making the interest payment on the loan to the lender. As part of the interim final rule, SBA provided that the interest rate would be published in the **Federal Register**. This notice establishes the initial interest rate for ARC Loans at prime plus two percentage points.

DATES: The interest rate is effective as of June 10, 2009.

FOR FURTHER INFORMATION CONTACT: Janet A. Tasker, Office of Capital Access, Small Business Administration, 409 Third Street, SW., Washington, DC 20410 or via e-mail at *ARCloanprogram@sba.gov.*

SUPPLEMENTARY INFORMATION:

I. Background Information

The American Recovery and Reinvestment Act of 2009 (the Recovery Act), Public Law 111–5, 123 Stat. 115, was enacted on February 17, 2009, to, among other things, promote economic recovery by preserving and creating jobs, and assisting those most impacted by the severe economic conditions facing the nation. SBA is one of several agencies that will play a role in achieving these goals. SBA received funding and authority through the Recovery Act for several actions to help small business lending, including authority to establish a new temporary loan program to help troubled businesses.

SBA has published in the **Federal Register** an interim final rule establishing a temporary program to guarantee loans to viable small business concerns that have a qualifying small business loan, and are experiencing immediate financial hardship. Loans made under this program, referred to as ''America's Recovery Capital Loan Program'' (ARC Loan Program) can be used to make principal and interest payments on existing qualifying small business loans. ARC Loans are interest free to the borrower with SBA making the interest payment on the loan to the lender. As part of the interim final rule, SBA provided that the interest rate for ARC Loans would be published in the **Federal Register**.

This notice establishes the interest rate for ARC Loans. SBA will pay SBA lenders a variable rate of interest on ARC Loans. The interest rate SBA will pay on an ARC Loan is the prime rate in effect on the first business day of the month, as printed in a national financial newspaper published each business day, plus two (2) percentage points.

The initial interest rate for ARC Loans will be based on the prime rate that was in effect as of the first business day of the month in which SBA received the loan application. The interest rate will be adjusted on the first business day of each month thereafter, using the prime rate in effect on such date.

Any future change to interest rates paid by SBA on ARC Loans will be published in the **Federal Register**.

Eric Zarnikow,

Associate Administrator, Office of Capital Access.

[FR Doc. E9–13687 Filed 6–8–09; 4:15 pm]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB 112]

Staff Accounting Bulletin No. 112

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: This staff accounting bulletin amends or rescinds portions of the interpretive guidance included in the Staff Accounting Bulletin Series in order to make the relevant interpretive guidance consistent with current authoritative accounting and auditing guidance and Securities and Exchange Commission rules and regulations. Specifically, the staff is updating the Series in order to bring existing guidance into conformity with recent pronouncements by the Financial Accounting Standards Board, namely, Statement of Financial Accounting Standards No. 141 (revised 2007), *Business Combinations,* and Statement of Financial Accounting Standards No. 160, *Noncontrolling Interests in Consolidated Financial Statements.*

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

FOR FURTHER INFORMATION CONTACT: Eric C. West, Associate Chief Accountant, Office of the Chief Accountant, at (202) 551–5314, or Steven C. Jacobs, Associate Chief Accountant, Division of Corporation Finance, at (202) 551–3403, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The statements in staff accounting bulletins are not rules or interpretations of the Commission, nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

June 4, 2009.

Elizabeth M. Murphy,

Secretary.

List of Subjects in 17 CFR Part 211

Accounting, Reporting and recordkeeping requirements, Securities.

PART 211—[AMENDED]

■ Accordingly, Part 211 of Title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 112 to the table found in Subpart B.

Staff Accounting Bulletin No. 112

This staff accounting bulletin amends or rescinds portions of the interpretive guidance included in the Staff Accounting Bulletin Series in order to make the relevant interpretive guidance consistent with current authoritative accounting and auditing guidance and Securities and Exchange Commission (''Commission'') rules and regulations. Specifically, the staff is updating the Series in order to bring existing guidance into conformity with recent pronouncements by the Financial Accounting Standards Board (''FASB''), namely, Statement of Financial Accounting Standards No. 141 (revised 2007), *Business Combinations* (''Statement 141(R)''), and Statement of Financial Accounting Standards No. 160, *Noncontrolling Interests in Consolidated Financial Statements* (''Statement 160'').

The following describes the changes made to the Staff Accounting Bulletin Series that are presented at the end of this release:

1. Topic 2: Business Combinations

a. Topic 2.A is retitled. It previously referred to the ''purchase method,'' which is a term rendered obsolete by Statement 141(R). That accounting method is now referred to as the ''Acquisition Method.''

b. Topic 2.A.5 is removed. This topic provided guidance on assigning acquisition cost to loans receivable acquired in a business combination. In a business combination, Statement 141(R) requires an entity to measure acquired receivables, including loans, at their acquisition-date fair value. Paragraph A57 of Statement 141(R) provides new guidance that precludes an acquirer from recognizing a separate valuation allowance as of the acquisition date for assets acquired in a business combination that are measured at their acquisition-date fair values because the effects of uncertainty about future cash flows are included in the fair value measure.

c. Topic 2.A.6 is amended to conform to the requirement in paragraph 59 of Statement 141(R) that acquisition-related costs be accounted for as expenses in the period in which the costs are incurred and services are received, except for costs incurred to issue debt or equity securities which are recognized in accordance with other applicable generally accepted accounting principles (''GAAP'').

d. Topic 2.A.7 is removed. This topic provided guidance on how an acquirer should account for and disclose contingent liabilities that have been assumed in a business combination. Statement 141(R), as amended by FASB Staff Position 141(R)–1 (''FSP 141(R)–1''), provides guidance on the recognition, measurement and disclosure of assets and liabilities arising from contingencies.

e. Topic 2.A.8 is amended to remove the reference to Emerging Issues Task Force (''EITF'') Issue No. 88–16, *Basis in Leveraged Buyout Transactions,* which was superseded by Statement 141(R).

f. Topic 2.A.9 is removed. This topic provided guidance on cash flow estimates used to determine the fair value of a contingent liability assumed in a business combination and referenced the need for disclosures in Management's Discussion and Analysis (''MD&A'') for any adjustments made to the historical financial statements of the acquired entity. This guidance is no longer necessary because: Statement 141(R), as amended by FSP 141(R)–1, provides guidance on the recognition, measurement and disclosure of assets and liabilities arising from contingencies; Statement of Financial Accounting Standards No. 157, *Fair Value Measurements* (''Statement 157''), provides guidance on fair value measurements; Statement of Financial Accounting Standards No.154, *Accounting Changes and Error Corrections,* provides guidance on error correction and disclosure; and Item 303 of Regulation S–K provides guidance on MD&A disclosures.

g. Topic 2.D is amended to remove the guidance on determining the basis of properties in ''exchange offers'' (also referred to as ''roll-ups'' or ''put-togethers''). This guidance is no longer necessary since Statement 141(R) provides measurement guidance for business combinations.

2. Topic 5: Miscellaneous Accounting

a. Topic 5.E is amended to reflect the issuance of FASB Interpretation No. 45, *Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others* (''FIN 45''), Statement 157, and Statement 160. Topic 5.E (as modified) expresses the views of the staff regarding the accounting for the divestiture of a subsidiary or other business operation.

b. Topic 5.H is removed. This topic provided guidance on the accounting for the direct sale of unissued shares by a consolidated subsidiary that resulted in a decrease in the parent's ownership percentage without resulting in deconsolidation of the subsidiary. Under this guidance, when an offering

takes the form of a subsidiary's direct sale of its unissued shares, the parent could adopt an accounting policy whereby the amount in excess of the parent's carrying value received may be reflected as a gain in the parent's consolidated financial statements. Paragraphs 32 and 33 of Accounting Research Bulletin (''ARB'') 51, as amended by Statement 160, provide new guidance on the accounting for a change in a parent's ownership interest when the parent retains its controlling financial interest. That guidance requires that changes in a parent's ownership interest that do not result in deconsolidation shall be accounted for as equity transactions. Therefore, no gain or loss shall be recognized on the direct sale of unissued shares by a consolidated subsidiary if the parent does not deconsolidate the subsidiary.

c. Topic 5.J is amended, in response to Statement 160, to clarify the basis of accounting for purchased assets and liabilities that should be used to establish a new accounting basis when a substantially wholly-owned subsidiary presents separate financial statements.

d. Topic 5.U is removed. This topic provided guidance on the recognition of gains in certain exchanges in which the seller received non-cash proceeds, such as securities issued by the buyer, as consideration for the assets transferred. This guidance is no longer necessary due to the issuance of FIN 45, Statement 157, and Statement 160.

3. Topic 6: Interpretations of Accounting Series Releases and Financial Reporting Releases

Topic 6.G.1.a and 2.a is amended to conform terminology to the Technical Amendments to Rules, Forms, Schedules and Codification of Financial Reporting Policies [Release Nos. 33–9026; 34–59775; FR–79 (April 15, 2009)] that the Commission adopted to conform to Statement 141(R) and Statement 160.

Accordingly, the staff hereby amends the Staff Accounting Bulletin Series as follows:

Note: The text of SAB 112 will not appear in the Code of Federal Regulations.

Topic 2: Business Combinations

A. Acquisition Method

* * * * *

5. Removed by SAB 112

6. Debt Issue Costs

Facts: Company A is to acquire the net assets of Company B in a transaction to be accounted for as a business combination. In connection with the transaction, Company A has retained an investment banker to provide advisory services in structuring the acquisition and to provide the necessary financing. It is expected that the acquisition will be financed on an interim basis using ''bridge financing'' provided by the investment banker. Permanent financing will be arranged at a later date through a debt offering, which will be underwritten by the investment banker. Fees will be paid to the investment banker for the advisory services, the bridge financing, and the underwriting of the permanent financing. These services may be billed separately or as a single amount.

Question 1: Should total fees paid to the investment banker for acquisition-related services and the issuance of debt securities be allocated between the services received?

Interpretive Response: Yes. Fees paid to an investment banker in connection with a business combination or asset acquisition, when the investment banker is also providing interim financing or underwriting services, must be allocated between acquisition related services and debt issue costs.

When an investment banker provides services in connection with a business combination or asset acquisition and also provides underwriting services associated with the issuance of debt or equity securities, the total fees incurred by an entity should be allocated between the services received on a relative fair value basis. The objective of the allocation is to ascribe the total fees incurred to the actual services provided by the investment banker.

Statement 141(R) provides guidance for the portion of the costs that represent acquisition-related services. The portion of the costs pertaining to the issuance of debt or equity securities should be accounted for in accordance with other applicable GAAP.

Question 2: May the debt issue costs of the interim ''bridge financing'' be amortized over the anticipated combined life of the bridge and permanent financings?

Interpretive Response: No. Debt issue costs should be amortized by the interest method over the life of the debt to which they relate. Debt issue costs related to the bridge financing should be recognized as interest cost during the estimated interim period preceding the placement of the permanent financing with any unamortized amounts charged to expense if the bridge loan is repaid prior to the expiration of the estimated period. Where the bridged financing consists of increasing rate debt, the consensus reached in EITF Issue 86–15, *Increasing Rate Debt,* should be followed.[1]

7. Removed by SAB 112

8. Business Combinations Prior to an Initial Public Offering

Facts: Two or more businesses combine in a single combination just prior to or contemporaneously with an initial public offering.

Question: Does the guidance in SAB Topic 5.G apply to business combinations entered into just prior to or contemporaneously with an initial public offering?

Interpretive Response: No. The guidance in SAB Topic 5.G is intended to address the transfer, just prior to or contemporaneously with an initial public offering, of nonmonetary assets in exchange for a company's stock. The guidance in SAB Topic 5.G is not intended to modify the requirements of Statement 141(R). Accordingly, the staff believes that the combination of two or more businesses should be accounted for in accordance with Statement 141(R).

9. Removed by SAB 112

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D. Financial Statements of Oil and Gas Exchange Offers

Facts: The oil and gas industry has experienced periods of time where there have been a significant number of ''exchange offers'' (also referred to as ''roll-ups'' or ''put-togethers'') to form a publicly held company, take an existing private company public, or increase the size of an existing publicly held company. An exchange offer transaction involves a swap of shares in a corporation for interests in properties, typically limited partnership interests. Such interests could include direct interests such as working interests and royalties related to developed or undeveloped properties and indirect interests such as limited partnership interests or shares of existing oil and gas companies. Generally, such transactions are structured to be tax-free to the individual or entity trading the property interest for shares of the corporation. Under certain circumstances, however, part or all of the transaction may be taxable. For purposes of the discussion in this Topic, in each of these situations, the entity (or entities) or property (or properties) are deemed to constitute a business.

[1] As noted in the ''Status'' section of the Abstract to Issue 86–15, the term-extending provisions of the debt instrument should be analyzed to determine whether they constitute an embedded derivative requiring separate accounting in accordance with Statement 133 (as amended).

One financial reporting issue in exchange transactions involves deciding which prior financial results of the entities should be reported.

Question 1: In Form 10–K filings with the Commission, the staff has permitted limited partnerships to omit certain of the oil and gas reserve value information and the supplemental summary of oil and gas activities disclosures required by Statement 69 in some circumstances. Is it permissible to omit these disclosures from the financial statements included in an exchange offering?

Interpretive Response: No. Normally full disclosures of reserve data and related information are required. The exemptions previously allowed relate only to partnerships where value-oriented data are otherwise available to the limited partners pursuant to the partnership agreement. The staff has previously stated that it will require all of the required disclosures for partnerships which are the subject of exchange offers.[13] These disclosures may, however, be presented on a combined basis if the entities are under common control.

The staff believes that the financial statements in an exchange offer registration statement should provide sufficient historical reserve quantity and value-based disclosures to enable offerees and secondary market public investors to evaluate the effect of the exchange proposal. Accordingly, in all cases, it will be necessary to present information as of the latest year-end on reserve quantities and the future net revenues associated with such quantities. In certain circumstances, where the exchange is accounted for using the acquisition method of accounting, the staff will consider, on a case-by-case basis, granting exemptions from (i) the disclosure requirements for year-to-year reconciliations of reserve quantities, and (ii) the requirements for a summary of oil and gas producing activities and a summary of changes in the net present value of reserves. For instance, the staff may consider requests for exemptions in cases where the properties acquired in the exchange transaction are fully explored and developed, particularly if the management of the emerging company has not been involved in the exploration and development of such properties.

Question 2: If the exchange company will use the full cost method of accounting, does the full cost ceiling limitation apply as of the date of the financial statements reflecting the exchange?

Interpretive Response: Yes. The full cost ceiling limitation on costs capitalized does apply. However, as discussed under Topic 12.D.3, the Commission has stated that in unusual circumstances, registrants may request an exemption if as a result of a major purchase, a write-down would be required even though it can be demonstrated that the fair value of the properties clearly exceeds the unamortized costs.

Question 3: How should ''common control accounting'' be applied to the specific assets and liabilities of the new exchange company?

Interpretive Response: Consistent with SAB Topic 12.C.2, under ''common control accounting'' the various accounting methods followed by the offeree entities should be conformed to the methods adopted by the new exchange company. It is not appropriate to combine assets and liabilities accounted for on different bases. Accordingly, all of the oil and gas properties of the new entity must be accounted for on the same basis (either full cost or successful efforts) applied retrospectively.

Question 4: What pro forma financial information is required in an exchange offer filing?

Interpretive Response: The requirements for pro forma financial information in exchange offer filings are the same as in any other filings with the Commission and are detailed in Article 11 of Regulation S–X.[14] Rule 11–02(b) specifies the presentation requirements, including periods presented and types of adjustments to be made. The general criteria of Rule 11–02(b)(6) are that pro forma adjustments should give effect to events that are (i) directly attributable to the transaction, (ii) expected to have a continuing impact on the registrant, and (iii) factually supportable. In the case of an exchange offer, such adjustments typically are made to:

(1) Show varying levels of acceptance of the offer.

(2) Conform the accounting methods used in the historical financial statements to those to be applied by the new entity.

(3) Recompute the depreciation, depletion and amortization charges, in cases where the new entity will use full-cost accounting, on a combined basis. If this computation is not practicable, and the exchange offer is accounted for as a transaction among entities under common control, historical depreciation, depletion and amortization provisions may be aggregated, with appropriate disclosure.

(4) Reflect the acquisition in the pro forma statements where the exchange offer is accounted for using the acquisition method of accounting, including depreciation, depletion and amortization based on the measurement guidance in Statement 141(R).

(5) Provide pro forma reserve information comparable to the disclosures required by paragraphs 10 through 17 and 30 through 34 of SFAS 69.

(6) Reflect significant changes, if any, in levels of operations (revenues or costs), or in income tax status and to reflect debt incurred in connection with the transaction.

In addition, the depreciation, depletion and amortization rate which will apply for the initial period subsequent to consummation of the exchange offer should be disclosed.

Question 5: Are there conditions under which the presentation of other than full historical financial statements would be acceptable?

Interpretive Response: Generally, full historical financial statements as specified in Rules 3–01 and 3–02 of Regulation S–X are considered necessary to enable offerees and secondary market investors to evaluate the transaction. Where securities are being registered to offer to the security holders (including limited partners and other ownership interests) of the businesses to be acquired, such financial statements are normally required pursuant to Rule 3–05 of Regulation S–X, either individually for each entity or, where appropriate, separately for the offeror and on a combined basis for other entities, generally excluding corporations. However, certain exceptions may apply as explained in the outline below:

A. Acquisition Method Accounting

1. If the registrant can demonstrate that full historical financial statements of the offeree businesses are not reasonably available, the staff may permit presentation of audited Statements of Combined Gross Revenues and Direct Lease Operating Expenses for all years for which an income statement would otherwise be required. In these circumstances, the registrant should also disclose in an unaudited footnote the amounts of total exploration and development costs, and general and administrative expenses along with the reasons why presentation of full historical financial statements is not practicable.

2. The staff will consider requests to waive the requirement for prior year

[13] *See* SAB 40, Topic 12.A.3.c.

[14] As announced in Financial Reporting Release No. 2 (July 9, 1982).

financial statements of the offerees and instead allow presentation of only the latest fiscal year and interim period, if the registrant can demonstrate that the prior years' data would not be meaningful because the offerees had no material quantity of production.

B. Common Control Accounting

The staff would expect that the full historical financial statements as specified in Rules 3–01 and 3–02 of Regulation S–X would be included in the registration statement for exchange offers accounted for as transactions among entities under common control, including all required supplemental reserve information. The presentation of individual or combined financial statements would depend on the circumstances of the particular exchange offer.

Registrants are also reminded that wherever historical results are presented, it may be appropriate to explain the reasons why historical costs are not necessarily indicative of future expenditures.

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Topic 5: Miscellaneous Accounting

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E. Accounting for Divestiture of a Subsidiary or Other Business Operation

Facts: Company X transferred certain operations (including several subsidiaries) to a group of former employees who had been responsible for managing those operations. Assets and liabilities with a net book value of approximately $8 million were transferred to a newly formed entity—Company Y—wholly owned by the former employees. The consideration received consisted of $1,000 in cash and interest bearing promissory notes for $10 million, payable in equal annual installments of $1 million each, plus interest, beginning two years from the date of the transaction. The former employees possessed insufficient assets to pay the notes and Company X expected the funds for payments to come exclusively from future operations of the transferred business. Company X remained contingently liable for performance on existing contracts transferred and agreed to guarantee, at its discretion, performance on future contracts entered into by the newly formed entity. Company X also acted as guarantor under a line of credit established by Company Y.

The nature of Company Y's business was such that Company X's guarantees were considered a necessary predicate to obtaining future contracts until such time as Company Y achieved profitable operations and substantial financial independence from Company X.

Question: If deconsolidation of the subsidiaries and business operations is appropriate, can Company X recognize a gain?

Interpretive Response: Before recognizing any gain, Company X should identify all of the elements of the divesture arrangement and allocate the consideration exchanged to each of those elements. In this regard, we believe that Company X would recognize the guarantees at fair value in accordance with FIN 45, *Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of the Indebtedness of Others;* the contingent liability for performance on existing contracts in accordance with Statement 5, *Accounting for Contingencies;* and the promissory notes in accordance with APB 21, *Interest on Receivables and Payables,* and Statements 114, *Accounting by Creditors for Impairment of a Loan,* and 118, *Accounting by Creditors for Impairment of a Loan—Income Recognition and Disclosures.*

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H. Removed by SAB 112

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J. New Basis of Accounting Required in Certain Circumstances

Facts: Company A (or Company A and related persons) acquired substantially all of the common stock of Company B in one or a series of purchase transactions.

Question 1: Must Company B's financial statements presented in either its own or Company A's subsequent filings with the Commission reflect the new basis of accounting arising from Company A's acquisition of Company B when Company B's separate corporate entity is retained?

Interpretive Response: Yes. The staff believes that purchase transactions that result in an entity becoming substantially wholly owned (as defined in Rule 1–02(aa) of Regulation S–X) establish a new basis of accounting for the purchased assets and liabilities.

When the form of ownership is within the control of the parent, the basis of accounting for purchased assets and liabilities should be the same regardless of whether the entity continues to exist or is merged into the parent's operations. Therefore, Company B's separate financial statements should reflect the new basis of accounting recorded by Company A upon acquisition (*i.e.,* ''pushed down'' basis).

Question 2: What is the staff's position if Company A acquired less than substantially all of the common stock of Company B or Company B had publicly held debt or preferred stock at the time Company B became wholly owned?

Interpretive Response: The staff recognizes that the existence of outstanding public debt, preferred stock or a significant noncontrolling interest in a subsidiary might impact the parent's ability to control the form of ownership. Although encouraging its use, the staff generally does not insist on the application of push down accounting in these circumstances.

Question 3: Company A borrows funds to acquire substantially all of the common stock of Company B. Company B subsequently files a registration statement in connection with a public offering of its stock or debt.[6] Should Company B's new basis (''push down'') financial statements include Company A's debt related to its purchase of Company B?

Interpretive Response: The staff believes that Company A's debt,[7] related interest expense, and allocable debt issue costs should be reflected in Company B's financial statements included in the public offering (or an initial registration under the Exchange Act) if: (1) Company B is to assume the debt of Company A, either presently or in a planned transaction in the future; (2) the proceeds of a debt or equity offering of Company B will be used to retire all or a part of Company A's debt; or (3) Company B guarantees or pledges its assets as collateral for Company A's debt. Other relationships may exist between Company A and Company B, such as the pledge of Company B's stock as collateral for Company A's debt.[8] While in this latter situation, it may be clear that Company B's cash flows will service all or part of Company A's debt, the staff does not insist that the debt be reflected in Company B's financial statements providing there is full and prominent disclosure of the relationship between Companies A and B and the actual or potential cash flow commitment. In this regard, the staff

[6] The guidance in this SAB should also be considered for Company B's separate financial statements included in its public offering following Company B's spin-off or carve-out from Company A.

[7] The guidance in this SAB should also be considered where Company A has financed the acquisition of Company B through the issuance of mandatory redeemable preferred stock.

[8] The staff does not believe Company B's financial statements must reflect the debt in this situation because in the event of default on the debt by Company A, the debt holder(s) would only be entitled to Company B's stock held by Company A. Other equity or debt holders of Company B would retain their priority with respect to the net assets of Company B.

believes that Statements 5 and 57 as well as Interpretation 45 require sufficient disclosure to allow users of Company B's financial statements to fully understand the impact of the relationship on Company B's present and future cash flows. Rule 4–08(e) of Regulation S–X also requires disclosure of restrictions which limit the payment of dividends.

Therefore, the staff believes that the equity section of Company B's balance sheet and any pro forma financial information and capitalization tables should clearly disclose that this arrangement exists.[9] Regardless of whether the debt is reflected in Company B's financial statements, the notes to Company B's financial statements should generally disclose, at a minimum: (1) The relationship between Company A and Company B; (2) a description of any arrangements that result in Company B's guarantee, pledge of assets [10] or stock, etc. that provides security for Company A's debt; (3) the extent (in the aggregate and for each of the five years subsequent to the date of the latest balance sheet presented) to which Company A is dependent on Company B's cash flows to service its debt and the method by which this will occur; and (4) the impact of such cash flows on Company B's ability to pay dividends or other amounts to holders of its securities. Additionally, the staff believes Company B's Management's Discussion and Analysis of Financial Condition and Results of Operations should discuss any material impact of its servicing of Company A's debt on its own liquidity pursuant to Item 303(a)(1) of Regulation S–K.

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U. Removed by SAB 112

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Topic 6: Interpretations of Accounting Series Releases and Financial Reporting Releases

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G. Accounting Series Releases 177 and 286—Relating to Amendments to Form 10–Q, Regulation S–K, and Regulations S–X Regarding Interim Financial Reporting.

* * * * *

1. *Selected Quarterly Financial Data (Item 302(a) of Regulation S–K)*

a. Disclosure of Selected Quarterly Financial Data

Facts: Item 302(a)(1) of Regulation S–K requires disclosure of net sales, gross profit, income before extraordinary items and cumulative effect of a change in accounting, per share data based upon such income (loss), net income (loss), and net income (loss) attributable to the registrant for each full quarter within the two most recent fiscal years and any subsequent interim period for which financial statements are included. Item 302(a)(3) requires the registrant to describe the effect of any disposals of components of an entity [11] and extraordinary, unusual or infrequently occurring items recognized in each quarter, as well as the aggregate effect and the nature of year-end or other adjustments which are material to the results of that quarter. Furthermore, Item 302(a)(2) requires a reconciliation of amounts previously reported on Form 10–Q to the quarterly data presented if the amounts differ.

* * * * *

2. *Amendments to Form 10–Q*

a. Form of Condensed Financial Statements

Facts: Rules 10–01(a)(2) and (3) of Regulation S–X provide that interim balance sheets and statements of income shall include only major captions (i.e., numbered captions) set forth in Regulation S–X, with the exception of inventories where data as to raw materials, work in process and finished goods shall be included, if applicable, either on the face of the balance sheet or in notes thereto. Where any major balance sheet caption is less than 10% of total assets and the amount in the caption has not increased or decreased by more than 25% since the end of the preceding fiscal year, the caption may be combined with others. When any major income statement caption is less than 15% of average net income attributable to the registrant for the most recent three fiscal years and the amount in the caption has not increased or decreased by more than 20% as compared to the corresponding interim period of the preceding fiscal year, the caption may be combined with others. Similarly, the statement of cash flows may be abbreviated, starting with a single figure of cash flows provided by operations and showing other changes individually only when they exceed 10% of the average of cash flows provided by operations for the most recent three years.

Question 1: If a company previously combined captions in a Form 10–Q but is required to present such captions separately in the Form 10–Q for the current quarter, must it retroactively reclassify amounts included in the prior-year financial statements presented for comparative purposes to conform with the captions presented for the current-year quarter?

Interpretive Response: Yes.

Question 2: If a company uses the gross profit method or some other method to determine cost of goods sold for interim periods, will it be acceptable to state only that it is not practicable to determine components of inventory at interim periods?

Interpretive Response: The staff believes disclosure of inventory components is important to investors. In reaching this decision, the staff recognizes that registrants may not take inventories during interim periods and that managements, therefore, will have to estimate the inventory components. However, the staff believes that management will be able to make reasonable estimates of inventory components based upon their knowledge of the company's production cycle, the costs (labor and overhead) associated with this cycle as well as the relative sales and purchasing volume of the company.

Question 3: If a company has years during which operations resulted in a net outflow of cash and cash equivalents, should it exclude such years from the computation of cash and cash equivalents provided by operations for the three most recent years in determining what sources and applications must be shown separately?

Interpretive Response: Yes. Similar to the determination of average net income, if operations resulted in a net outflow of cash and cash equivalents during any year, such amount should be excluded in making the computation of cash flow provided by operations for the three most recent years unless operations resulted in a net outflow of cash and cash equivalents in all three years, in which case the average of the

[9] For example, the staff has noted that certain registrants have indicated on the face of such financial statements (as part of the stockholder's equity section) the actual or potential financing arrangement and the registrant's intent to pay dividends to satisfy its parent's debt service requirements. The staff believes such disclosures are useful to highlight the existence of arrangements that could result in the use of Company B's cash to service Company A's debt.

[10] A material asset pledge should be clearly indicated on the face of the balance sheet. For example, if all or substantially all of the assets are pledged, the ''assets'' and ''total assets'' captions should include parenthetically: ''pledged for parent company debt—See Note X.''

[11] See question 5 for a discussion of the meaning of components of an entity as used in Item 302(a)(2).

net outflow of cash and cash equivalents should be used for the test.

* * * * *

[FR Doc. E9–13511 Filed 6–9–09; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 285

RIN 1510–AB22

Disbursing Official Offset

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Interim final rule.

SUMMARY: The Department of the Treasury, Financial Management Service, is amending its regulations governing the offset of Federal payments to collect nontax debts owed to the United States and States through the Treasury Offset Program. This amendment changes the priorities for collecting debt when a debtor owes more than one debt which has been referred to the Treasury Offset Program for collection by offset, consistent with a change in the statute on which the priority is based. The statutory change, enacted as part of the Deficit Reduction Act of 2005, amends the priority given to the collection of certain past-due support debts.

DATES: This final rule is effective June 10, 2009.

ADDRESSES: The Financial Management Service participates in the U.S. government's eRulemaking Initiative by publishing rulemaking information on *www.regulations.gov*. Regulations.gov offers the public the ability to comment on, search, and view publicly available rulemaking materials, including comments received on rules.

Comments on this rule, identified by docket FISCAL–FMS–2008–0005, should only be submitted using the following methods:

- *Federal eRulemaking Portal: www.regulations.gov*. Follow the instructions on the Web site for submitting comments.
- *Mail:* Thomas Dungan, Policy Analyst, Financial Management Service, 401 14th Street, SW., Washington, DC 20227.

The fax and e-mail methods of submitting comments on rules to FMS have been retired.

Instructions: All submissions received must include the agency name (''Financial Management Service'') and docket number FISCAL–FMS–2008–0005 for this rulemaking. In general, comments will be published on Regulations.gov without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may also inspect and copy this rule at: Treasury Department Library, Freedom of Information Act (FOIA) Collection, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Before visiting, you must call (202) 622–0990 for an appointment.

FOR FURTHER INFORMATION CONTACT: Thomas Dungan, Policy Analyst, at (202) 874–6660 or Tricia Long, Senior Attorney, at (202) 874–6680.

SUPPLEMENTARY INFORMATION:

I. Background

The Deficit Reduction Act of 2005 (Pub. L. 109–171) amended section 6402 of the Internal Revenue Code (26 U.S.C. 6402) by changing the order of priority for collecting debt when a debtor owes more than one debt which is subject to collection by tax refund offset. Prior to this change, the order of priority was as follows: (1) Past-due support debts which had been assigned to a State under section 402(a)(26) or 471(a)(17) of the Social Security Act; (2) nontax debt owed to Federal agencies; (3) other past-due support debts; and (4) other reductions allowed by law. Effective October 1, 2008, the order of priority is: (1) All past-due support debts; (2) nontax debt owed to Federal agencies and (3) other reductions allowed by law.

The changes to this rule conform to the statutory change by reordering the order of priority for collecting debt through the Treasury Offset Program. Although the statutory change is directed to the offset of tax refund payments, the portions of this rule that govern offset of nontax payments are also being changed to conform to the new priority order. This is necessary for operational consistency and to create uniformity in how offsets are conducted.

II. Procedural Analyses

Administrative Procedures Act

This rule is being issued without prior public notice and comment as to tax refund payments, because the changes to the rule are being made to conform to statutory requirements. As to other payments, the change does not adversely affect the rights of the public. Under 5 U.S.C. 553(b) and (d)(3), good cause exists to determine that notice and comment rulemaking is unnecessary and contrary to the public interest. The amendments made by this rule regarding the offset of tax refund payments are required due to amendments enacted into law. The amendments made by this rule regarding the offset of nontax payments mirror those statutory amendments and are necessary to achieve consistency in how non-judicial offsets are conducted. These changes relate to procedures between and among agencies that are owed delinquent debt; therefore, public comment is not necessary. Further delay in making these amendments is contrary to the public interest because it would create an inconsistency both between the law and the regulations and between the regulations themselves, and would cause confusion.

Request for Comment on Plain Language

Executive Order 12866 requires each agency in the Executive branch to write regulations that are simple and easy to understand. We invite comment on how to make the proposed rule clearer. For example, you may wish to discuss: (1) Whether we have organized the material to suit your needs; (2) whether the requirements of the rules are clear; or (3) whether there is something else we could do to make these rules easier to understand.

Regulatory Planning and Review

The final rule does not meet the criteria for a ''significant regulatory action'' as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

Regulatory Flexibility Act Analysis

Because no notice of rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. *et seq.*) do not apply.

List of Subjects in 31 CFR Part 285

Administrative practice and procedure, Child support, Child welfare, Claims, Credits, Debts, Disability benefits, Federal employees, Garnishment of wages, Hearing and appeal procedures, Loan programs, Privacy, Railroad retirement, Railroad unemployment insurance, Salaries, Social Security benefits, Supplemental Security Income (SSI), Taxes, Veteran's benefits, Wages.

■ For the reasons set forth in the preamble, we are amending 31 CFR part 285 as follows:

PART 285—DEBT COLLECTION AUTHORITIES UNDER THE DEBT COLLECTION IMPROVEMENT ACT OF 1996

■ 1. The authority citation for part 285 continues to read as follows:

Authority: 5 U.S.C. 5514; 26 U.S.C. 6402; 31 U.S.C. 321, 3701, 3711, 3716, 3719, 3720A, 3720B, 3720D; 42 U.S.C. 664; E.O. 13019, 61 FR 51763, 3 CFR, 1996 Comp., p. 216.

■ 2. In § 285.1, revise paragraph (n) to read as follows:

§ 285.1 Collection of past-due support by administrative offset.

* * * * *

(n) *Administrative offset priorities.* (1) A levy pursuant to the Internal Revenue Code of 1986 shall take precedence over deductions under this section.

(2) Offsets will be applied first to past-due support being enforced by the State before any other offsets under this part.

* * * * *

§ 285.2 [Amended]

■ 3. Amend § 285.2 as follows:

■ a. Remove paragraph (e);

■ b. Redesignate paragraphs (f) through (l) as (e) through (k).

■ c. In newly redesignated paragraph (e)(1)(ii), revise the reference to ''paragraph (f)(1)(i)'' to read ''paragraph (e)(1)(i)'' and revise the reference to ''paragraph (g)'' to read ''paragraph (f)''; and

■ d. In newly redesignated paragraph (g), revise the reference to ''paragraph (i)'' to read ''paragraph (h)''.

■ 4. In § 285.3, revise paragraph (d)(1) to read as follows:

§ 285.3 Offset of tax refund payments to collect past-due support.

* * * * *

(d) *Priorities for offset.* (1) As provided in 26 U.S.C. 6402, a tax refund payment shall be reduced in the following order of priority:

(i) First, by the amount of any past-due support which is to be offset under 26 U.S.C. 6402(c) and 42 U.S.C. 464;

(ii) Second, by the amount of any past-due, legally enforceable debt owed to a Federal agency which is to be offset under 26 U.S.C. 6402(d), 31 U.S.C. 3720A and § 285.2 of this part; and

(iii) Third, by the amount of any past-due, legally enforceable debt owed to States (other than past-due support) which is to be offset under 26 U.S.C. 6402(e) or 26 U.S.C. 6402(f).

* * * * *

■ 5. In § 285.5, revise paragraph (f)(3) to read as follows:

§ 285.5 Centralized offset of Federal payments to collect nontax debts owed to the United States.

* * * * *

(f) * * *

(3) *Priorities for collecting multiple debts owed by the payee.* (i) A levy pursuant to the Internal Revenue Code of 1986 shall take precedence over deductions under this section.

(ii) When a payment may be offset to collect more than one debt, amounts offset will be applied:

(A) First, to satisfy any past-due support that that the State is collecting under section 464 of the Social Security Act (see 285.1 and 285.3 of this part);

(B) Second, to satisfy any debts owed to Federal agencies, as described in this § 285.5; and

(C) Third, to any debts owed to States for debts other than past-due support (see §§ 285.6 and 285.8 of this part).

* * * * *

■ 6. In § 285.7, revise paragraph (h)(2) to read as follows:

§ 285.7 Salary offset.

* * * * *

(h) * * *

(2) When a salary payment may be reduced to collect more than one debt, amounts offset under this section will be applied to a debt only after amounts have been applied to satisfy past-due support debts being collected by the State pursuant to Section 464 of the Social Security Act.

* * * * *

■ 7. In § 285.8, revise paragraph (d)(1) to read as follows:

§ 285.8 Offset of tax refund payments to collect state income tax obligations.

* * * * *

(d) * * *

(1) As provided in 26 U.S.C. 6402, a tax refund payment shall be reduced first by the amount of any past-due support being enforced under section 464 of the Social Security Act which is to be offset under 26 U.S.C. 6402(c); second by the amount of any past-due, legally enforceable debt owed to a Federal agency which is to be offset under 26 U.S.C. 6402(d); and third by any past-due, legally enforceable debt owed to a State (other than past-due support) which is to be offset under 26 U.S.C. 6402(e) or 26 U.S.C. 6402(f).

* * * * *

Dated: May 29, 2009.

Gary Grippo,

Acting Fiscal Assistant Secretary.

[FR Doc. E9–13613 Filed 6–9–09; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 538

Sudanese Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control of the U.S. Department of the Treasury (''OFAC'') is amending the Sudanese Sanctions Regulations to expand the scope of an existing authorization of certain imports for diplomatic or official personnel to include the provision of goods or services in the United States to the diplomatic missions of the Government of Sudan to the United States and the United Nations, and to the employees of such missions, subject to certain conditions. The amended section also authorizes the importation of goods or services into the United States by the regional Government of Southern Sudan and its employees that involve the transit or transshipment of goods through areas of Sudan other than the Specified Areas of Sudan, subject to certain conditions.

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

FOR FURTHER INFORMATION CONTACT: Assistant Director for Compliance Outreach & Implementation, tel.: 202–622–2490, Assistant Director for Licensing, tel.: 202–622–2480, Assistant Director for Policy, tel.: 202–622–4855, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202–622–2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

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*) or via facsimile through a 24-hour fax-on demand service, tel.: (202) 622–0077.

Background

The Sudanese Sanctions Regulations, 31 CFR part 538 (the ''SSR''), were promulgated to implement Executive Order 13067 of November 3, 1997 (''E.O. 13067''), in which the President declared a national emergency with respect to the policies and actions of the Government of Sudan. To deal with that emergency, E.O. 13067 imposed comprehensive trade sanctions with respect to Sudan and blocked all property and interests in property of the

Government of Sudan in the United States or within the possession or control of United States persons. On October 13, 2006, the President issued Executive Order 13412 (''E.O. 13412''), to take additional steps with respect to the emergency declared in E.O. 13067, and to implement the Darfur Peace and Accountability Act of 2006 (Pub. L. 109–344, 120 Stat. 1869). While it exempted specified areas of Sudan from certain prohibitions in E.O. 13067, E.O. 13412 continued the blocking of the Government of Sudan's property and interests in property and imposed a country-wide prohibition on transactions relating to Sudan's petroleum or petrochemical industries. E.O. 13412 also removed the regional Government of Southern Sudan from the definition of the Government of Sudan. On October 31, 2007, the SSR were amended to implement E.O. 13412 (72 FR 61513, October 31, 2007).

Today, OFAC is amending section 538.515 of the SSR. Before its amendment, section 538.515 authorized all transactions ordinarily incident to the importation of any goods or services into the United States destined for official or personal use by the diplomatic missions of the Government of Sudan to the United States and to international organizations located in the United States, subject to certain conditions. OFAC is amending this section to expand the scope of the authorization to include the provision of goods or services in the United States to the diplomatic missions of the Government of Sudan to the United States and the United Nations, and to the employees of the diplomatic missions of the Government of Sudan to the United States and the United Nations, subject to certain conditions.

Paragraph (a) of the revised section 538.515 authorizes the importation of goods or services into the United States by, and the provision of goods or services in the United States to, the diplomatic missions of the Government of Sudan to the United States and the United Nations, subject to four conditions: (1) The goods or services must be for the conduct of the official business of the missions, or for personal use of the employees of the missions, and not for resale; (2) such transactions must not involve the purchase, sale, financing, or refinancing of real property; (3) such transactions are not otherwise prohibited by law; and (4) all such transactions must be conducted through an account at a U.S. financial institution specifically licensed by OFAC. A note to paragraph (a)(4) of the revised section 538.515 states that U.S. financial institutions are required to obtain specific licenses to operate accounts for, or extend credit to, the diplomatic missions of the Government of Sudan to the United States and the United Nations.

Paragraph (b) of the revised section 538.515 authorizes the importation of goods or services into the United States by, and the provision of goods or services in the United States to, the employees of the diplomatic missions of the Government of Sudan to the United States and the United Nations, subject to two conditions: (1) The goods or services must be for personal use of the employees of the missions, and not for resale; and (2) such transactions are not otherwise prohibited by law.

Paragraph (c) of the revised section 538.515 authorizes the importation of goods or services into the United States by the regional Government of Southern Sudan and its employees that involve the transit or transshipment of goods from the Specified Areas of Sudan through areas of Sudan other than the Specified Areas of Sudan, subject to two conditions: (1) The goods or services must be for the conduct of the business of the regional Government, or for personal use of the employees of the regional Government, and not for resale; and (2) such transactions are not otherwise prohibited by law. A note to paragraph (c) of revised section 538.515 explains that the authorization contained in this paragraph permits the regional Government of Southern Sudan and its employees to import into the United States goods or services that have transited or transshipped through areas of Sudan other than the Specified Areas of Sudan without the need to obtain a specific license under § 538.417. The importation of goods and services into the United States by the regional Government of Southern Sudan not involving the transit or transshipment through areas of Sudan other than the Specified Areas of Sudan is already exempt under §§ 538.212(g) and 538.305(b) and, therefore, requires no authorization. Similarly, the provision of goods and services in the United States to the regional Government of Southern Sudan and its employees already is exempt pursuant to §§ 538.212(g) and 538.305(b) and also requires no authorization.

Public Participation

Because the amendment of the SSR involves a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to the SSR are contained in 31 CFR part 501 (the ''Reporting, Procedures and Penalties Regulations''). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. 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 control number.

List of Subjects in 31 CFR Part 538

Administrative practice and procedure, Banks, Banking, Blocking of assets, Exports, Foreign trade, Humanitarian aid, Imports, Penalties, Reporting and recordkeeping requirements, Specially designated nationals, Sudan, Terrorism, Transportation.

■ For the reasons set forth in the preamble, the Office of Foreign Assets Control amends 31 CFR part 538 as follows:

PART 538—SUDANESE SANCTIONS REGULATIONS

■ 1. The authority citation for part 538 continues to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2339B, 2332d; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 106–387, 114 Stat. 1549; Pub. L. 109–344, 120 Stat. 1869; Pub. L. 110–96, 121 Stat. 1011; E.O. 13067, 62 FR 59989, 3 CFR, 1997 Comp., p. 230; E.O. 13412, 71 FR 61369, 3 CFR, 2006 Comp., p. 244.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

■ 2. Revise § 538.515 to read as follows:

§ 538.515 Sudanese diplomatic missions in the United States.

(a) The importation of goods or services into the United States by, and the provision of goods or services in the United States to, the diplomatic missions of the Government of Sudan to the United States and the United Nations are authorized, provided that:

(1) The goods or services are for the conduct of the official business of the missions, or for personal use of the employees of the missions, and are not for resale;

(2) The transaction does not involve the purchase, sale, financing, or refinancing of real property;

(3) The transaction is not otherwise prohibited by law; and

(4) The transaction is conducted through an account at a U.S. financial institution specifically licensed by OFAC.

Note to paragraph (a)(4) of § 538.515: U.S. financial institutions are required to obtain specific licenses to operate accounts for, or extend credit to, the diplomatic missions of the Government of Sudan to the United States and the United Nations.

(b) The importation of goods or services into the United States by, and the provision of goods or services in the United States to, the employees of the diplomatic missions of the Government of Sudan to the United States and the United Nations are authorized, provided that:

(1) The goods or services are for personal use of the employees of the missions, and are not for resale; and

(2) The transaction is not otherwise prohibited by law.

(c) The importation of goods or services into the United States by the regional Government of Southern Sudan and its employees that involves the transit or transshipment of goods from the Specified Areas of Sudan through areas of Sudan other than the Specified Areas of Sudan is authorized, provided that:

(1) The goods or services are for the conduct of the business of the regional Government, or for personal use of the employees of the regional Government, and are not for resale; and

(2) The transaction is not otherwise prohibited by law.

Note to paragraph (c) of § 538.515: The authorization contained in paragraph (c) of this section permits the regional Government of Southern Sudan and its employees to import into the United States goods or services that have transited or transshipped through areas of Sudan other than the Specified Areas of Sudan without the need to obtain a specific license under § 538.417. The importation of goods and services into the United States by the regional Government of Southern Sudan not involving transit or transshipment through areas of Sudan other than the Specified Areas of Sudan already is exempt pursuant to §§ 538.212(g) and 538.305(b) and, therefore, requires no authorization. Similarly, the provision of goods and services in the United States to the regional Government of Southern Sudan and its employees already is exempt pursuant to §§ 538.212(g) and 538.305(b) and also requires no authorization.

Dated: June 3, 2009.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 1, 25, 66, 70, 72, 100, 110, 133, 135, 136, 137, 138, 155, 157, 161, 165, and 169

[Docket No. USCG–2009–0416]

RIN 1625–ZA23

Navigation and Navigable Waters; Technical, Organizational and Conforming Amendments

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: This rule makes non-substantive changes throughout Title 33 of the Code of Federal Regulations. The purpose of this rule is to make conforming amendments and technical corrections to Coast Guard navigation and navigable water regulations. This rule will have no substantive effect on the regulated public. These changes are provided to coincide with the annual recodification of Title 33 in July.

DATES: This final rule is effective June 10, 2009.

ADDRESSES: Comments and material received from the public, as well as the documents mentioned in this preamble as being available in the docket, are part of docket USCG–2009–0146 and are available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2009–0416 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail LCDR Reed Kohberger, CG–5232, Coast Guard, telephone 202–372–1471, e-mail *Reed.H.Kohberger@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

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I. Regulatory History

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under both 5 U.S.C. 553(b)(A) and (b)(B), the Coast Guard finds this rule is exempt from notice and comment rulemaking requirements because these changes involve agency organization and practices. In addition, good cause exists for not publishing an NPRM for all revisions in the rule because they are all non-substantive changes. This rule consists only of corrections and editorial, organizational, and conforming amendments. These changes will have no substantive effect on the public; therefore, it is unnecessary to publish an NPRM. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that, for the same reasons, good cause exists for making this rule effective upon publication in the **Federal Register**.

II. Background

Each year the printed edition of Title 33 of the Code of Federal Regulations is recodified on July 1. This rule, which becomes effective June 10, 2009, makes technical and editorial corrections throughout Title 33. This rule does not create any substantive requirements.

III. Discussion of Rule

This rule amends 33 CFR parts 1 and 100 to affirm and clarify the delegation of authority by the Commandant to Coast Guard Captains of the Port to issue special local regulations.

This rule updates Coast Guard headquarters and field office designations, telephone numbers, and Web site addresses. These updates are non-substantive and are located throughout 33 CFR parts 70, 133, 135, 136, 137, and 138. Part 100 is amended to correct typographical and grammatical errors.

This rule amends 33 CFR part 110 to standardize the format of latitude/

longitude coordinates and better conform to the Government Printing Office (GPO) style.

The National Pollution Funds Center (NPFC) has changed the location within NPFC where a document entitled ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process'', may be viewed by the public. The document has been relocated from Suite 1013 to the NPFC Law Library in Suite 1000. This rule amends 33 CFR part 137 to provide the public with this new location.

The authorities for 33 CFR parts 133, 136, and 137 have changed as a result of the Coast Guard's transfer to the Department of Homeland Security in 2003. This rule amends 33 CFR parts 133, 136, and 137 to reflect recent changes in the statutory authorities and delegations governing NPFC program regulations.

IV. 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.

A. Regulatory Planning and Review

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

B. 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.

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

C. Assistance for 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. This rule does not require a general notice of proposed rulemaking and, therefore, is exempt from the requirements of the Regulatory Flexibility Act.

D. Collection of Information

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

E. Federalism

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

F. Unfunded Mandates Reform Act

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

G. 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.

H. Civil Justice Reform

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

I. Protection of Children

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

J. Indian Tribal Governments

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

K. Energy Effects

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

L. Technical Standards

The National Technology Transfer and Advancement Act (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.

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human

environment. Therefore, this rule is categorically excluded under section 2.B.2, figure 2–1, paragraph (34)(a) and (b) of the Instruction. This rule involves editorial, procedural, and internal agency functions. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under the **ADDRESSES**. We seek any comments or information that may lead to discovery of a significant environmental impact from this proposed rule.

List of Subjects

33 CFR Part 1

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Penalties.

33 CFR Part 25

Authority delegations (Government agencies), Claims.

33 CFR Part 66

Intergovernmental relations, Navigation (water), Reporting and recordkeeping requirements.

33 CFR Part 70

Navigation (water), Reporting and recordkeeping requirements.

33 CFR Part 72

Government publications, Navigation (water).

33 CFR Part 100

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

33 CFR Part 110

Anchorage grounds.

33 CFR Part 133

Intergovernmental relations, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 135

Administrative practice and procedure, Continental shelf, Insurance, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 136

Administrative practice and procedure, Advertising, Claims, Oil pollution, Penalties, Reporting and recordkeeping requirements.

33 CFR Part 137

Claims, Oil pollution, Penalties, Reporting and recordkeeping requirements.

33 CFR Part 138

Alaska, Hazardous substances, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 155

Alaska, Hazardous substances, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 157

Cargo vessels, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 161

Harbors, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

33 CFR Part 165

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

33 CFR Part 169

Endangered and threatened species, Marine animals, Navigation (water), Radio, Reporting and recordkeeping requirements, Vessels, Water pollution control.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 1, 25, 66, 70, 72, 100, 110, 133, 135, 136, 137, 138, 155, 157, 161, 165, and 169 as follows:

Title 33—Navigation and Navigable Waters

PART 1—GENERAL PROVISIONS

Subpart 1.05—Rulemaking

■ 1. The authority citation for subpart 1.05 continues to read as follows:

Authority: 5 U.S.C. 552, 553, App. 2; 14 U.S.C. 2, 631, 632, and 633; 33 U.S.C. 471, 499; 49 U.S.C. 101, 322; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 1.05–1—

■ a. Revise paragraphs (e)(1) introductory text and (f) as set out below.

■ b. Add new paragraphs (e)(1)(vi) and (i) to read as set out below.

§ 1.05–1 Delegation of rulemaking authority.

* * * * *

(e)(1) The Commandant has redelegated to the Coast Guard District Commanders, with the reservation that this authority must not be further redelegated except as specified in paragraph (i) below, the authority to issue regulations pertaining to the following:

* * * * *

(vi) The establishment of special local regulations.

* * * * *

(f) Except for those matters specified in paragraph (c) of this section, the Commandant has redelegated to Coast Guard Captains of the Port, with the reservation that this authority must not be further redelegated, the authority to establish safety and security zones.

* * * * *

(i) The Commandant has redelegated to the Coast Guard District Commanders the authority to redelegate in writing to the Captains of the Port (COTP), with the reservation that this authority must not be further redelegated, the authority to issue such special local regulations as the COTP deems necessary to ensure safety of life on the navigable waters immediately prior to, during, and immediately after regattas and marine parades.

PART 25—CLAIMS

■ 3. The authority citation in part 25 continues to read as follows:

Authority: 14 U.S.C. 633, 49 CFR 1.45(a); 49 CFR 1.45(b); 49 CFR 1.46(b), unless otherwise noted.

§ 25.111 [Amended]

■ 4. Revise § 25.211(b) introductory text to read as follows:

§ 25.111 Action by a claimant.

* * * * *

(b) *Presentation.* Whenever possible, the claim must be presented to the Coast Guard Legal Service Command, Claims Division (LSC–5), located at 300 East Main Street, Suite 400, Norfolk, VA 23510–9100. If that is not possible, the claim may also be presented to:

* * * * *

PART 66—PRIVATE AIDS TO NAVIGATION

■ 5. The authority citation for part 66 continues to read as follows:

Authority: 14 U.S.C. 83, 84, 85; 43 U.S.C. 1333; Pub. L. 107–296, 116 Stat. 2135; Department of Homeland Security Delegation No. 0170.1.

■ 6. Revise § 66.01–1(a) to read as follows:

§ 66.01–1 Basic provisions.

(a) The Uniform State Waterway Marking System's (USWMS) aids to navigation provisions for marking channels and obstructions (see § 66.10–15 in this part) may be used in those navigable waters of the U.S. that have been designated as state waters for private aids to navigation and in those internal waters that are non-navigable

waters of the U.S. All other provisions for the use of regulatory markers and other aids to navigation must be in accordance with United States Aid to Navigation System, described in part 62 of this subchapter.

* * * * *

PART 70—INTERFERENCE WITH OR DAMAGE TO AIDS TO NAVIGATION

■ 7. The authority citation for part 70 continues to read as follows:

Authority: Secs. 14, 16, 30 Stat. 1152, 1153; secs. 84, 86, 92, 633, 642, 63 Stat. 500, 501, 503, 545, 547 (33 U.S.C. 408, 411, 412: 14 U.S.C. 84, 86, 92, 633, 642).

§ 70.05–5 [Amended]

■ 8. In § 70.05–5, remove the phrase ''not exceeding $2,500 or less than $500'' and add, in its place, the phrase ''of up to $25,000 per day''.

PART 72—MARINE INFORMATION

■ 9. The authority citation for part 72 continues to read as follows:

Authority: 14 U.S.C. 85, 633; 43 U.S.C. 1333; Department of Homeland Security Delegation No. 0170.1.

§ 72.01–10 [Amended]

■ 10. In § 72.01–10(a)(1), remove the phrase ''National Imagery and Mapping Agency'' and add, in its place, the phrase ''National Geospatial-Intelligence Agency''.

§ 72.01–25 [Amended]

■ 11. In § 72.01–25(a), remove the phrase ''National Imagery and Mapping Agency'' and add, in its place, the phrase ''National Geospatial-Intelligence Agency''.

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

■ 13. Revise § 100.35 to read as follows:

§ 100.35 Special local regulations.

(a) The Commander of a Coast Guard District or Captain of the Port (COTP) as authorized by 33 CFR 1.05–1(i), after approving plans for the holding of a regatta or marine parade within his or her district or zone, is authorized to promulgate such special local regulations as he or she deems necessary to insure safety of life on the navigable waters immediately prior to, during, and immediately after the approved regatta or marine parade. Such regulations may include a restriction on, or control of, the movement of vessels through a specified area immediately prior to, during, and immediately after the regatta or marine parade.

(b) The Commander of a Coast Guard District or COTP as authorized by 33 CFR 1.05–1(i), after approving plans for the holding of a regatta or marine parade upon the navigable waters within his or her district or zone, and promulgating special regulations thereto, must give the public full and adequate notice of the dates of the regatta or marine parade, together with full and complete information of the special local regulations, if there be such. Such notice should be published in the local notices to mariners.

(c) The special local regulations referred to in paragraph (a) of this section, when issued and published by the Commander of a Coast Guard District or COTP as authorized by 33 CFR 1.05–1(i), must have the status of regulations issued pursuant to the provisions of section 1 of the act of April 28, 1908, as amended (33 U.S.C. 1233).

§ 100.114 [Amended]

■ 14. In § 100.114—

■ a. In paragraph (a), remove the word ''year'' and add, in its place, the word ''yard''.

■ b. In the Fireworks Display Table, remove table entries Massachusetts 6.3 and Massachusetts 7.1.

■ c. Redesignate Fireworks Display Table entries 7.2 through 7.42 as the new 7.1 through 7.41 respectively.

§ 100.906 [Amended]

■ 15. In § 100.906(c), remove the phrase ''August 1st'' and add, in its place, the phrase ''the Tuesday before the first Saturday in August''.

PART 110—ANCHORAGE REGULATIONS

■ 16. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, and 2071; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 17. Revise § 110.25 to read as follows:

§ 110.25 Salem Sound, Mass.

(a) *Beverly Harbor, north of Salem Neck, Salem, MA.* A line extending from the northerly end of the Salem Willows Yacht Club House 360 yards bearing 281° true to position latitude 42°32′14.3″ N., longitude 70°52′24.17″ W.; thence north 275 yards to Monument Bar Beacon thence 540 yards bearing 080° to position latitude 42°32′25.3″ N., longitude 70°52′2.1″ W., thence 365 yards bearing 175° to position latitude 42°32′14.3″ N., longitude 70°52′1.1″ W.; thence 237° to the shore. [NAD83]

(b) *Bass River.* All of the area upstream of the highway bridge (Popes Bridge) outside of the dredged channel.

(c) *South Channel.* Bounded by a line commencing at the northern most point of Peach's Point at position latitude 42°31′08.6″ N., longitude 70°50′32.8″ W.; thence westerly to a point, at position latitude 42°31′21.9″ N., longitude 70°51′15.1″ W. off Fluen Point; thence westerly to a point at latitude 42°31′19.3″ N., longitude 70°51′47.4″ W. off Naugus Head; thence southwesterly to a point at latitude 42°31′00.3″ N., longitude 70°51′16.6″ W. east of Folger Point; thence to a point at latitude 42°30′38.3″ N., longitude 70°52′34.6″ W.; thence easterly to a point on Long Point at latitude 42°30′52.6″ N., longitude 70°53′05″ W. The areas will be principally for use by yachts and other recreational craft. Temporary floats or buoys for marking anchors will be allowed in the areas but fixed piles or stakes may not be placed. The anchoring of vessels, the placing of moorings, and the maintenance of fairways will be under the jurisdiction of the local Harbor Master.

(d) *Beverly and Mackerel Coves, north side of Beverly Harbor.* The water area enclosed by a line commencing at the southernmost point of Curtis Point in Beverly; thence bearing 238°, 1,400 yards to latitude 42°32′29.7″ N., 70°51′32.1″ W.; thence 284°, 1,475 yards to the western shoreline of Mackerel Cove; thence north northeasterly to the point of beginning.

(e) *Collins Cove, Salem, MA.* The water area enclosed by a line beginning at Monument Bar Beacon; thence 242°, 580 yards to latitude 42°32′14.5″ N., longitude 70°52′46.3″ W.; thence 284°, 220 yards to latitude 42°32′16″ N., longitude 70°52′55″ W.; thence 231°, 525 yards to a point on the shoreline; thence following the shoreline and the western boundary of the special anchorage area as described in 33 CFR 110.25(a) to the point of beginning.

(f) *Marblehead Harbor, Marblehead, MA.* The area comprises that portion of the harbor lying between the extreme low water line and southwestward of a line bearing 336° from Marblehead Neck Light to a point on Peach Point at latitude 42°31′03″ N., longitude 70°50′30″ W.

Note: The area is principally for use by yachts and other recreational craft. Temporary floats or buoys for marking anchors are allowed. Fixed mooring piles or stakes are prohibited. All moorings must be so that no vessel, when anchored, will at any time extend beyond the limits of the area.

The anchoring of vessels and the placing of temporary moorings are under the jurisdiction and at the direction of the local harbormaster.

■ 18. Add a new § 110.27 to read as follows:

§ 110.27 Lynn Harbor in Broad Sound, Mass.

North of a line bearing 244° from the tower of the Metropolitan District Building, extending from the shore to a point 100 feet from the east limit of the channel; east of a line bearing 358°, extending thence to a point 100 feet east of the northeast corner of the turning basin; south of a line bearing 88°, extending thence to the shore; and south and west of the shoreline to its intersection with the south boundary.

■ 19. Add a new § 110.29 to read as follows:

§ 110.29 Boston Inner Harbor, Mass.

(a) *Vicinity of Pleasant Park Yacht Club, Winthrop.* Southerly of a line bearing 276° from a point on the west side of Pleasant Street, Winthrop, 360 feet from the southwest corner of its intersection with Main Street; westerly of a line bearing 186° from a point on the south side of Main Street 140 feet from the southwest corner of its intersection with Pleasant Street; northerly of a line bearing 256° from a point on the west side of Pleasant Street 550 feet from the southwest corner of its intersection with Main Street and easterly of a line bearing 182° from a point on the south side of Main Street 640 feet from the southwest corner of its intersection with Pleasant Street.

(b) *Mystic River, east side of Tobin Bridge.* Beginning at a line running from a point on the Tobin Bridge at latitude 42°23′08.5″ N. 071°02′48.2″ W. to a point at latitude 42°23′06.4″ N. 071°02′43.7″ W.; thence northwest to a point at latitude 42°23′09.1″ N. 071°02′43.2″ W. along the shoreline to the western side of Tobin Bridge, thence to the point of origin.

(c) *Mystic River, west side of Tobin Bridge.* Beginning at a line running from a point on the Tobin Bridge at latitude 42°23′08.8″ N. 071°02′48.6″ W. to a point at latitude 42°23′10.5″ N. 071°05′52″ W.; thence northwest to the southeasterly corner of the pier at latitude 42°23′13.4″ N. 071°02′57.1″ W. along the pier to the shoreline to the eastern side of Tobin Bridge, thence to the point of origin.

(d) *Boston Inner Harbor A.* (1) The waters of the western side of Boston Inner Harbor north of the entrance to the Fort Point Channel bound by the following points beginning at latitude 42°21′32″ N., longitude 071°02′50″ W; thence to latitude 42°21′33″ N., longitude 071°02′44″ W.; thence to latitude 42°21′26″ N., longitude 071°02′36″ W.; thence to latitude 42°21′26″ N., longitude 071°02′53″ W.; thence to point of origin. [NAD83].

(2) The area is principally for use by yachts and other recreational craft. Temporary floats or buoys for marking anchors will be allowed. Fixed mooring piles or stakes are prohibited. The anchoring of vessels and placing of temporary moorings will be under the jurisdiction, and at the discretion of the Harbormaster, City of Boston. All moorings must be so placed that no vessel, when moored, will at any time extend beyond the limits of the area.

Note to paragraph (d): Administration of Special Anchorage Area is exercised by the Harbormaster, City of Boston, pursuant to local ordinances. The City of Boston will install and maintain suitable navigational aids to mark the limits of Special Anchorage areas.

■ 20. Revise § 110.30 to read as follows:

§ 110.30 Boston Harbor, Mass.

(a) *Vicinity of South Boston Yacht Club, South Boston.* Northerly of a line bearing 96° from the stack of the heating plant of the Boston Housing Authority in South Boston; easterly of a line bearing 5° from the west shaft of the tunnel of the Boston Main Drainage Pumping Station; southerly of the shoreline; and westerly of a line bearing 158° from the northeast corner of the iron fence marking the east boundary of the South Boston Yacht Club property.

(b) *Dorchester Bay, in vicinity of Savin Hill Yacht Club.* Northerly of a line bearing 64° from the stack of the old power plant of the Boston Elevated Railway on Freeport Street in Dorchester; westerly of a line bearing 163° from the stack of the Boston Main Drainage Pumping Station on the Cow Pasture in Dorchester; and southerly and easterly of the shoreline.

(c) *Dorchester Bay, in vicinity of Dorchester Yacht Club.* Eastward of a line bearing 21° from the stack located a short distance northwestward of the Dorchester Yacht Club; southward of a line bearing 294° from the southerly channel pier of the highway bridge; westward of the highway bridge and the shoreline; and northward of the shoreline.

(d) *Quincy Bay, in vicinity of Wollaston and Squantum Yacht Clubs.* Northwesterly of a line bearing 36°30′ from a point on the shore 2,600 feet easterly of the east side of the Wollaston Yacht Club landing; southwesterly of a line bearing 129°15′ from the water tank in Squantum; and southeasterly and northeasterly of the shoreline.

(e) *Quincy Bay, in vicinity of Merrymount Yacht Club.* South of a line starting from a point bearing 246°, 3,510 yards, from the stack of the pumping station on Nut Island, and extending thence 306° to the shore; west of a line bearing 190° from the aforesaid point to the shore; and north and east of the shoreline.

(f) *Weymouth Fore River, in vicinity of Quincy Yacht Club.* A line from the position latitude 42°16′46.9″ N. 70°57′12.5″ W. to position latitude 42°16′48.8″ N. 70°57′5.5″ W.; thence to latitude 42°16′31″ N. 70°56′23.1″ W. to the northerly end of Raccoon Island at position latitude 42°15′48″ N. 70°56′43.4″ W.; thence along the western shoreline of Raccoon Island to the point latitude 42°15′46.4″ N. 70°56′55.4″ W.; thence to latitude 42°15′43″ N. 70°57′5.8″ W.; thence along the shoreline to the point of origin. [NAD83]

(g) *Weymouth Fore River, in vicinity of Wessagussett Yacht Club.* Southwesterly of a line bearing 117° from channel light ''4''; southeasterly of a line 150 feet from and parallel to the meandering easterly limit of the dredged channel; easterly of a line bearing 188° from the eastern extremity of Rock Island Head; and northwesterly of the shoreline.

(h) *Weymouth Fore River, in the vicinity of Gull Point (PT).* All of the waters bound by the following points beginning at latitude 42°15′05″ N., longitude 70°57′26″ W.; thence to latitude 42°15′00″ N., longitude 70°57′26″ W.; thence to latitude 42°15′15″ N., longitude 70°56′50″ W.; thence to latitude 42°15′18″ N., longitude 70°56′50″ W.; thence to the point of the beginning. [NAD83]

Note to paragraph (h): The area is principally for use by recreational craft. All anchoring in the area will be under the supervision of the local harbor master or such other authority as may be designated by the authorities of the Town of Weymouth, Massachusetts. All moorings are to be so placed that no moored vessel will extend beyond the limit of the anchorage area.

(i) *Weymouth Back River, in vicinity of Eastern Neck.* The cove on the north side of the river lying northerly of a line bearing 264°30′ from the southwesterly corner of the American Agricultural Chemical Company's wharf (Bradley's Wharf) to the shore of Eastern Neck, about 2,200 feet distant.

(j) *Area No. 1 in Allerton Harbor.* That area north of Spinnaker Island beginning at latitude 42°18′15.3″ N. 70°53′44.1″ W.; thence due east to latitude 42°18′15.3″ N. longitude 70°53′27.6″ W.; thence due south to latitude 42°18′07.8″ N. longitude

70°53′27.6″ W.; thence due west to latitude 42°18′07.8″ N. longitude 70°53′44.1″ W.; thence due north to the point of beginning. [NAD83]

(k) *Area No. 2 in Hull Bay.* That area south of Hog Island beginning at latitude 42°17′50.8″ N. longitude 70°54′05.1″ W.; thence due east to latitude 42°17′50.8″ N. longitude 70°53′27.6″ W.; thence due south to latitude 42°17′30.3″ N. longitude 70°53′27.6″ W.; thence due west to latitude 42°17′30.3″ N. longitude 70°54′5.1″ W.; thence due north to the point of beginning. [NAD83]

(l) *Area No. 3 in Hull Bay.* That area north of Bumkin Island beginning at position latitude 42°17′22.3″ N. longitude 70°54′5.1″ W.; thence due east to latitude 42°17′22.3″ N. longitude 70°53′15.6″ W.; thence due south to latitude 42°17′01.3″ N. longitude 70°53′15.6″ W.; thence due west to latitude 42°17′01.3″ N. longitude 70°54′5.17″ W.; thence due north to the point of beginning. [NAD83].

Note to paragraphs (j), (k), and (l): The areas will be principally for use by yachts and other recreational craft. Temporary floats or buoys for marking anchors will be allowed. Fixed mooring piles or stakes are prohibited. The anchoring of vessels and the placing of temporary moorings is under the jurisdiction, and at the discretion, of the local Harbor Master, Hull, Mass.

(m) *Hingham Harbor Area 1.* Beginning at position latitude 42°15′39.3″ N. longitude 70°53′22.1″ W.; thence to latitude 42°15′53.8″ N. longitude 70°53′30.1″ W.; thence to latitude 42°15′56.3″ N. longitude 70°53′21.1″ W.; thence to latitude 42°15′42.3″ N. longitude 70°53′13.1″ W.; thence to point of beginning. [NAD83]

(n) *Hingham Harbor Area 2.* Beginning at position latitude 42°15′30.6″ N. longitude 70°53′0.5″ W.; thence to latitude 42°15′30.3″ N. longitude 70°53′11.6″ W.; thence to latitude 42°15′27.8″ N. longitude 70°53′16.1″ W.; thence to latitude 42°15′28.8″ N. longitude 70°53′29.1″ W.; thence to latitude 42°15′35.3″ N. longitude 70°53′32.1″ W.; thence to latitude 42°15′36.3″ N. longitude 70°53′34.6″ W.; thence to latitude 42°15′41.3″ N. longitude 70°53′32.6.5″ W.; thence to latitude 42°15′31.3″ N. longitude 70°53′26.1″ W.; thence to latitude 42°15′31.8″ N. longitude 70°53′01.1″ W.; thence to point of beginning. [NAD83]

(o) *Hingham Harbor Area 3.* Beginning at latitude 42°15′33.3″ N. longitude 70°52′59.6″ W.; thence to latitude 42°15′33.8″ N. longitude 70°53′17.1″ W.; thence to latitude 42°15′35.8″ N. longitude 70°53′00.1″ W.; thence to point of beginning. [NAD83]

(p) *Hingham Harbor Area 4.* Beginning at position latitude 42°14′47.3″ N. longitude 70°53′07.6″ W.; thence to latitude 42°14′48.8″ N. longitude 70°53′9.6″ W.; thence to latitude 42°14′54.3″ N. longitude 70°53′6.1″ W.; thence to latitude 42°14′56.9″ N. longitude 70°52′56.6″ W.; thence to point of beginning. [NAD83]

(q) *Hingham Harbor Area 5.* Beginning at position latitude 42°14′48.3″ N. longitude 70°52′55.1″ W.; thence to latitude 42°14′48.8″ N. longitude 70°53′0.1″ W.; thence to latitude 42°14′58.3″ N. longitude 70°52′49.1″ W.; thence to latitude 42°14′53.8″ N. longitude 70°52′48.1″ W.; thence to point of beginning. [NAD83]

Note to paragraphs (m), (n), (o), (p) and (q): The areas will be principally for use by yachts and other recreational craft. Temporary floats or buoys for marking anchors will be allowed in the areas but fixed piles or stakes may not be placed. The anchoring of vessels and the placing of moorings will be under the jurisdiction of the local Harbor Master.

■ 21. Amend § 110.55 by revising paragraphs (d)(1) through (d)(3) to read as follows:

§ 110.155 Port of New York.

* * * * *

(d) *Upper Bay—(1) Anchorage No. 20–A.* (i) All waters bound by the following points: latitude 40°42′06.9″ N., longitude 074°02′18.0″ W.; thence to latitude 40°42′05.4″ N., longitude 074°01′56.9″ W.; thence to latitude 40°41′54.9″ N., longitude 074°01′57.7″ W.; thence to latitude 40°41′54.0″ N., longitude 074°02′12.0″ W.; thence to latitude 40°41′54.4″ N., longitude 074°02′11.7″ W.; thence to latitude 40°41′57.5″ N., longitude 074°02′07.5″ W.; thence to latitude 40°42′06.1″ N., longitude 074°02′19.1″ W.; thence to the point of origin (NAD 83).

(ii) See 33 CFR 110.155(d)(6), (d)(16), and (l).

(2) *Anchorage No. 20–B.* (i) All waters bound by the following points: latitude 40°41′46.2″ N., longitude 074°02′23.0″ W.; thence to latitude 40°41′42.4″ N., longitude 074°02′00.5″ W.; thence to latitude 40°41′35.7″ N., longitude 074°02′02.7″ W.; thence to latitude 40°41′30.3″ N., longitude 074°02′06.3″ W.; thence to latitude 40°41′41.9″ N., longitude 074°02′29.2″ W.; thence to the point of origin (NAD 83).

(ii) See 33 CFR 110.155(d)(6), (d)(16), and (l).

(3) *Anchorage No. 20–C.* (i) All waters bound by the following points: latitude 40°41′42.4″ N., longitude 074°02′41.5″ W.; thence to latitude 40°41′25.8″ N., longitude 074°02′09.2″ W.; thence to latitude 40°41′02.1″ N., longitude 074°02′24.7″ W.; thence to latitude 40°41′09.4″ N., longitude 074°02′40.0″ W.; thence to latitude 40°41′13.3″ N., longitude 074°02′41.5″ W.; thence to latitude 40°41′15.8″ N., longitude 074°02′32.6″ W.; thence to latitude 40°41′25.3″ N., longitude 074°02′29.1″ W.; thence to latitude 40°41′33.0″ N., longitude 074°02′44.5″ W.; thence to latitude 40°41′32.5″ N., longitude 074°02′48.8″ W.; thence to the point of origin (NAD 83).

(ii) See 33 CFR 110.155(d)(6), (d)(16), and (l).

* * * * *

PART 133—OIL SPILL LIABILITY TRUST FUND; STATE ACCESS

■ 22. The authority citation for part 133 is revised to read as follows:

Authority: 33 U.S.C. 2712(a)(1)(B), 2712(d) and 2712(e); Sec. 1512 of the Homeland Security Act of 2002, Pub. L. 107–296, Title XV, Nov. 25, 2002, 116 Stat. 2310 (6 U.S.C. 552(d)); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351, as amended by E.O. 13286, 68 FR 10619, 3 CFR, 2004 Comp., p. 166; Department of Homeland Security Delegation No. 0170.1., para. 2(80).

§ 133.3 [Amended]

■ 23. In § 133.3(b), in the definition of ''NPFC'', remove the address ''U.S. Coast Guard National Pollution Funds Center, 4200 Wilson Boulevard, Suite 1000, Arlington, Virginia 22203–1804'' and add, in its place, the address, ''Director National Pollution Funds Center, NPFC MS 7100, U.S. Coast Guard, 4200 Wilson Blvd., Suite 1000, Arlington, VA 20598–7100''.

§ 133.25 [Amended]

■ 24. In § 133.25(c), remove the address ''Chief, Case Management Division, National Pollution Funds Center, Suite 1000, 4200 Wilson Boulevard, Arlington, Virginia 22203–1804'' and add, in its place, the address, ''Director National Pollution Funds Center, NPFC CM, MS 7100, U.S. Coast Guard, 4200 Wilson Blvd., Suite 1000, Arlington, VA 20598–7100''.

PART 135—OFFSHORE OIL POLLUTION COMPENSATION FUND

■ 25. The authority citation for part 135 continues to read as follows:

Authority: 33 U.S.C. 2701–2719; E.O. 12777, 56 FR 54757; Department of Homeland Security Delegation No. 0170.1, para. 2(80).

§ 135.9 [Amended]

■ 26. In § 135.9, remove the address ''U.S. Coast Guard National Pollution Funds Center, 4200 Wilson Boulevard, Suite 1000, Arlington, VA 22203–1804''

and add, in its place, the address, ''Director National Pollution Funds Center, NPFC MS 7100, U.S. Coast Guard, 4200 Wilson Blvd., Suite 1000, Arlington, VA 20598–7100''.

PART 136—OIL SPILL LIABILITY TRUST FUND; CLAIMS PROCEDURES; DESIGNATION OF SOURCE; AND ADVERTISEMENT

■ 27. The authority citation for part 136 is revised to read as follows:

Authority: 33 U.S.C. 2713(e) and 2714; Sec. 1512 of the Homeland Security Act of 2002, Pub. L. 107–296, Title XV, Nov. 25, 2002, 116 Stat. 2310 (6 U.S.C. 552(d)); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351, as amended by E.O. 13286, 68 FR 10619, 3 CFR, 2004 Comp., p.166; Department of Homeland Security Delegation No. 0170.1, para. 2(80).

§ 136.3 [Amended]

■ 28. In § 136.3 remove ''Director, National Pollution Funds Center, suite 1000, 4200 Wilson Boulevard, Arlington, Virginia 22203–1804, (703) 235–4756.'' and add, in its place, ''Director National Pollution Funds Center, NPFC MS 7100, U.S. Coast Guard, 4200 Wilson Blvd., Suite 1000, Arlington, VA 20598–7100, (800) 280–7118''.

§ 136.5 [Amended]

■ 29. In § 136.5(b), in the definition of NPFC, remove the address ''U.S. Coast Guard, National Pollution Funds Center, suite 1000, 4200 Wilson Boulevard, Arlington, Virginia 22203–1804'' and add, in its place, the address, ''Director National Pollution Funds Center, NPFC MS 7100, U.S. Coast Guard, 4200 Wilson Blvd., Suite 1000, Arlington, VA 20598–7100''.

§ 136.101 [Amended]

■ 30. In § 136.101(b), remove the address ''National Pollution Funds Center, suite 1000, 4200 Wilson Boulevard, Arlington, Virginia 22203–1804'' and add, in its place, the address, ''Director National Pollution Funds Center, NPFC MS 7100, U.S. Coast Guard, 4200 Wilson Blvd., Suite 1000, Arlington, VA 20598–7100''.

PART 137—OIL SPILL LIABILITY: STANDARDS FOR CONDUCTING ALL APPROPRIATE INQUIRIES UNDER THE INNOCENT LAND-OWNER DEFENSE

■ 31. The authority citation for part 137 is revised to read as follows:

Authority: 33 U.S.C. 2703(d)(4); Sec. 1512 of the Homeland Security Act of 2002, Pub. L. 107–296, Title XV, Nov. 25, 2002, 116 Stat. 2310 (6 U.S.C. 552(d)); Department of Homeland Security Delegation No. 14000.

■ 32. Revise § 137.15 to read as follows:

§ 137.15 References: Where can I get a copy of the publication mentioned in this part?

Section 137.20 of this part refers to ASTM E 1527–05, Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process. That document is available from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959. It is also available for inspection at the Coast Guard National Pollution Funds Center, Law Library, 4200 Wilson Boulevard, Suite 1000, Arlington, VA.

PART 138—FINANCIAL RESPONSIBILITY FOR WATER POLLUTION (VESSELS) AND OPA 90 LIMITS OF LIABILITY (VESSELS AND DEEPWATER PORTS)

■ 33. The authority citation for part 138 continues to read as follows:

Authority: 33 U.S.C. 2716, 2716a; 42 U.S.C. 9608, 9609; Sec. 1512 of the Homeland Security Act of 2002, Pub. L. 107–296, Title XV, Nov. 25, 2002, 116 Stat. 2310 (6 U.S.C. 552); E.O. 12580, Sec. 7(b), 3 CFR, 1987 Comp., p. 198; E.O. 12777, 3 CFR, 1991 Comp., p. 351; E.O. 13286, Sec. 89 (68 FR 10619, Feb. 28, 2003); Department of Homeland Security Delegation Nos. 0170.1 and 5110. Section 138.30 also issued under the authority of 46 U.S.C. 2103, 46 U.S.C. 14302.

§ 138.45 [Amended]

■ 34. In § 138.45(a), remove the address ''U.S. Coast Guard, National Pollution Funds Center (Cv), 4200 Wilson Boulevard, Suite 1000, Arlington, VA 22203–1804'' and add, in its place, the address, ''Director National Pollution Funds Center, NPFC CV MS 7100, U.S. Coast Guard, 4200 Wilson Blvd., Suite 1000, Arlington, VA 20598–7100''.

PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATION FOR VESSELS

■ 35. The authority citation for part 155 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j); E.O. 11735, 3 CFR, 1971–1975 Comp., p. 793. Sections 155.100 through 155.130, 150.350 through 155.400, 155.430, 155.440, 155.470, 155.1030(j) and (k), and 155.1065(g) are also issued under 33 U.S.C. 1903(b). Sections 155.480, 155.490, 155.750(e), and 155.775 are also issued under 46 U.S.C. 3703. Section 155.490 also issued under section 4110(b) of Pub. L. 101–380. Sections 155.110–155.130, 155.350–155.400, 155.430, 155.440, 155.470, 155.1030 (j) and (k), and 155.1065(g) also issued under 33 U.S.C. 1903(b); and §§ 155.1110–155.1150 also issued under 33 U.S.C. 2735.

§ 155.1130 [Amended]

■ 36. In § 155.1130(h), remove the phrase ''§ 155.1050(l)'' and add, in its place, the phrase ''Subpart I of this part''.

PART 157-—RULES FOR THE PROTECTION OF THE MARINE ENVIRONMENT RELATING TO TANK VESSELS CARRYING OIL IN BULK

■ 37. The authority citation for part 157 continues to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3703, 3703a (note); 49 CFR 1.46. Subparts G, H, and I are also issued under section 4115(b), Pub. L. 101–380, 104 Stat. 520; Pub. L. 104–55, 109 Stat. 546.

§ 157.22 [Amended]

■ 38. In § 157.22, remove the phrase ''Regulation 25A'' and add, in its place, the phrase ''Regulation 27''.

PART 161—VESSEL TRAFFIC MANAGEMENT

■ 39. The authority citation for part 161 continues to read as follows:

Authority: 33 U.S.C. 1223, 1231; 46 U.S.C. 70114, 70119; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

§ 161.40 [Amended]

■ 40. In § 161.40—

■ a. In paragraph (b), remove the phrase ''Southern Pacific Railroad Bridge'' and add, in its place, the phrase ''Burlington Northern/Santa Fe Railroad Bridge''.

■ b. In Table 161.40(c), remove the phrase ''South Pacific Railroad Bridge'' and add, in its place, the phrase ''Burlington Northern/Santa Fe Railroad Bridge''.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 41. 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(g), 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

§ 165.116 [Amended]

■ 42. In § 165.116, remove paragraph (b) and redesignate paragraph (c) as paragraph (b).

§ 165.120 [Amended]

■ 43. In § 165.120, revise paragraphs (a) and (b)(4) introductory text to read follows:

§ 165.120 Safety Zone: Chelsea River, Boston Inner Harbor, Boston, MA.

(a) *Location.* The following area is a safety zone: The waters of the Chelsea

River, Boston Inner Harbor, for 100 yards upstream and downstream of the center of the Chelsea Street Draw span (in the approximate position of latitude 42°23′10.3″ N., longitude 71°01′21.2″ W.). [NAD83].

* * * * *

(b) * * *

(4) Restrictions when the Chelsea River channel is obstructed by vessel(s) moored at the Northeast Petroleum Terminal located downstream of the Chelsea Street Bridge on the Chelsea, MA side of the Chelsea River—hereafter referred to as the Jenny Dock (approximate position latitude 42°23′05.2″ N., longitude 71°01′35.8″ W.)—or the Mobile Oil Terminal located on the East Boston Side of the Chelsea River downstream of the Chelsea Street Bridge (approximate position latitude 42°23′04.9″ N., longitude 71°01′28.52″ W.): [NAD83].

* * * * *

§ 165.1407 [Amended]

■ 44. In § 165.1407(c)(2), following the numbers ''(808) 842–2600'' add ''and (808) 842–2601, fax (808) 842–2624''.

PART 169—SHIP REPORTING SYSTEMS

■ 45. The authority citation for part 169 continues to read as follows:

Authority: 33 U.S.C. 1230(d), Department of Homeland Security Delegation No. 0170.1.

§ 169.1 [Amended]

■ 46. In § 169.1, add a note at the end of the current section to read as follows:

§ 169.1 What is the purpose of this part?

* * * * *

Note to § 169.1: For ship reporting system requirements not established by the Coast Guard, see 50 CFR Part 404.

Dated: June 3, 2009.

Stefan G. Venckus,

Chief, Office of Regulations and Administrative Law, United States Coast Guard.

[FR Doc. E9–13370 Filed 6–9–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2009–0415]

RIN 1625–AA09

Drawbridge Operation Regulation; Atlantic Intracoastal Waterway, New Smyrna Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Coronado Beach Bridge (SR 44) across the Atlantic Intracoastal Waterway, mile 854, at New Smyrna Beach, FL. The deviation is necessary to repair the bridge. This deviation allows the bridge to remain closed to navigation during the deviation period.

DATES: This deviation is effective from 6 a.m. on June 30, 2009 through 6 a.m. on July 3, 2009.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2009–0415 and are available online by going to *http://www.regulations.gov,* selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2009–0415 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Michael Lieberum, Bridge Branch, Seventh Coast Guard District, telephone 305–415–6744, e-mail *Michael.b.lieberum@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: M&J Construction Company of behalf of the bridge owner, Florida Department of Transportation (FDOT), has requested a deviation to the regulation of the Coronado Beach/George C. Musson (SR 44) Bridge across the Atlantic Intracoastal Waterway, mile 854.0, New Smyrna, FL. The bridge provides a vertical clearance of 24 feet in the closed position. As required by 33 CFR 117.261(h), the bridge shall open on signal, except that from 7 a.m. until 7 p.m., each day of the week, the draw need only open on the hour, twenty minutes past the hour and forty minutes past the hour. The deviation is from 6 a.m. on June 30, 2009 through 6 a.m. on July 3, 2009. During the deviation this bridge will remain closed to navigation. Vessels not requiring an opening may pass at any time. This action is necessary because the bridge will be inoperable in a jacked-up state to perform repairs. The action will affect all vessels requiring an opening during this time period. Vessels unable to transit through this area may transit via an ocean route or schedule their transit prior to or after the repair work is completed.

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

Dated: May 26, 2009.

R.S. Branham,

Rear Admiral, U.S. Coast Guard, Commander, Coast Guard Seventh District.

[FR Doc. E9–13640 Filed 6–9–09; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2006–0004; FRL–8900–5]

Approval and Promulgation of Air Quality Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to provisions in the Clean Air Act (Act) which allow EPA to correct State Implementation Plan (SIP) actions made in error, EPA is taking final action to correct an error in part of its June 12, 2006 approval of an amendment to Indiana's ozone SIP. In today's action, EPA is rescinding its approval of the inclusion of the state's codified definition of hazardous air pollutant (HAP) in Indiana's ozone SIP.

DATES: This final rule is effective on July 10, 2009.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2006–0004. All documents in the docket are listed on the *http://www.regulations.gov* Web

site. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Steven Rosenthal, Environmental Engineer, at (312) 886–6052 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6052, *rosenthal.steven@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What public comments were received on the proposed correction notice and what is EPA's response?
II. What action is EPA taking and what is the reason for this action?
III. Statutory and Executive Order Reviews

I. What public comments were received on the proposed correction notice and what is EPA's response?

EPA did not receive any public comments on the August 4, 2008, proposed correction notice.

II. What action is EPA taking and what is the reason for this action?

Section 110 of the Act is the authority under which Congress has directed EPA to act on SIPs and SIP revisions. Section 110(a) establishes the applicable procedures for SIP development and submission. The trigger for these activities is the promulgation of national ambient air quality standards (NAAQS); and the focus of the State's efforts is to develop ''a plan which provides for implementation, maintenance, and enforcement'' of the NAAQS. Section 110(a)(1). EPA must then determine whether the submission contains the air quality-related components prescribed in Section 110(a)(2).

Other than for lead, which is both a HAP and criteria pollutant, Section 110 does not provide parameters to determine the approvability of a HAP provision. Instead, in the 1990 Amendments to the Act, Congress envisioned that HAPs (including the then-listed ethylene glycol monobutyl ether (EGBE)) would be regulated under Section 112. State programs for hazardous pollutants, including delegations, are governed by Section 112(l) of the Act. They should not be included in the SIP under Section 110.

Section 110(k)(6) of the Act provides that ''whenever EPA determines that its action approving, disapproving, or promulgating any plan or plan revision (or part thereof), * * * was in error, EPA may revise such action as appropriate without requiring any further submission from the State.'' Therefore, under section 110(k)(6), EPA is rescinding its exclusion of EGBE from Indiana's definition of HAP, and is also rescinding Indiana's definition of HAP in 326 IAC 1–2–33.5, from Indiana's ozone SIP.

On June 12, 2006, as requested by the State, EPA took action under section 110(a) of the Act and deleted EGBE from the SIP's definition for HAP in 326 IAC 1–2–33.5. For the reasons discussed above, EPA should not have taken this action under section 110(a) of the Act. On January 10, 2008, the Indiana Department of Environmental Management requested that EPA correct that earlier action.

III. 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 corrects an error and approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this final 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 corrects an error and approves preexisting 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 final 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 final 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 corrects an error and approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Act. 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 is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Act. 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 SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Act. 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 correction to 40 CFR 52 for Indiana is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 10, 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. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Hazardous air pollutants, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 22, 2009.

Walter W. Kovalick, Jr.,

Acting Regional Administrator, Region 5.

■ 40 CFR Part 52 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 P—Indiana

■ 2. Section 52.770 is amended by revising paragraph (c)(176) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(176) On December 21, 2005, Indiana submitted revised regulations to the EPA. As a result, the compounds, 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane, 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl)hexane, 1,1,1,2,3,3,3-heptafluoropropane, and methyl formate, are added to the list of ''nonphotochemically reactive hydrocarbons'' or ''negligibly photochemically reactive compounds'' in 326 IAC 1–2–48 and these compounds are deleted from the list of VOCs in 326 IAC 1–2–90. Companies producing or using the four compounds will no longer need to follow the VOC rules for these compounds. The requirements in 326 IAC 1–2–48 and 1–2–90 were also modified for the compound t-butyl acetate. It is not considered a VOC for emission limits and content requirements. T-butyl acetate will still be considered a VOC for the recordkeeping, emissions reporting, and inventory requirements.

(i) Incorporation by reference.

(A) Indiana Administrative Code Title 326: Air Pollution Control Board, Article 1: General Provisions, Rule 2: Definitions, Section 48: '''Nonphotochemically reactive hydrocarbon' or 'negligibly photochemically reactive compounds' defined'', and Section 90: '' 'Volatile organic compound' or 'VOC' defined''. Filed with the Secretary of State on October 20, 2005 and effective November 19, 2005. Published in 29 *Indiana Register* 795–797 on December 1, 2005.

* * * * *

[FR Doc. E9–13486 Filed 6–9–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–RO4–OAR–2008–0159(b); FRL–8912–9]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; City of Memphis, TN; Control of Emissions From Existing Hospital/Medical/Infectious Waste Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the Clean Air Act (CAA) section 111(d)/129 State Plan submitted by the Memphis-Shelby County Health Department (MSCHD) for the City of Memphis, Tennessee on February 16, 2006 (State Plan). The State Plan is for implementing and enforcing the Emissions Guidelines (EG) applicable to existing Hospital/Medical/Infectious Waste Incinerator (HMIWI) units that commenced construction on or before June 20, 1996.

DATES: This direct final rule will be effective August 10, 2009, unless EPA receives adverse comments by July 10, 2009. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) by Docket ID No. EPA–R04–OAR–2008–0159 by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. *Agency Web site: http://docket.epa.gov/rmepub/RME,* EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the online instructions for submitting comments.

3. *E-mail: louis.egide@epa.gov.*

4. *Fax:* (404) 562–9095.

5. *Mail:* ''EPA–R04–OAR–2008–0159,'' Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

6. *Hand Delivery or Courier:* Deliver your comments to: Dr. Egide N. Louis, Air Toxics and Monitoring Branch, U.S. Environmental Protection Agency, Region 4, 12th Floor, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to RME ID No. EPA–R04–OAR–2008–0159. 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://docket.epa.gov/rmepub/,* 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 RME, regulations.gov or e-mail. The EPA RME Web site and the Federal regulations.gov Web site are ''anonymous access'' systems, 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 RME or 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 electronic docket are listed in the RME index at *http://docket.epa.gov/rmepub/*. 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 RME or in hard copy at the Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Egide Louis at (404) 562–9240.

SUPPLEMENTARY INFORMATION:

I. Background

On February 16, 2006, pursuant to the CAA sections 111 and 129, EPA promulgated new source performance standards (NSPS) applicable to new HMIWI units and EG applicable to existing HMIWI units. The NSPS and EG are codified at 40 CFR part 60, subparts Ce and Ec. Subparts Ce and Ec regulate the following: Particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans.

For existing sources, CAA section 129(b)(2) requires States to submit to EPA for approval State Plans that implement and enforce the EG contained in 40 CFR part 60, subpart Ce. State Plans must be at least as protective as the EG, and become federally enforceable upon approval by EPA. Pursuant to subpart Ce, State Plans must include the following nine items: An inventory of affected HMIWI units; an inventory of emissions from affected HMIWI units; compliance schedules for each affected HMIWI unit; operator training and qualification requirements, a waste management plan, and operating limits for affected HMIWI units; performance testing, recordkeeping, and reporting requirements; certification that a public hearing was held; provision for State progress reports to EPA; identification of enforceable State mechanisms for implementing the EG; and a demonstration of the State's legal authority to carry out the State Plan. The procedures for adoption are codified in 40 CFR part 60, subpart B.

In this action, EPA is approving the State Plan for existing HMIWI units submitted by MSCHD because it meets the requirements of 40 CFR part 60, subpart Ce.

II. Discussion

MSCHD's 111(d)/129 State Plan for implementing and enforcing the EG for existing HMIWI units includes the following: Public Participation—Demonstration that the Public Had Adequate Notice and Opportunity to Submit Written Comments and Attend Public Hearing; Emissions Standards and Compliance Schedules; Emission Inventories, Source Surveillance, and Reports; and Legal Authority. EPA's approval of the State Plan is based on our finding that it meets the nine requirements of 40 CFR part 60, subpart Ce.

Requirements (1) and (2): Inventory of affected HMIWI units and inventory of emissions. MSCHD submitted an emissions inventory of all designated pollutants for existing HMIWI units under their jurisdiction in the City of Memphis. This portion of the State Plan has been reviewed and approved as meeting the Federal requirements for existing HMIWI units.

Requirement (3): Compliance schedules for each affected HMIWI unit. MSCHD submitted the compliance schedule for existing HMIWI units under their jurisdiction in the City of Memphis. This portion of the State Plan has been reviewed and approved as being at least as protective as Federal requirements for existing HMIWI units.

Requirement (4): Emission limitations, operator training and qualification requirements, a waste management plan, and operating limits for affected HMIWI units. MSCHD adopted all emission standards and limitations applicable to existing HMIWI units. These standards and limitations have been approved as being at least as protective as the Federal requirements contained in subpart Ce for existing HMIWI units.

Requirement (5): Performance testing, recordkeeping, and reporting requirements. The State Plan contains requirements for monitoring, recordkeeping, reporting, and compliance assurance. This portion of the State Plan has been reviewed and approved as being at least as protective as the Federal requirements for existing HMIWI units. The MSCHD State Plan also includes its legal authority to require owners and operators of designated facilities to maintain records and report on the nature and amount of emissions and any other information that may be necessary to enable MSCHD to judge the compliance status of the facilities in the State Plan. MSCHD also submitted its legal authority to provide for periodic inspection and testing, and provisions for making reports of existing HMIWI unit emissions data, correlated with emission standards that apply, available to the general public.

Requirement (6): Certification that a public hearing was held. MSCHD provided certification that a public hearing was held on April 3, 2003.

Requirement (7): Provision for State progress reports to EPA. The MSCHD State Plan provides for progress reports of plan implementation updates to EPA on an annual basis. These progress reports will include the required items pursuant to 40 CFR part 60, subpart B. This portion of the State Plan has been reviewed and approved as meeting the Federal requirements for State Plan reporting.

Requirement (8): Identification of enforceable State mechanisms for implementing the EG. An enforcement mechanism is a legal instrument by which MSCHD can enforce a set of standards and conditions. Pursuant to the authority of the Tennessee Code Annotated (T.C.A.) Section 68–201–115, MSCHD is authorized to enforce regulations and/or ordinances for the control of air pollution, which are as stringent as the State of Tennessee's requirements. On March 2, 2004, the City of Memphis amended its Code of Ordinances to adopt Section 16–84.1, ''Emission Standards for Existing Hospital/Medical/Infectious Waste Incinerators (HMIWI),'' which is equivalent to 40 CFR part 60, subpart Ce. Therefore, MSCHD's mechanism for enforcing the standards and conditions of 40 CFR, part 60, subpart Ce is the City of Memphis Code, Section 16–84.1. On the basis of this rule and the rules identified in Requirement (9) below, the State Plan is approved as being at least

as protective as Federal requirements for existing HMIWI units.

Requirement (9): A demonstration of the State's legal authority to carry out the State Plan. MSCHD demonstrated legal authority to adopt emissions standards and compliance schedules for designated facilities; authority to enforce applicable laws, regulations, standards, and compliance schedules, and authority to seek injunctive relief; authority to obtain information necessary to determine whether designated facilities are in compliance with applicable laws, regulations, standards, and compliance schedules, including authority to require recordkeeping, make inspections, and conduct tests at designated facilities; authority to require owners or operators of designated facilities to install, maintain and use emission monitoring devices and to make periodic reports to MSCHD on the nature and amount of emissions from such facilities; and authority to make emissions data publicly available.

MSCHD cites the following references for the legal authority noted above: Adopt emission standards and compliance schedules—T.C.A. Section 68–201–115(b)(3), and the City of Memphis Code 16–84.1(c) and 16–84.1(d); enforce applicable laws, regulations, standards, and compliance schedules, and seek injunctive relief—T.C.A. 68–201–105, T.C.A. 68–201–108, T.C.A. 68–201–109, T.C.A. 68–201–110, and T.C.A. 68–201–112, and the City of Memphis Code 16–84.1; obtain information necessary to determine compliance—T.C.A. Section 68–201–105 and T.C.A. Section 68–201–115(b)(3); require recordkeeping, make inspections and conduct tests—City of Memphis Code 16–84.1(g), and 16–84.1(i), and T.C.A. 68–201–107; require the use of monitors and require emission reports of owners and operators—City of Memphis Code 16–84.1(h) and City of Memphis Code 16–84.1(i); and make emissions data publicly available—City of Memphis Code 16–84.1(i).

EPA is approving the State Plan for existing HMIWI units submitted by MSCHD because it meets the nine requirements of 40 CFR part, 60, subpart Ce.

III. Final Action

In this action, EPA approves the 111(d)/129 State Plan submitted by MSCHD for the City of Memphis to implement and enforce 40 CFR part 60, subpart Ce, as it applies to existing HMIWI units. EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the State Plan should adverse comments be filed. This rule will be effective August 10, 2009, without further notice unless the Agency receives adverse comments by July 10, 2009.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Parties interested in commenting on this action should do so at this time. If no such comments are received, this action is effective August 10, 2009 and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule, and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this rule 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 rule 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 rule 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 Clean Air Act. 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 is not economically significant.

In reviewing 111(d)/129 plan submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. 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 111(d)/129 plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a 111(d)/129 plan submission, to use VCS in place of a 111(d)/129 plan submission that otherwise satisfies the provisions of the Clean Air Act. 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 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 rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days from the effective date of this rule. 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. This rule may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection; Administrative practice and procedure; Air pollution control; Intergovernmental relations; Reporting and recordkeeping requirements.

Dated: April 10, 2009.

Beverly H. Banister,

Acting, Regional Administrator, Region 4.

■ 40 CFR part 62, subpart RR, is amended as follows:

PART 62—[AMENDED]

■ 1. The authority citation for Part 62 continues to read as follows:

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

Subpart RR—Tennessee

■ 2. Section 62.10626 is amended by adding paragraphs (b)(6) and (c)(3) to read as follows:

§ 62.10626 Identification of plan.

* * * * *

(b) * * *

(6) City of Memphis Implementation Plan: Federal Emission Guidelines Hospital/Medical/Infectious Waste Incinerators (HMIWI), submitted on February 16, 2006, by the Memphis and Shelby County Health Department.

(c) * * *

(3) Existing Hospital/Medical/Infectious Waste Incinerators

■ 3. Part 62 is amended by adding a new undesignated center heading to subpart RR and a new § 62.10632 to read as follows:

Air Emissions From Existing Hospital/Medical/Infectious Waste Incinerators (HMIWI)—Section 111(d)/129 Plan

§ 62.10632 Identification of sources.

The Plan applies to all existing HMWI facilities at St. Jude Children's Hospital in the City of Memphis, for which construction was commenced on or before June 20, 1996.

[FR Doc. E9–13595 Filed 6–9–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0395; FRL–8412–1]

Residues of Silver in Foods from Food Contact Surface Sanitizing Solutions; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation amends the exemption from the requirement of a tolerance for residues of silver (excludes silver salts) in or on all foods when applied or used in public eating places, dairy processing equipment, and food-processing equipment. ETO H2O, Inc., submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act requesting to establish concentration limits for silver in end-use solutions eligible for tolerance exemption. The regulation being established will exempt all foods from the requirement of a tolerance for residues of silver resulting from contact with surfaces treated with solutions in which the end-use concentration of silver is not to exceed 50 parts per million (ppm).

DATES: This regulation is effective June 10, 2009. Objections and requests for hearings must be received on or before August 10, 2009 and must be filed in accordance with the itructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0395. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Marshall Swindell, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–6341; e-mail address: *swindell.marshal@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a dairy cattle milk producer, food manufacturer, or beverage manufacturer. Potentially affected entities may include, but are not limited to:

- Food Manufacturing (NAICS code 311).
- Beverage Manufacturing (NAICS code 3121).
- Dairy Cattle Milk Production (NAICS code 11212).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in 40 CFR 180.940 (a) Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (Food-contact surface sanitizing solutions). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://*

www.regulations.gov, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–0395 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before August 10, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2007–0395, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

- Mail: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001.

- Delivery: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The docket telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of July 11, 2007 (72 FR 37779) (FRL–8136–1), EPA issued a notice pursuant to section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of an pesticide tolerance petition (PP 7F7178) by ETO H20, Inc, 1725 Gillespie Way, El Cajon, CA 92020. The petition requested that 40 CFR 180.940(a) be amended by establishing concentration limits for Silver in end-use solutions eligible for the tolerance exemption in all foods from treatment of food contact surfaces in public eating establishments, dairy processing equipment, and food processing equipment and utensils not to exceed silver at 50 ppm. The notice referenced a summary of the petition prepared by ETO H20, Inc., 90 Boroline Rd Allendale, NJ 07401, the registrant, which is available to the public in the docket at *www.regulations.gov*, Docket ID Number EPA–HQ–OPP–2007–0395. There were no comments received in response to the notice of filing.

In drafting the regulatory language for this exemption, EPA has adopted more restrictive language than suggested in the petition to ensure that the scope of the exemption does not exceed the form of silver evaluated in the risk assessment supporting this action. As revised, the tolerance expression would now read:

> Silver ions resulting from the use of electrolytically-generated silver ions stabilized in citric acid as silver dihydrogen citrate (does not include metallic silver).

This revised tolerance expression excludes any other silver-containing compounds whether they are other silver salts, complexes with inorganic polymers such as zeolites, or metallic silver in any form or dimension including nanoscale.

EPA understands that this petition was not intended to extend to silver salts accordingly EPA has modified the regulatory language to make this clear.

Section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(c)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C), which requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

A. Toxic Effects

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by silver are discussed in this unit.

Silver ions and preparations containing silver in an ionic state have been used for over a century for medicinal and bactericidal purposes. Because of its bactericidal properties, silver has been used as a topical treatment for burns, as a treatment for venereal diseases, as an ingredient in cosmetic formulations and in the sanitation of swimming pools and hot tubs/spas. Silver has also been used in dentistry (as amalgams and as an ingredient in mouth washes), in acupuncture, jewelry making, and photography. Silver can be found in electroplating as well as in paints and in water purification systems.

The toxicity of silver is well understood based on epidemiological data from humans, toxicology data in animals, and documented information on the metabolism of silver in mammalian species. Unlike for other pesticides, EPA does not have a conventional check-list of guideline laboratory animal studies to assess human risk from exposure to silver. Based on the extensive past uses of

silver and EPA's knowledge and experience about those uses of the compound, however, it is apparent that humans and laboratory animals do not handle elevated doses of silver in the same manner. For this reason, additional conventional laboratory animal toxicity studies would not provide a better understanding of the effects of silver in humans. Further, the Agency has determined that silver and several of its salts (chloride, sulfate nitrate and acetate) can be reviewed together because these silver salts react similarly in aqueous media and the major active ion is the silver ion.

A human biomonitoring study conducted in 1935, as reported in the *Journal of the American Medical Association* by L.E. Gaul and H.E. Staud, has served as the basis for establishing regulatory limits for silver in drinking water and in the diet. The results from this study were further supported by the results from an inhalation study conducted by Pillsbury and Hill in 1939, which established inhalation limits for silver in humans. In both studies, the effect of concern was argyria, a bluish discoloration of the skin. Argyria, while a permanent condition, is a cosmetic condition. The function of the skin as an organ is not compromised and the resulting discoloration is not associated with systemic toxicity. In the 1935 study by Gaul and Staud, silver was administered for medicinal purposes to 70 patients for periods from 2 to 9 years. Of the 70 patients receiving medicinal silver, 1/70 developed argyria after receiving an intravenous dose of 1 gram. This intravenous dose was converted to an oral dose of 0.014 milligram/kilogram/day (mg/kg/day) and was considered a lowest observed effect level. Other patients did not develop argyria until doses five times higher were administered. This study and an inhalation biomonitoring study by Pillsbury, *et al*, clearly determined the endpoint of concern for humans. Interestingly, the skin form of argyria has not been reported in laboratory animals when doses that are approximately 4 orders of magnitude higher (100 mg/kg) are administered.

Further support for not requiring additional laboratory animal studies for silver is provided from the results of the developmental toxicity study in rats, conducted by the National Toxicology Program (NTP). In a developmental study conducted in 2002, silver acetate was administered by gavage on days 6 – 19 of gestation. No developmental effects were reported at doses up to 100 mg/kg; maternal animals were observed to have piloerection and rooting behavior at 30 mg/kg. The observed effects in maternal animals would not be expected to occur in humans and are frequently observed in animal studies. These observations, when made in the absence of other clinical findings are not considered adverse when establishing a ''no adverse effect level.'' More importantly, the results from this study did not demonstrate an increased susceptibility of offspring, nor did it demonstrate systemic toxicity. This study corroborates the use of the information provided by the human biomonitoring study in determining dietary limits for silver and further supports our decision to not rely on animal data when assessing the health effects of silver in humans.

In addition to the information gleaned from the biomonitoring studies and the developmental toxicity study, the reviews of the literature by other EPA offices and national and inter-national organizations provide supplemental support that argyria is the primary effect in humans (e.g. EPA's Integrated Risk Management System, Agency for Toxic Substances and Disease Registry, the World Health Organization). Also the acute oral toxicity studies that have been provided to support the registration of silver as an antimicrobial agent establish LD_{50s} between 2,000 and 5,000 mg/kg. These values are above the limit dose for acute toxicity. For other silver salts, such as silver cyanide, the LD_{50} values may be significantly lower based on the molecules to which the silver ions are attached. For the antimicrobial silver covered by this exemption, the LD_{50} ranges are very high because the silver ions have very low acute toxicity.

Finally, the pharmacokinetics of silver is understood and may explain the low systemic toxicity potential of the compound. Pharmacokinetics describes what the body does to a chemical when it is introduced into the body including how it is metabolized, distributed, and eliminated. When silver is introduced into the body by the oral or dietary route, it is absorbed by the digestive system and then enters the liver before it reaches the rest of the body (referred to as first-pass metabolism). This first pass through the liver greatly reduces the bioavailability of silver in that about 90% of the orally administered dose is eliminated in the feces. The remaining 10% that is not eliminated in the feces, reacts with proteins by binding to a specific chemical group contained in the structure of the protein. By forming silver-protein complexes through this binding action, the remaining silver is removed from circulation. This remaining fraction accounts for the background levels of silver that are found within the body. At excessive doses, the pathways of elimination become saturated and deposition of these complexes in the tissues is increased. The formation of these complexes and deposition in the skin, mucous membranes, and conjunctiva is the primary mechanism which results in the development of argyria. Based on information from biomonitoring studies, the lowest observed effect level for the formation of argyria was 1 gram (total dose), which was converted to an oral dose of 0.014 mg/kg/day.

B. Regulatory Levels

Safe exposure levels for silver have been established by several regulatory Agencies including the Food and Drug Administration, Occupational Safety and Health Administration and other offices within EPA based on the common endpoint argyria and using the same human studies. Argyria is a blue-gray discoloration of the skin and is not considered as being of toxicological concern. Argyria is cosmetically disfiguring and permanent in nature; however, the occurrence of this condition does not adversely affect organ function or threaten human health. EPA believes that by regulating for argyria, it is protecting the public from this permanent cosmetic effect as well as any potential toxic manifestations of silver that may occur at much higher doses. There is no animal condition that would mimic the dermatologic form of argyria found in humans following exposure to silver by various routes. This may be due in part to the protection imparted by the presence of the fur or by the fact that laboratory animal species are not routinely exposed to direct sunlight. Argyrosis, a form of argyria which involves silver deposition in organs, has been documented. In laboratory species, the effects of silver toxicity have been reported to involve pathology to the liver (necrosis) and kidney (thickening of the basement membranes of the glomeruli), and, at elevated levels, death.

The effect on which silver is regulated (argyria) occurs only after chronic exposure. Both the Secondary Maximum Contamination Level (SMCL) reported by the EPA's Office of Water and the oral reference dose (RfD) reported under the EPA's Integrated Risk Information System (IRIS) were determined based on the previously-mentioned human biomonitoring by Gaul and Staud. For the SMCL, additional mathematical derivations were applied to the oral equivalent dose

to the study Lowest Observed Adverse Effect Level (LOAEL) of 0.014 mg/kg/day to obtain a 0.1 milligram/Liter (mg/L) dose level. The factors applied for changing volume to mass account for the slight difference in the values reported for the SMCL (0.003 mg/kg/day) and for the RfD (0.005 mg/kg/day).

In deriving the chronic dietary regulatory level (RfD) and the SMCL, a safety factor of 3X was applied based on the following rationale as reported by the Office of Water and IRIS. First, the critical effect was cosmetic and not of toxicological significance. Second, the derivation of the LOAEL included the most sensitive individual since other patients did not present with argyria unless dose levels five times higher were administered. Finally, in the human biomonitoring study, silver was administered to these individuals over a period of time that is in excess of chronic exposure and that approaches a level that would be considered a life time exposure duration. Therefore, the dose that was administered was determined as being one that would mimic lifetime exposure.

For the oral exposure route, the Agency is relying on the drinking water Secondary Maximum Contaminant Level (SMCL) of 0.1 mg/L (0.003 mg/kg/day) based on skin discoloration and graying of the whites of eyes (argyria). The Agency applied an additional 3X uncertainty factor to further address the lack of a NOAEL in the study on which this assessment and all regulatory advisories are set. This additional 3X factor was not imposed due to the lack or need for additional standard animal toxicity testing. Thus, a composite database factor of 10X is being applied to account for a lack of NOAEL in the Gaul and Staud (1935) study. This composite factor of 10 should be sufficient for providing protection from the non-toxic effects which may result from chronic oral exposure to silver.

Chronic Dietary Reference Dose (RFD) = 0.003 mg/kg/day ÷ 3 = 0.001 mg/kg/day

Alternatively, a roughly equivalent chronic RfD can be derived by dividing the oral equivalent dose from the Gaul and Staud study (0.014 mg/kg/day) by a factor of 10X.

Following dermal exposure, silver ions tend to bind to the skin and do not penetrate the skin to cause systemic effects. Rather, skin discoloration is the only effect induced by silver exposure through the dermal route. Although this discoloration appears to be the same effect that results from oral and inhalation exposure, the mechanism by which discoloration occurs following dermal exposure is not the same as the mechanism leading to argyria following other routes of exposure. Systemic uptake and distribution of silver following dermal exposure does not occur, and the discoloration is the result of a localized reaction. Again, the effect is not adverse and there is no reason to believe that there would be an increase in susceptibility based on age to the nontoxic discoloration. Susceptibility to this cosmetic event is a function of dose and not age.

IV. Aggregate Exposures

To establish a tolerance, it must be shown ''that there is reasonable certainty that no harm will result from aggregate exposure to pesticide chemical residue, including all anticipated dietary exposures and other exposures for which there are reliable information.'' Aggregate exposure is the total exposure to a single chemical (or its residues) that may occur from dietary (i.e., food and drinking water), residential, and other non-occupational sources, and from all known or plausible exposure routes (oral, dermal, and inhalation).

Silver is commonly used for a variety of non-pesticidal industrial uses, which include but are not limited to photography, cosmetics, sunscreens, manufacture of inks and dyes, mirror production, and in jewelry. These sources result in primary exposures being via the dermal route. As previously mentioned, the consequence of silver exposures via the dermal route is dermal argyria, which does not contribute to the systemic argyria induced by oral and inhalation routes of exposures. Silver has also been used in dentistry (as amalgams) and as an ingredient in mouth washes. However, there is no documented evidence of argyria developing from dental or mouth wash uses of silver despite its widespread and frequent use in dentistry for over a century; consequently, EPA concludes that the level of exposure from the dental and mouthwash uses is negligible. Therefore, EPA did not aggregate the exposures resulting from these various uses with pesticidal exposure sources.

A. Dietary Exposure

Under the current proposal (PP 7F7178), silver will be used as a sanitizer for food contact surfaces, resulting in dietary, drinking water, and residential exposures. The use sites include but are not limited to: Food service facilities, cafeterias, households, kitchens, food preparation areas, food processing equipment and treated surfaces, such as countertops, equipment, and appliances. The sanitizing solution is applied to these various surfaces by spraying (trigger, spraying, coarse pump), wiping with a cloth or sponge, mopping, or by full immersion. As a result of these uses, residues are expected to transfer to the food that comes into contact with these treated surfaces and subsequently to be ingested by humans.

1. *Food.* The Agency assessed chronic dietary exposure from the use of silver as a food contact sanitizer. The dietary assessment was only completed for chronic routes because the regulatory effect that has been identified is based on argyria, one that occurs only after chronic exposure. For dietary exposures from this product being used on countertops, the Incidental Dietary Residential Exposure Assessment Model, IDREAM™ incorporates consumption data from USDA's Continuing Surveys of Food Intakes by Individuals (CSFII), 1994-1996 and 1998. The 1994-1996, and 1998 data are based on the reported consumption of more than 20,000 individuals over two non-consecutive survey days. The maximum rate for silver is 50 ppm active ingredient.

The use on utensils, dishes and glass was assessed. Based on conservative calculations, risk concerns were identified. At this time, a label restriction will be required that prohibits the use on utensils, dishes and glassware until a residue transfer study has been conducted and accepted by the Agency.

Agricultural Premises-Dairy Facilities. Dietary exposures from these general premise uses are expected to be much lower than the dietary exposure resulting from the surface disinfectant and sanitizing uses considered for this tolerance exemption: therefore, the agricultural uses were not assessed separately. However, the sanitization of food processing equipment permits product contact with the interior of equipment. The milk-truck model (described in the FDA document, ''Sanitizing Solutions: Chemistry Guidelines for Food Additive Petitions'', pages 9-10)(FDA 2003) for these types of uses was executed in order to estimate residues that could transfer from treated surfaces to food. From this guidance, it was conservatively assumed that a child will consume 320 grams of milk per day (90th percentile value) and an adult will consume 125 grams milk per day (mean value). Because EPA has utilized this maximized value for children along with a child's body weight in this assessment, EPA has confidence that the calculations are conservative and representative of any potential risks to any population.

The Agency assumes that the sanitized tank truck which transports the milk is a conservative estimate of residue that is available in food processing facilities.

Milk undergoes no additional dilution prior to reaching the consumer and it is also assumed that 100% of the residues available post sanitation is transferred to the food.

Additionally, the dietary contribution as a result of food processing equipment sanitization is so extremely small that it is considered negligible and not included in the combined or aggregate assessments.

2. *Drinking water exposure*. There are no outdoor or potable human drinking water system uses for the use of silver proposed in pesticide petition (PP) 7F7178. In addition, the uses identified as indoor hard surface applications will result in minimal, if any, runoff of silver into the surface water. The use of silver as a food contact surface sanitizer will result in minimal, if any, runoff of silver into the surface water. This use will result in an insignificant contribution to drinking water exposures. In addition to sanitization, silver is registered as an active ingredient in water filters. The bacteriostatic water filters are impregnated with silver and may result in residues in the drinking water supply. However, the levels of available residues resulting from impregnated water filters are much less when in comparison to the amount of residues that will be available for intake when silver-containing liquid concentrates are used. As a result, any drinking water exposures from the new use of silver are assumed to be negligible. Additionally, any drinking water risks from impregnated filters are assumed to be represented by the dietary risks resulting from hard surface sanitization. The Agency believes that an assessment of any potential risks resulting from silver in drinking water is not warranted at this time.

Therefore, based on the uses of silver outlined in the pesticide petition, the Agency believes that risks resulting from silver in drinking water will be negligible and that an assessment is not warranted at this time.

Table 1 provides a comprehensive summary of all of the use patterns potentially resulting in dietary exposure that were considered for this tolerance exemption.

TABLE 1.—POTENTIAL USE SCENARIOS

Use Site Category	Example Use Sites	Scenarios
Use Site Category I: Agricultural Premises and Equipment	Dairy farms, hog farms, equine farms	Application to hard surface (feeding dishes, bottling equipment, floors, etc) through coarse spraying (low pressure spray), trigger pump spray, wipe/sponge, mop, and immersion
Use Site Categories II, III, and V: Food Handling, Commercial/Institutional/Industrial, Medical	Food processing plants; Hospitals; Public places (e.g., restaurants, hotel/motel rooms); Medical/Dental offices; Nursing home; Schools, Cruise ships, Dining Halls.	Application to hard surfaces through coarse spraying (low pressure spray), trigger pump spray, wipe/sponge, mop, and immersion. Some examples of surfaces include: sinks, cutting boards, counter tops, kitchen appliances, breast pumps and parts, baby bottles, ice chests, and various others that are summarized on the proposed label.
Use Site Category IV: Residential and Public Access Premises	Homes, kitchens	Application to hard surfaces through coarse spraying (low pressure spray), trigger pump spray, wipe/sponge, mop, and immersion. Examples of the hard surfaces include those identified for Use Site Categories II, III, and V.

B. Other Non-Occupational Exposure

The residential exposure assessment considers all potential non-occupational pesticide exposure, other than exposure due to residues in food or in drinking water. Exposures may occur during and after application on hard surfaces (e.g., floors). Each route of exposure (incidental oral, dermal, inhalation) is considered where appropriate. The risks to handlers are quantitatively assessed based on the nature of the chemical. As previously stated, there are no adverse toxicological consequences (systemic or irritation) resulting from contact with silver other than skin discoloration. Residential exposures are short-term (< 30 days) and intermediate-term (1 to 6 months) in nature. As supported in the toxicological discussion, however, silver ion produces only cosmetic effects and only as a result of chronic exposures. In addition, incidental ingestion (hand to mouth behavior of a child on a treated floor) as well as dermal exposures resulting from a child contacting a freshly cleaned floor are considered short-term in duration.

Based on the fact that silver will exist in the ionic form, which does not volatilize, any post-application inhalation exposures to vapors are expected to be negligible. Essentially, there are no toxicological consequences (systematic or irritation) resulting from contact with silver other than discoloration. Table 2 outlines the use patterns and routes of exposure that were considered for purposes of a non dietary residential assessment. The Agency will request that label claim be placed on the label to advise users that prolonged contact with the product may cause skin discoloration.

Other non-pesticidal industrial uses of silver include, but are not limited to, photography, cosmetics, sunscreens, manufacture of inks and dyes, mirror production, and in jewelry. All these uses may result in exposures via the dermal route, which over a chronic duration, may cause skin discoloration. However, dermal exposures resulting from these uses are not appropriate to include in this aggregate exposure assessment. It has been previously concluded that systemic uptake and distribution of silver does not occur via the dermal route. The specific uses of silver that were considered for this aggregate assessment include the cleansing of hard surfaces in various food handling, institutional, medical and residential premises. Exposures

resulting from freshly cleaned surfaces are considered not to be of concern to the Agency.

TABLE 2.—REPRESENTATIVE USES ASSOCIATED WITH RESIDENTIAL EXPOSURE

Representative Use	Exposure Scenario	Application Method	Application Rate
Indoor Hard Surfaces	ST Handler: Dermal and Inhalation;	Liquid Pour	4.17 E-04 lb ai/gal (0.005% ai x 8.34 lb/gal)
	ST and IT Post-app[1]: child incidental ingestion and dermal	Mopping Wiping Trigger Pump Spray Low Pressure Spray (coarse spray) Immersion[2]	50 ppm silver ion

ST = Short-term exposure, IT = Intermediate-term exposure

[1] IT post-application exposures to children were assessed because this product could be used in a commercial day care facility.

[2] The handler exposures associated with liquid pouring of this product are representative of those associated with immersion (standing solution).

V. Cumulative Effects

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding between silver and any other substances and silver does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance exemption action, therefore, EPA has not assumed that silver has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative*.

VI. Safety Factor for Infants and Children-

1. *In general*. Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity*. There is extensive data and analysis on silver's toxicity in the historical data/literature and the regulatory advisories established by other Federal Agencies, which do not indicate an increased susceptibility of children to the toxic effects of silver. A NTP developmental toxicity study concluded that the NOAEL recorded for developmental toxicity in rats receiving gavage doses of silver acetate, was greater than 100 mg/kg when the test material was administered on gestation days 6 through 19. No increase in susceptibility was apparent in this study. Furthermore, silver nitrate has been used for decades to treat neonatal conjunctivitis. Finally, there is no reason to believe that the effects that are observed following the administration of silver would warrant additional safety factors for children. The skin is the target organ and the deposition of silver should not be age dependent. Moreover, because EPA believes that the Gaul and Staud study adequately characterizes variability in human sensitivity, EPA is not applying an intra-species uncertainty factor in deriving the chronic RfD for silver.

3. *Conclusion*. Although EPA is not applying an inter-species uncertainty factor (because of reliance on human data) or an intra-species uncertainty factor (because human sensitivity has been adequately characterized), EPA is retaining the 10X FQPA safety factor in assessing oral risk to address the fact that the dose used to determine the chronic RfD showed effects from silver (argyria). In making this determination, EPA took into account that argyria is not a toxic effect, there is no evidence of increased sensitivity in the young, and the exposure assessment for silver is very conservative.

For dermal exposure, silver ions tend to bind to the skin and do not penetrate the skin to cause systemic effects. Thus, systemic uptake and distribution of silver does not occur following dermal exposure. Skin discoloration is the only effect due to a localized reaction. Based on the above findings, a FQPA safety factor of 1X should be applied to the chronic dietary RfD for assessing dermal exposure. An additional safety factor is not required for the protection of infants and children because there would not be an increase in susceptibility to this cosmetic nontoxic effect. This cosmetic event is a function of the dermal contact dose not age. Furthermore, the approach taken to assess risk from dermal exposure is very conservative in that the Agency has based its dermal risk assessment on the systemic oral dose that was used to establish the oral/dietary risks.

VII. Aggregate Risks and Determination of Safety

Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the LOC by all applicable uncertainty/safety factors. For linear cancer risks, EPA calculates the probability of additional cancer cases given aggregate exposure. Short-term, intermediate-term, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the margin of exposure (MOE) called for by the product of all applicable uncertainty/safety factors is not exceeded.

For a tolerance to be found to be safe, it must be shown ''that there is reasonable certainty that no harm will

result from aggregate exposure to pesticide chemical residue, including all anticipated dietary exposures and other exposures for which there are reliable information.'' Aggregate exposure is the total exposure to a single chemical (or its residues) that may occur from dietary (i.e., food and drinking water), residential, and other non-occupational sources, and from all known or plausible exposure routes (oral, dermal, and inhalation).

1. *Dietary risk*. A summary of antimicrobial indirect food use acute/chronic risk estimates from exposure to treated countertops are shown below in Table 3. As explained above, EPA believes that exposures resulting from silver in drinking water will be negligible. For adults, chronic dietary exposure risk estimates are approximately 20% of the chronic PAD. For children, the most highly exposed population subgroup, the chronic dietary risk estimates are 62% of the chronic PAD. Therefore, chronic dietary exposure estimates are below the Agency's level of concern for all population subgroups.

TABLE 3.—CALCULATED EXPOSURE AND RISK RESULTING FROM SILVER SANITIZATION OF COUNTERTOPS

Exposure Group	Chronic	
	DDD(mg/kg/d) [a]	%cPAD [b]
Adult males (13+)	0.00022	22
Adult females (13-69)	0.00021	21
Children (1-2)	0.00062	62

[a] DDD (mg/kg/day) was provided from the IDREAM model.
[b] % PAD = exposure (total dietary exposure)/ PAD) x 100. The cPAD is equivalent to the chronic oral RfD value of 0.001mg/kg/day.

2. *Aggregate non-cancer risk*. Aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Because any oral residential exposures will be short-term in nature, the chronic risk is equal to the estimate for dietary risk.

3. *Aggregate cancer risk for U.S. population*. Available animal and human experience through occupational and medicinal exposure scenarios have not indicated a carcinogenic potential for silver. Therefore, silver is not expected to be carcinogenic to humans particularly in light of its low systemic toxicity potential and our understanding of its metabolism.

4. *Determination of safety*. Based on these risk assessments, EPA concludes that there is reasonable certainty that no harm will result to the general population or to infants and children from aggregate exposure to silver residues.

VIII. Other Considerations

A. Analytical Enforcement Methodology

An analytical method for food is not needed. Food contact sanitizers are typically regulated by state health departments to ensure that the food industry is using these products in compliance with the regulations in 40 CFR 180.940. The end use solution that is applied to the food contact surface is analyzed rather than food items that may come into contact with the treated surface. An analytical method is available to analyze the use dilution that is applied to food contact surfaces. The following methods of analysis are used to analyze the use dilution of silver being applied to food contact surfaces: Gas chromatography (GC), infrared (IR), ultraviolet absorption (UV), nuclear magnetic resonance (NMR).

B. International Residue Limits

There is not a Codex Maximum Residue Level established for silver.

IX. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000) do not apply to this rule. In addition, This rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note).

X. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report 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 this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Food contact sanitizers, Silver, Food additives, Pesticides and pests,

Reporting and recordkeeping requirements.

Dated: May 26, 2009.

Joan Harrigan-Farrelly,

Director, Antimicrobials Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Section 180.940 is amended by adding alphabetically the following entry to the table in paragraph (a):

§ 180.940 Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (Food-contact surface sanitizing solutions).

* * * * *

(a) * * *

Pesticide Chemical	CAS Reg. No.	Limits
* * * * * * *		
Silver ions resulting from the use of electrolytically-generated silver ions stabilized in citric acid as silver dihydrogen citrate (does not include metallic silver)	14701–21–4	When ready for use, the end-use concentration of silver ions is not to exceed 50 ppm of active silver.
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[FR Doc. E9–13476 Filed 6–9–09; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–1209; MB Docket No. 08–126; RM–11458]

Television Broadcasting Services; Canton, OH

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a petition for rulemaking filed by Trinity Christian Center of Santa Ana, Inc., d/b/a Trinity Broadcasting Network (''Trinity''), the licensee of station WDLI–DT, to substitute DTV channel 49 for its assigned post-transition DTV channel 39 at Canton, Ohio.

DATES: This rule is effective June 10, 2009.

FOR FURTHER INFORMATION CONTACT: David J. Brown, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 08–126, adopted May 28, 2009, and released May 29, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via the Internet *http://www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Ohio, is amended by adding DTV channel 49 and removing DTV channel 39 at Canton.

Federal Communications Commission.

Clay C. Pendarvis

Associate Chief, Video Division, Media Bureau.

[FR Doc. E9–13650 Filed 6–9–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–1225; MB Docket No. 08–129; RM–11461]

Television Broadcasting Services; Spokane, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a petition for rulemaking filed KHQ, Incorporated (''KHQ''), the licensee of station KHQ–DT, DTV channel 7, Spokane, Washington, and a related petition for rulemaking filed by Spokane School District #81 (''Spokane School District''), the licensee of noncommercial educational station KSPS–DT, DTV channel *8, Spokane, Washington. KHQ requests the substitution of DTV channel 15 for its assigned post-transition DTV channel 7 at Spokane, and the Spokane School District requests the substitution of DTV channel *7, its current analog channel, for its assigned post-transition DTV channel *8 at Spokane.

DATES: This rule is effective June 10, 2009.

FOR FURTHER INFORMATION CONTACT: David Brown, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 08–129, adopted May 29, 2009, and released June 1, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC, 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the DTV Table of Allotments under Washington, is amended by adding channel 15 and removing channel 7 at Spokane and by adding channel *7 and removing channel *8 at Spokane.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E9–13652 Filed 6–9–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WP Docket No. 07–100; FCC 09–29]

Amendment of Part 90 of the Commission's Rules; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission is correcting a final rule that appeared in the **Federal Register** of May 21, 2009, 74 FR 23799. The document issued a measurement procedure for the maximum conducted output power of radio equipment used in the 4.9 GHz frequency band.

DATES: Effective June 22, 2009.

FOR FURTHER INFORMATION CONTACT: Thomas Eng, Policy Division, Public Safety and Homeland Bureau, Federal Communications Commission, Washington, DC 20554, at (202) 418–0019, TTY (202) 418–7233, via e-mail at *Thomas.Eng@fcc.gov,* or via U.S. Mail at Federal Communications Commission, Public Safety and Homeland Security Bureau, 445 12th Street, SW., Washington, DC 20554.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission published a document in the **Federal Register** on May 21, 2009, 74 FR 23799, inadvertently omitting the words ''using instrumentation.'' This correction is necessary for clarification. In rule FR Doc. E9–11908 published May 21, 2009, 74 FR 23799 make the following correction:

§ 90.1215 [Corrected]

■ On page 23803, in the third column, in § 90.1215 Power Limits, in paragraph (c), the first sentence, ''The maximum conducted output power is measured as a conducted emission over any interval of continuous transmission calibrated in terms of an RMS-equivalent voltage.'' is corrected to read ''The maximum conducted output power is measured as a conducted emission over any interval of continuous transmission using instrumentation calibrated in terms of an RMS-equivalent voltage.''

Marlene H. Dortch,

Secretary.

[FR Doc. E9–13665 Filed 6–9–09; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 74, No. 110
Wednesday, June 10, 2009

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 319, 352, 360, and 361

[Docket No. APHIS–2007–0146]

RIN 0579–AC97

Update of Noxious Weed Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to make several changes to the regulations governing the importation and interstate movement of noxious weeds. We would add definitions of terms used in the regulations, add details regarding the process of applying for the permits used to import or move noxious weeds, add a requirement for the treatment of niger seed, and add provisions for petitioning to add a taxon to or remove a taxon from the noxious weed lists. These changes would update the regulations to reflect current statutory authority and program operations and improve the effectiveness of the regulations. We are also proposing to add seven taxa to the list of terrestrial noxious weeds and to the list of seeds with no tolerances applicable to their introduction. This action would prevent the introduction or dissemination of these noxious weeds into or within the United States.

DATES: We will consider all comments that we receive on or before August 10, 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–2007–0146* 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–2007–0146, 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–2007–0146.

Reading Room: You may read any comments that we receive on this docket 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. Alan V. Tasker, Noxious Weeds Program Coordinator, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road, Unit 26, Riverdale, MD 20737–1236; (301) 734–5225; or Dr. Arnold Tschanz, Senior Plant Pathologist, Risk Management and Plants for Planting Policy, RPM, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1231; (301) 734–0627.

SUPPLEMENTARY INFORMATION:

Background

The Plant Protection Act (PPA, as amended, 7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of any plant, plant product, biological control organism, noxious weed, article, or means of conveyance if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction of a plant pest or noxious weed into the United States or the dissemination of a plant pest or noxious weed within the United States.

The PPA defines ''noxious weed'' as ''any plant or plant product that can directly or indirectly injure or cause damage to crops (including nursery stock or plant products), livestock, poultry, or other interests of agriculture, irrigation, navigation, the natural resources of the United States, the public health, or the environment.'' The PPA also provides that the Secretary may publish, by regulation, a list of noxious weeds that are prohibited or restricted from entering the United States or that are subject to restrictions on interstate movement within the United States. Under this authority, the Animal and Plant Health Inspection Service (APHIS) administers the noxious weeds regulations in 7 CFR part 360 (referred to below as the regulations), which prohibit or restrict the importation and interstate movement of those plants that are designated as noxious weeds in § 360.200.

Under the authority of the Federal Seed Act (FSA) of 1939, as amended (7 U.S.C. 1551 *et seq.*), the U.S. Department of Agriculture regulates the importation and interstate movement of certain agricultural and vegetable seeds and screenings. Title III of the FSA, ''Foreign Commerce,'' requires shipments of imported agricultural and vegetable seeds to be labeled correctly and to be tested for the presence of the seeds of certain noxious weeds as a condition of entry into the United States. APHIS' regulations implementing the provisions of title III of the FSA are found in 7 CFR part 361. A list of noxious weed seeds is contained in § 361.6. Paragraph (a)(1) of § 361.6 lists species of noxious weed seeds with no tolerances applicable to their introduction into the United States.

We are proposing to make several changes to the regulations. Briefly, we would:

- Add definitions for terms used in the regulations and replace references to the Federal Noxious Weed Act with references to the PPA;
- Add explanatory text to clarify the listing of noxious weeds in § 360.200;
- Provide additional detail about the requirements for permits to move noxious weeds in § 360.300;
- Amend the regulations to require heat treatment for *Guizotia abyssinica* (niger) seed, as currently required in § 319.37–6;
- Add a section to provide information about the process for petitioning to add or remove a taxon from the noxious weed list;
- Add seven new noxious weeds to the list of noxious weeds in § 360.200 and the list of noxious weed seeds in § 361.6; and
- Update or correct the taxonomic designations for several currently listed noxious weeds. These proposed changes

are discussed in further detail directly below.

Definitions

Section 360.100 defines terms used in the noxious weed regulations. We are proposing to add definitions for several terms in § 360.100.

Some of the terms and definitions we are proposing to add to the regulations are derived from the definitions of these terms in the PPA. We are proposing to add these definitions in order to ensure that the regulations are consistent with the PPA. Those definitions are listed below:

- *Interstate.* From one State into or through any other State; or within the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.
- *Move.* To carry, enter, import, mail, ship, or transport; to aid, abet, cause, or induce the carrying, entering, importing, mailing, shipping, or transporting; to offer to carry, enter, import, mail, ship, or transport; to receive to carry, enter, import, mail, ship, or transport; to release into the environment; or to allow any of the activities described in this definition.
- *Noxious weed.* Any plant or plant product that can directly or indirectly injure or cause damage to crops (including nursery stock or plant products), livestock, poultry, or other interests of agriculture, irrigation, navigation, the natural resources of the United States, the public health, or the environment.
- *Person.* Any individual, partnership, corporation, association, joint venture, or other legal entity.
- *Permit.* A written authorization, including by electronic methods, by the Administrator to move plants, plant products, biological control organisms, plant pests, noxious weeds, or articles under conditions prescribed by the Administrator.
- *State.* Any of the several States of the United States, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.
- *United States.* All of the States.

The definition of *permit* in the PPA includes oral authorization as well as written authorization; we are proposing to omit oral authorization because the current regulations in § 360.300 refer specifically to written permits and because the practice of issuing oral authorizations in other contexts has created both verification and enforcement problems in the past.

Other definitions we are proposing to add to the noxious weed regulations are based on definitions in other parts of our regulations in 7 CFR chapter III. These definitions are listed below:

- *Administrator.* The Administrator, Animal and Plant Health Inspection Service, or any individual authorized to act for the Administrator.
- *APHIS.* The Animal and Plant Health Inspection Service, United States Department of Agriculture.
- *Responsible person.* The person who has control over and will maintain control over the movement of the noxious weed and assure that all conditions contained in the permit and requirements in 7 CFR part 360 are complied with. A responsible person must be at least 18 years of age and must be a legal resident of the United States or designate an agent who is at least 18 years of age and a legal resident of the United States. (This definition is based on a similar definition of the same term in 7 CFR part 340.)
- *Through the United States.* From and to places outside the United States.

We would remove the definition of *Deputy Administrator* and replace all references to the Deputy Administrator in 7 CFR part 360 with references to the Administrator.

We are proposing to add one definition based on the International Plant Protection Convention's (IPPC) Glossary of Phytosanitary Terms.[1] We would define the term *taxon (taxa)* as: ''Any grouping within botanical nomenclature, such as family, genus, species, or cultivar.''

Finally, paragraph (b) of § 360.100 includes a reference to the Federal Noxious Weed Act (7 U.S.C. 2802), indicating that the terms included in that act apply with equal force and effect in the regulations in part 360. Because the Federal Noxious Weed Act has been superseded by the PPA, it is not necessary to include this language in the definitions in § 360.100. Accordingly, we would remove paragraph (b) and redesignate paragraph (a) as the introductory text of the section.

Adding these definitions to the regulations would improve their clarity and make them consistent with the PPA.

[1] International Standard for Phytosanitary Measures (ISPM) Number 5. To view this and other ISPMs on the Internet, go to *http://www.ippc.int/IPP/En/default.jsp* and click on the ''Adopted ISPMs'' link under the ''Standards (ISPMs)'' heading.

Explanatory Text in § 360.200

Section 360.200 designates certain plants and plant products as noxious weeds. The introductory text of this section currently reads as follows:

> As authorized under section 412 of the Plant Protection Act (7 U.S.C. 7712), the Secretary of Agriculture has determined that the following plants or plant products fall within the definition of ''noxious weed'' as defined in section 403 of the Act (7 U.S.C. 7702(10)). Accordingly, the dissemination in the United States of the following plants or plant products may reasonably be expected to have the effects specified in section 403 of the Act:

We are proposing to amend this text for several reasons. As discussed earlier, we are proposing to add a definition of *noxious weed* to the regulations, which would mean it would not be necessary to cite the definition of that term in the PPA at the beginning of § 360.200. Also, because the Secretary has delegated to APHIS the authority to carry out title IV of the PPA, the Administrator is the person who makes the determination that a plant or plant product is a noxious weed. Finally, the PPA grants the Administrator the authority to take action to prevent the introduction of a noxious weed into the United States as well as to prevent the dissemination of a noxious weed within the United States.

The revised introductory text would thus read as follows:

> The Administrator has determined that it is necessary to designate the following plants as noxious weeds to prevent their introduction into the United States or their dissemination within the United States.

In addition, a footnote to the current introductory text currently reads as follows:

> One or more of the common names of weeds are given in parentheses after most scientific names to help identify the weeds represented by such scientific names; however, a scientific name is intended to include all weeds within the genus or species represented by the scientific name, regardless of whether the common name or names are as comprehensive in scope as the scientific name.

However, noxious weeds may be designated below the species level. In addition, the proposed definition of the term *taxon (taxa)* would allow us to convey this information more succinctly. We propose to revise this footnote to read as follows:

> One or more of the common names of weeds are given in parentheses after most scientific names to help identify the weeds represented by such scientific names; however, a scientific name is intended to include all subordinate taxa within the taxon. For example, taxa listed at the genus level

include all species, subspecies, varieties, and forms within the genus; taxa listed at the species level include all subspecies, varieties, and forms within the species.

These changes would help to clarify the listing of noxious weeds in § 360.200.

Additional Information in Permit Regulations

The regulations in § 360.300 set out general prohibitions and restrictions on the movement of noxious weeds and requirements for permits for such movement. Under paragraph (a) of § 360.300, no person may move a Federal noxious weed into or through the United States, or interstate, unless he or she obtains a permit for such movement in accordance with paragraphs (b) through (e) of § 360.300 and the movement is consistent with the specific conditions contained in the permit.

We are proposing to add to the regulations new §§ 360.301 through 360.305. These sections would contain the following: Specific requirements for applying for permits; information about consultations that the Administrator may perform in deciding whether to grant a permit; the actions the Administrator may take on a permit and the conditions in the permit; denial or cancellation of permits; and disposal of noxious weeds when permits are canceled. The proposed provisions are modeled on similar provisions in 7 CFR part 330, the regulations governing the importation and interstate movement of plant pests.

Paragraphs (b) through (e) of current § 360.300 provide fewer details about the same topics that our proposed new sections would cover; accordingly, we are proposing to remove those paragraphs. We would add a new paragraph (b) stating that persons who move noxious weeds into or through the United States, or interstate, without complying with paragraph (a) of § 360.300 would be subject to such criminal and civil penalties as are provided by the PPA.

The current regulations do not contain detailed requirements regarding the process of applying for permits. We would add such detailed requirements in a new § 360.301. We would also amend paragraph (a) of § 360.300 to refer to applying for a permit in accordance with proposed § 360.301.

Proposed paragraph (a) in § 360.301 would set out details regarding the process of applying for permits to import a noxious weed into the United States. Under this paragraph, a responsible person would be required to apply for a permit to import a noxious weed into the United States. We would include a footnote directing the reader to a Web site with application information. The application would have to include the following information:

- The responsible person's name, address, telephone number, and (if available) e-mail address;
- The taxon of the noxious weed;
- Plant parts to be moved;
- Quantity of noxious weeds to be moved per shipment;
- Proposed number of shipments per year;
- Origin of the noxious weeds;
- Destination of the noxious weeds;
- Whether the noxious weed is established in the State of destination;
- Proposed method of shipment;
- Proposed port of first arrival in the United States;
- Approximate date of arrival;
- Intended use of the noxious weeds;
- Measures to be employed to prevent danger of noxious weed dissemination; and
- Proposed method of final disposition of the noxious weeds.

Proposed paragraph (b) in § 360.301 would set out details regarding the process of applying for permits to move a noxious weed interstate. Under this paragraph, a responsible person would be required to apply for a permit to move a noxious weed interstate. We would also provide a footnote with application information in this paragraph. The application would have to include the following information:

- The responsible person's name, address, telephone number, and (if available) e-mail address;
- The taxon of the noxious weed;
- Plant parts to be moved;
- Quantity of noxious weeds to be moved per shipment;
- Proposed number of shipments per year,
- Origin of the noxious weeds;
- Destination of the noxious weeds;
- Whether the noxious weed is established in the State of destination;
- Proposed method of shipment;
- Approximate date of movement;
- Intended use of the noxious weeds;
- Measures to be employed to prevent danger of noxious weed dissemination; and
- Proposed method of final disposition of the noxious weeds.

The regulations do not currently indicate what information must be provided when applying for a permit, meaning that the information we receive sometimes does not allow us to fully evaluate the application. Requiring that responsible persons applying for a permit to import noxious weeds or move them interstate provide this information will allow APHIS to evaluate the permit applications more quickly and thoroughly and to followup in case any part of a permit application is unclear.

Proposed paragraph (c) would provide that permits to move noxious weeds through the United States would be obtained in accordance with the plant quarantine safeguard regulations in 7 CFR part 352. The regulations in 7 CFR part 352 provide a general framework for regulating the movement of plants, plant products, and other articles through the United States to prevent the dissemination of plant pests. We have determined that 7 CFR part 352 provides an appropriate framework for regulating the movement of noxious weeds through the United States as well.

To accommodate this change, we would make the following changes to the regulations in 7 CFR part 352: Refer to noxious weeds in addition to other plant products; refer to the noxious weeds regulations in 7 CFR part 360 as well as the foreign quarantine notices in 7 CFR part 319 and the plant pest movement regulations in 7 CFR part 330; and refer to preventing the dissemination of noxious weeds as well as plant pests. These changes can be found in the regulatory text at the end of this document.[2]

We are proposing to add a new section on approving permit applications. Currently, paragraph (b) of § 360.300 provides that the Deputy Administrator will issue a written permit for the movement of a noxious weed into or through the United States, or interstate, if application is made for such movement and if the Deputy Administrator determines that such movement, under conditions specified in the permit, would not involve a danger of dissemination of the noxious weed in the United States, or interstate.

We would discuss in more detail the factors that we will consider in determining whether to approve an application for a permit to move noxious weeds in proposed § 360.302. Proposed § 360.302, ''Consideration of applications for permits to move noxious weeds,'' would state that, upon the receipt of an application made in accordance with § 360.301 for a permit for movement of a noxious weed into the United States or interstate, the Administrator will consider the application on its merits.

[2] Paragraph (d) of § 352.5 contains two references to ''parts 319.'' These references are intended to include both 7 CFR part 319 and 7 CFR part 330. We would correct the error and add a reference to 7 CFR part 360 as well.

Paragraph (a) of proposed § 360.302 would provide that the Administrator may consult with other Federal agencies or entities, States or political subdivisions of States, national governments, local governments in other nations, domestic or international organizations, domestic or international associations, and other persons for views on the danger of noxious weed dissemination into the United States, or interstate, in connection with the proposed movement. The list of entities with which the Administrator may consult is taken from section 431(a) of the PPA.

Paragraph (b) of proposed § 360.302 would provide that the Administrator may inspect the site where noxious weeds are proposed to be handled in connection with or after their movement under permit to determine whether existing or proposed facilities will be adequate to prevent noxious weed dissemination if a permit is issued.

Currently, paragraph (c) of § 360.300 states that any permits issued under that section will contain in written form any conditions (other than the conditions in 7 CFR part 360) under which the permit is to be granted, *e.g.*, conditions with respect to shipment, storage, and destruction. Proposed § 360.303, ''Approval of an application for a permit to move a noxious weed; conditions specified in permit,'' would provide more detail on this process. It would state that the Administrator will approve or deny an application for a permit to move a noxious weed. If the application is approved, the Administrator would issue the permit including any conditions that the Administrator had determined would be necessary to prevent dissemination of noxious weeds into the United States or interstate. Such conditions could include requirements for inspection of the premises where the noxious weed is to be handled after its movement under the permit, to determine whether the facilities there are adequate to prevent noxious weed dissemination and whether the conditions of the permit are otherwise being observed. Before the permit is issued, the Administrator would require the responsible person to agree in writing to the conditions under which the noxious weed will be safeguarded.

Currently, paragraph (d) of § 360.300 states that, if a permit application is denied, the applicant shall be furnished the reasons for the denial. Paragraph (e) of § 360.300 states that the Deputy Administrator may revoke any outstanding permit issued under § 360.300, and may deny future permit applications, if the Deputy Administrator determines that the issuee has failed to comply with any provision of the Act or this section, including conditions of any permit issued. Paragraph (e) also provides that, upon request, any permit holder will be afforded an opportunity for a hearing with respect to the merits or validity of any such revocation involving his or her permit.

Proposed § 360.304, ''Denial of an application for a permit to move a noxious weed; cancellation of a permit to move a noxious weed,'' would provide more specific information on potential reasons for denying a permit and reasons for canceling a permit. It would also provide more details about the hearing process that is available to permittees when a permit is canceled.

Under paragraph (a) of proposed § 360.304, the Administrator could deny an application for a permit to move a noxious weed when the Administrator has determined that:

- No safeguards adequate or appropriate to prevent dissemination of the noxious weed can be implemented; or
- The destructive potential of the noxious weed, should it escape despite proposed safeguards, outweighs the probable benefits to be derived from the proposed movement and use of the noxious weed; or
- The responsible person, or the responsible person's agent, as a previous permittee, failed to maintain the safeguards or otherwise observe the conditions prescribed in a previous permit and failed to demonstrate the ability or intent to observe them in the future; or
- The movement could impede an APHIS eradication, suppression, control, or regulatory program; or
- A State plant regulatory official objects to the issuance of the permit on the grounds that granting the permit will pose a risk of dissemination of the noxious weed into the State.

It is important to note that, under the proposed regulations, the Administrator would have the option to approve a permit for movement of a noxious weed even if one of these conditions was true. For example, if a State plant regulatory official objected to the issuance of a permit, the Administrator could still approve the permit if the Administrator determined that the safeguards specified in the permit were adequate to address the risk of dissemination.

Under paragraph (b) of proposed § 360.304, the Administrator could cancel any outstanding permit when:

- After the issuance of the permit, information is received that constitutes cause for the denial of an application for permit under proposed paragraph § 360.304(a); or
- The responsible person has not maintained the safeguards or otherwise observed the conditions specified in the permit.

Paragraph (c) of proposed § 360.304 would provide that, if a permit is orally canceled, APHIS would provide the reasons for the withdrawal of the permit in writing within 10 days. Any person whose permit has been canceled or any person who has been denied a permit would be allowed to appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the cancellation or denial. The appeal would have to state all of the facts and reasons upon which the person relies to show that the permit was wrongfully canceled or denied. The Administrator would grant or deny the appeal, in writing, stating the reasons for the decision as promptly as circumstances allow. If there is a conflict as to any material fact, a hearing would be held to resolve the conflict. Rules of practice concerning such a hearing would be adopted by the Administrator.

Currently, the regulations in § 360.300 do not address the disposal of noxious weeds when a permit is canceled. Proposed § 360.305 would provide that, when a permit for the movement of a noxious weed is canceled by the Administrator and not reinstated under proposed § 360.304(c), further movement of the noxious weed covered by the permit into or through the United States, or interstate, would be prohibited unless authorized by another permit. The responsible person would have to arrange for disposal of the noxious weed in question in a manner that the Administrator determines is adequate to prevent noxious weed dissemination. The Administrator would be able to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of, in such manner as the Administrator deems appropriate, any noxious weed that is moved without compliance with any conditions in the permit or after the permit has been canceled, whenever the Administrator deems it necessary in order to prevent the dissemination of any noxious weed into or within the United States. This is consistent with APHIS' authority under the PPA.

These new sections would provide applicants for permits to move noxious weeds and current permit holders with more detailed information on the processes for applying for, approving or denying, and canceling a permit.

New Section With Treatment for Niger Seed

The nursery stock regulations in § 319.37–6 require *Guizotia abyssinica* (niger) seeds to be heat treated in accordance with 7 CFR part 305, either before importation or at the time of arrival at the port of first arrival in the United States, for the presence of various noxious weed seeds including *Cuscuta* spp. If the seeds are treated before importation, paragraph (c) of § 319.37–6 requires the seeds to be treated at a facility that is approved by APHIS in accordance with 7 CFR part 305 and that operates in compliance with a written agreement between the treatment facility owner and the plant protection service of the exporting country, in which the treatment facility owner agrees to comply with the provisions of § 319.37–6 and allow inspectors and representatives of the plant protection service of the exporting country access to the treatment facility as necessary to monitor compliance with the regulations. The treatments must be certified in accordance with the conditions described in § 319.37–13(c).

Most niger seed is imported not for use as nursery stock, however, but for use as birdseed. To ensure that the regulations in 7 CFR chapter III clearly require niger seed to be treated regardless of its intended use, we are proposing to add a new section § 360.400 to the noxious weed regulations that would require imported niger seed to be treated under the same conditions that are currently specified in § 319.37–6.

We are also proposing to correct an editorial error in § 319.37–6(c), to clarify the conditions under which niger seed may be treated prior to importation into the United States.

Petitions To Add a Taxon to or Remove a Taxon From the Noxious Weed Lists

APHIS accepts petitions to add a taxon to or remove a taxon from the noxious weed lists in § 360.200. Although we provide some information about the petition process on APHIS' noxious weeds Web site, the regulations do not contain any information about this process. We are proposing to add new §§ 360.500 and 360.501 to provide such information.

Proposed § 360.500 would describe the process for petitioning to add a taxon to the noxious weed list. This section would state that a person may petition the Administrator to have a taxon added to the noxious weeds lists in § 360.200. The section would also state that details of the petitioning process for adding a taxon to the lists are available on the Internet at *http://www.aphis.usda.gov/plant_health/plant_pest_info/weeds/downloads/listingguide.pdf*. Persons who submit a petition to add a taxon to the noxious weed lists would be required to provide their name and contact information, in case we need to followup with them to clarify details of a petition. Persons who submit a petition would also be encouraged to provide several pieces of information, which can help speed up the review process and help APHIS determine whether the specified plant taxon should be listed as a noxious weed. However, providing such information would not be required.

Petitioners would be encouraged to provide the following information for identification of the noxious weed:

- The taxon's scientific name and author;
- Common synonyms;
- Botanical classification;
- Common names;
- Summary of life history;
- Native and world distribution;
- Distribution in the United States, if any (specific States, localities, or Global Positioning System coordinates);
- Description of control efforts, if established in the United States; and
- Whether the taxon is regulated at the State or local level.

Petitioners would be encouraged to provide the following information about the potential consequences of the taxon's introduction or spread:

- The taxon's habitat suitability in the United States (predicted ecological range);
- Dispersal potential (biological characteristics associated with invasiveness);
- Potential economic impacts (*e.g.*, potential to reduce crop yields, lower commodity values, or cause loss of markets for U.S. goods); and
- Potential environmental impacts (*e.g.*, impacts on ecosystem processes, natural community composition or structure, human health, recreation patterns, property values, or use of chemicals to control the taxon).

Petitioners would also be encouraged to provide the following information about the likelihood of the taxon's introduction or spread:

- Potential pathways for the taxon's movement into and within the United States; and
- The likelihood of survival and spread of the taxon within each pathway.

Finally, petitioners would be encouraged to provide a list of references for the information discussed above.

Similarly, proposed § 360.501 would describe the process for petitioning to remove a taxon from the noxious weed list. This section would state that a person may petition the Administrator to remove a taxon from the noxious weeds lists in § 360.200. The section would also state that details of the petitioning process for removing a taxon from the lists are available at *http://www.aphis.usda.gov/plant_health/plant_pest_info/weeds/downloads/delistingguide.pdf*. Persons who submit a petition to remove a taxon from the noxious weed lists would be required to provide their name and contact information, in case we need to followup with them to clarify details of a petition. Persons who submit a petition would also be encouraged to provide the following information, which can help speed up the review process and help APHIS determine whether the specified plant taxon should not be listed as a noxious weed. However, providing such information would not be required.

- Evidence that the species is distributed throughout its potential range or has spread too far to implement effective control;
- Evidence that control efforts have been unsuccessful and further efforts are unlikely to succeed; and
- For cultivars of a listed noxious weed, scientific evidence that the cultivar has a combination of risk elements that result in a low pest risk. For example, the cultivar may have a narrow habitat suitability, low dispersal potential, evidence of sterility, inability to cross-pollinate with introduced wild types, or few if any potential negative impacts on the economy or environment of the United States.

Petitioners would also be encouraged to provide a list of references for this information.

Additions to the Lists of Terrestrial Noxious Weeds and Noxious Weed Seeds

Paragraph (c) of § 360.200 lists terrestrial noxious weeds. Such weeds may not be imported into and through the United States, or moved interstate except with a permit obtained in accordance with § 360.300. In addition, as mentioned earlier in this document, paragraph (a)(1) of § 361.6 lists species of noxious weed seeds with no tolerances applicable to their introduction into the United States.

We are proposing to add seven new taxa to the list of terrestrial noxious weeds in § 360.200(c) and to the list of noxious weed seeds with no tolerances applicable to their introduction in § 361.6(a)(1). These taxa are:

- *Acacia nilotica* (Linnaeus) Wildenow ex Delile (prickly acacia), a

perennial non-climbing shrub or tree. *A. nilotica* is a serious weed in South Africa and Australia, where it aggressively replaces grasslands with thorny thickets. Seedlings and young trees of *A. nilotica* are protected from grazing by thorns, and the plants have long-distance dispersal mechanisms allowing uncontrolled spread, large seed production, and long-lived seeds. Young *A. nilotica* plants grow rapidly, and the plants are tolerant of drought, fire, and salinity. Potential pathways for the introduction of *A. nilotica* into the United States include ornamental seed shipments, sale of seeds for medicinal purposes, and intentional importation in passenger baggage. *A. nilotica* occurs in Puerto Rico and the Virgin Islands, and may also be in Hawaii. It is possibly cultivated in other States, as it is offered for sale by at least three U.S. nurseries. We invite public comment on the distribution of *A. nilotica* in the United States.

• *Ageratina riparia* (Regel) R.M. King and H. Robinson (mistflower), a perennial erect or sprawling herb to subshrub. Colonies of *A. riparia* increase in density and size by spreading horizontally and rooting at the nodes. The plant thrives in misty, upland pastures and mountainous areas with high rainfall, and its leaf litter is allelopathic, inhibiting the growth of other species. *A. riparia* is a serious weed in Africa, India, Indonesia, Papua New Guinea, Southeast Asia, Australia, New Zealand, Jamaica, Hawaii, and Madagascar. In Hawaii Volcanoes National Park, the weed competes with native plants and occupies disturbed areas. *A. riparia* has been introduced as a contaminant in ornamental and agricultural material and is both an agricultural and environmental weed.

• *Arctotheca calendula* (Linnaeus) Levyns (capeweed), a flat, stemless or short-stemmed, spreading, rosette-forming annual (or perennial in areas with frost-free climate). *A. calendula* produces stolons, which root at the nodes and are often vigorous. It is capable of infesting turf and pasture, competing with many kinds of crops, causing allergies and dermatitis in sensitive people, and negatively affecting stock production, with likely impacts to both agriculture and the environment. *A. calendula* is currently present in California. A purple-flowered, seed-producing type of *A. calendula* is regulated by the State. A sterile, vegetatively reproducing yellow-flowered type is not currently regulated by the State of California, but is noted by some to escape from cultivation. In addition, identifying a plant as a member of one type or another of *A. calendula* can be difficult. We invite public comment on whether it is appropriate to regulate the entire species *A. calendula* or whether we should only regulate the purple-flowered, seed-producing type.

• *Euphorbia terracina* Linnaeus (false caper), a glabrous erect leafy perennial. An aggressive plant, it forms dense stands that inhibit the growth of native plants, competing with crops and pasture plants. In Western Australia, *E. terracina* is a serious weed of grazing land. *E. terracina* is avoided by livestock and can be toxic to animals.

• *Inula britannica* Linnaeus (British elecampane), an erect biennial. *I. britannica* has been found in Michigan and Minnesota, where it is regulated by those States, and in the Netherlands. It was initially detected in Michigan in nurseries with hosta imported from the Netherlands. *I. britannica* has negative impacts on surrounding hosta, which must be sacrificed if chemical control efforts are undertaken.

• *Onopordum acaulon* Linnaeus (stemless thistle), a prostrate annual or biennial herb. The plant is found in roadsides, wastelands, cultivated land, and pastures. *O. acaulon* reduces carrying capacity of pasture, and livestock eating the plant suffer impaction and liver damage. The seeds of *O. acaulon* are long-lived in soil.

• *Onopordum illyricum* Linnaeus (Illyrian thistle), a tall, erect annual or biennial herb. In California, where *O. illyricum* is currently found and regulated, the plant is found in natural areas, disturbed sites, roadsides, fields, and especially in sites with fertile soils. *O. illyricum* is difficult to control and has the potential to infest pastures, reduce carrying capacity, and create physical barriers to stock and wildlife.

To evaluate the possibility that these taxa could be noxious weeds, we have prepared a weed risk assessment (WRA) for each taxon. Copies of the WRAs may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the Regulations.gov Web site (see **ADDRESSES** above for a link to Regulations.gov).

The WRAs conclude that the taxa listed above qualify as Federal noxious weeds. They also conclude that the introduction or further spread of those taxa could directly or indirectly injure or cause damage to crops (including nursery stock or plant products), livestock, poultry, or other interests of agriculture, irrigation, navigation, the natural resources of the United States, the public health, or the environment. Therefore, pursuant to APHIS' authority under the PPA, we have determined that it is necessary to place restrictions on their importation and interstate movement, and we are proposing to list those seven taxa as terrestrial noxious weeds in § 360.200(c) and as noxious weed seeds with no tolerances applicable to their introduction in § 361.6(a)(1).

Updates and Corrections in Current Entries for Noxious Weeds in §§ 360.200 and 361.6(a)(1)

We are proposing to make several updates, corrections, and clarifications in the lists of noxious weeds in § 360.200 and the list of noxious weed seeds with no tolerances applicable to their introduction in § 361.6(a)(1). For some of the taxa listed in these paragraphs, the accepted names have changed. In addition, these lists contain a few spelling errors and incorrect or incomplete author designations. We are proposing to update and correct the entries for these taxa. These proposed changes are set forth in the regulatory text at the end of this document.

In § 360.200, we are proposing to change the designation of *Caulerpa taxifolia* to add the author's name and a common name and to clarify that only the Mediterranean strain is regulated as a noxious weed. The new entry would thus read: ''*Caulerpa taxifolia* (Vahl) C. Agardh, Mediterranean strain (killer algae).'' We would remove the entry for *C. taxifolia* from the list of noxious weed seeds with no tolerances applicable to their introduction in § 361.6(a)(1), since a marine alga would not be found in seed shipments.

The list of parasitic noxious weeds in § 360.200(b) contains an entry for *Cuscuta* spp. but lists exceptions for species within that genus that are native to or widespread in the United States. Three of the species listed as exceptions under *Cuscuta* spp., *C. jepsonii, C. occidentalis,* and *C. nevadensis,* have been determined to be synonyms of three other species listed as exceptions—respectively, *C. indecora, C. californica,* and *C. veatchii.* (*C. veatchii* is currently listed in the regulations as *C. vetchii;* we would correct that error.) Accordingly, we would remove *C. jepsonii, C. occidentalis,* and *C. nevadensis* from the list of exceptions under *Cuscuta* spp. in § 360.200(b).

The names listed in the regulations for two species listed in § 360.200(c), the list of terrestrial noxious weeds, and § 361.6(a)(1) are not the currently accepted botanical names. Accordingly, we would replace the entry for *Digitaria scalarum* with an entry for *D. abyssinica* in § 360.200(c) and replace the entry for *Digitaria abyssinica* (=*D. scalarum*) in

§ 361.6(a)(1) with an entry that simply refers to *D. abyssinica.* In both §§ 360.200(c) and 361.6(a)(1), we would replace the entry for *Mimosa invisa* with an entry for *M. diplotricha.*

Both §§ 360.200(c) and 361.6(a)(1) contain entries for *Homeria* spp. However, this genus, and several other genera from the family Iridaceae, have been reclassified and transferred to the large genus *Moraea.* The PRA that we prepared to help evaluate whether we should add *Homeria* spp. to the noxious weed list considered specific species within the genus *Homeria.* These species are now classified as *Moraea collina, M. flaccida, M. miniata, M. ochroleuca,* and *M. pallida.* Accordingly, we would update the regulations by removing the entry for *Homeria* spp. from both §§ 360.200(c) and 361.6(a)(1) and adding entries for *M. collina, M. flaccida, M. miniata, M. ochroleuca,* and *M. pallida* in its place.

Executive Order 12866 and Regulatory Flexibility Act

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

This proposal would make several changes to the regulations governing the importation and interstate movement of noxious weeds. It would add definitions of terms used in the regulations, add details regarding the process of applying for the permits used to import or move noxious weeds, add a requirement for the treatment of niger seed, and add provisions for petitioning to add a taxon to or remove a taxon from the noxious weed lists. These changes would update the regulations to reflect current statutory authority and program operations and improve the effectiveness of the regulations. The proposal would also add seven taxa to the list of terrestrial noxious weeds and to the list of seeds with no tolerances applicable to their introduction. This action would prevent the introduction or dissemination of these noxious weeds into or within the United States.

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), this analysis considers the impact on small businesses, small organizations, and small governmental jurisdictions. Section 603 of the Act requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis (IRFA) describing the expected impact of proposed rules on small entities. Sections 603(b) and 603(c) of the Act specify the content of an IRFA. The IRFA requirements are addressed in the following sections.

Reasons Action Is Being Considered

To add clarity and provide transparency, it has become necessary to update and expand the regulations in 7 CFR parts 360 and 361. Seven additional weeds that have been identified as noxious weeds need to be added to the noxious weeds list. The addition of these seven additional taxa to the noxious weeds list would help prevent their introduction into the United States or their spread into noninfested areas of the United States. In addition, the list of noxious weeds in the regulations needs to be updated. Updating the regulations would help ensure that the regulated community can easily determine what taxa may only be imported or moved interstate under a permit.

Objectives and Legal Basis for the Proposed Rule

The main objective of the proposed rule is to update the regulations that govern the movement of noxious weeds (7 CFR parts 360 and 361). This action is authorized by the PPA, which authorizes the Secretary of Agriculture to implement programs and policies designed to prevent the introduction and spread of plant pests and noxious weeds. Specifically, the Act authorizes the Secretary to regulate the importation and interstate movement of noxious weeds, which can damage crops, livestock, and other agricultural interests, as well as impede navigation and cause harm to irrigation systems, public health, and the environment.

Description and the Number of Small Entities Regulated

For the purpose of this analysis and following the Small Business Administration (SBA) guidelines, we note that a major segment of entities potentially affected by the proposed rule are classified within the following industries: Nursery and Tree Production (North American Industry Classification System [NAICS] code 111421), and Floriculture Production (NAICS 111422).[3] For these two industry categories, entities are considered small by SBA standards if annual sales are $750,000 or less. According to the Census of Agriculture, these two categories included 64,366 farms in 2002, and represented 3 percent of all farms in the United States. Over 92 percent of the farms had annual sales of less than $500,000 and by SBA standards are thus considered small.

As there have been no previous restrictions on their importation other than the general restrictions on the importation of nursery stock in §§ 319.37 through 319.37–14, the seven new species that would be added to the noxious weed list may currently be imported into the United States as ornamental crops under certain conditions. However, based on the WRAs, these species are not known to be economically significant in the United States. Adding these noxious weeds to the regulations is not expected to have an economic effect on small entities in terms of restricting existing markets. However, APHIS welcomes public comment on the likely effects of the rule.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2007–0146. Please send a copy of your comments to: (1) Docket No. APHIS–2007–0146, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, Room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to

[3] As observed in the preceding paragraph, other agricultural and nonagricultural industries and resources can be negatively affected by the introduction of noxious weeds. The nursery and floriculture industries are representative of these other industries in terms of being comprised largely of small entities.

OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

We are proposing to make several changes to update the regulations governing the importation and interstate movement of noxious weeds. We would add definitions of terms used in the regulations, add requirements for the permits used to import or move noxious weeds, add a requirement for the treatment of niger seed, and add provisions for petitioning to add a taxon to or remove a taxon from the noxious weed lists. These actions will necessitate information collection for permits and for petitions to add a taxon to or remove a taxon from the noxious weed lists.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, 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 information collection on those who are to respond (such as 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).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 16 hours per response.

Respondents: Researchers.

Estimated annual number of respondents: 2.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 2.

Estimated total annual burden on respondents: 32 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

List of Subjects

7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

7 CFR Part 352

Customs duties and inspection, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

7 CFR Part 360

Imports, Plants (Agriculture), Quarantine, Reporting and recordkeeping requirements, Transportation, Weeds.

7 CFR Part 361

Agricultural commodities, Imports, Labeling, Quarantine, Reporting and recordkeeping requirements, Seeds, Vegetables, Weeds.

Accordingly, we are proposing to amend 7 CFR parts 319, 352, 360, and 361 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

§ 319.37–6 [Amended]

2. In § 319.37–6, paragraph (c) is amended by adding the words ''must be treated'' after the word ''States''.

PART 352—PLANT QUARANTINE SAFEGUARD REGULATIONS

3. The authority citation for part 352 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

§ 352.2 [Amended]

4. Section 352.2 is amended as follows:

a. In paragraph (a), in the first sentence, by adding the words ''noxious weeds,'' after the words ''plant pests,''; and by removing the words ''319 and 330'' and adding the words ''319, 330, and 360'' in their place.

b. In paragraph (b), by removing the words ''319 or 330'' and adding the words ''319, 330, or 360'' in their place.

§ 352.3 [Amended]

5. Section 352.3 is amended as follows:

a. In paragraphs (a) and (b), by adding the words ''noxious weeds,'' after the words ''plant pests,'' each time they occur.

b. In paragraph (d), by adding the words ''or noxious weed'' before the word ''dissemination.''

§ 352.5 [Amended]

6. Section 352.5 is amended as follows:

a. By adding the words ''noxious weeds,'' after the words ''plant pests,'' each time they occur.

b. In paragraph (d), by adding the words '', 330, and 360'' after the words ''parts 319'' each time they occur.

§ 352.6 [Amended]

7. Section 352.6 is amended as follows:

a. In paragraph (a), by adding the words *''(including noxious weeds)''* before the period at the end of the paragraph heading.

b. In paragraph (e), by adding the words ''or noxious weed'' before the word ''dissemination'' each time it occurs.

§ 352.7 [Amended]

8. Section 352.7 is amended by adding the words ''(including noxious weeds)'' after the word ''products'' the first time it occurs.

§ 352.9 [Amended]

9. Section 352.9 is amended by adding the words ''noxious weeds,'' after the words ''plant pests,''.

§ 352.10 [Amended]

10. Section 352.10 is amended as follows:

a. In paragraphs (a) and (b)(1), by removing the words ''part 319 or 330'' each time they occur and adding the words ''parts 319, 330, or 360'' in their place.

b. In paragraphs (b)(1), (b)(2), and (c), by adding the words ''or noxious weed'' before the word ''dissemination'' each time it occurs.

c. In paragraph (b)(2), by removing the words ''319 and 330'' and adding the words ''319, 330, or 360'' in their place.

§ 352.11 [Amended]

11. In § 352.11, paragraph (a)(1) is amended by adding the words ''noxious weeds,'' after the words ''plant pests,''.

§ 352.13 [Amended]

12. Section 352.13 is amended as follows:

a. By adding the words ''noxious weeds,'' after the words ''plant pests,''.

b. By removing the words ''319 or 330'' and adding the words ''319, 330, or 360'' in their place.

§ 352.15 [Amended]

13. Section 352.15 is amended by adding the words ''or noxious weed'' before the word ''dissemination''.

PART 360—NOXIOUS WEED REGULATIONS

14. The authority citation for part 360 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

15. Section 360.100 is amended as follows:

a. By removing the introductory text of paragraph (b).

b. By redesignating paragraph (a) as undesignated introductory text.

c. By adding, in alphabetical order, new definitions of *Administrator, APHIS, interstate, move, noxious weed, permit, person, responsible person, State, taxon (taxa), through the United States,* and *United States* to read as set forth below.

d. By removing the definition of *Deputy Administrator*.

§ 360.100 Definitions.

* * * * *

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any individual authorized to act for the Administrator.

APHIS. The Animal and Plant Health Inspection Service, United States Department of Agriculture.

* * * * *

Interstate. From one State into or through any other State; or within the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

Move. To carry, enter, import, mail, ship, or transport; to aid, abet, cause, or induce the carrying, entering, importing, mailing, shipping, or transporting; to offer to carry, enter, import, mail, ship, or transport; to receive to carry, enter, import, mail, ship, or transport; to release into the environment; or to allow any of the activities described in this definition.

Noxious weed. Any plant or plant product that can directly or indirectly injure or cause damage to crops (including nursery stock or plant products), livestock, poultry, or other interests of agriculture, irrigation, navigation, the natural resources of the United States, the public health, or the environment.

Permit. A written authorization, including by electronic methods, by the Administrator to move plants, plant products, biological control organisms, plant pests, noxious weeds, or articles under conditions prescribed by the Administrator.

Person. Any individual, partnership, corporation, association, joint venture, or other legal entity.

* * * * *

Responsible person. The person who has control over and will maintain control over the movement of the noxious weed and assure that all conditions contained in the permit and requirements in this part are complied with. A responsible person must be at least 18 years of age and must be a legal resident of the United States or designate an agent who is at least 18 years of age and a legal resident of the United States.

State. Any of the several States of the United States, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

Taxon (taxa). Any grouping within botanical nomenclature, such as family, genus, species, or cultivar.

Through the United States. From and to places outside the United States.

United States. All of the States.

16. Section 360.200 is amended as follows:

a. By revising the introductory text, including footnote 1, to read as set forth below.

b. In paragraph (a), by revising the entries for ''*Caulerpa taxifolia* (Mediterranean clone),'' ''*Eichornia azurea* (Swarth) Kunth,'' and ''*Melaleuca quenquinervia* (Cav.) Blake'' to read as set forth below.

c. In paragraph (b), by removing the entries for ''*Cuscuta jepsonii* Yuncker,'' ''*Cuscuta nevadensis* I.M. Johnston,'' and ''*Cuscuta occidentalis* Millspaugh ex Mill & Nuttall;'' and by revising the entries for ''*Cuscuta ceanothii* Behr,'' ''*Cuscuta cephalanthii* Engelmann;'' ''*Cuscuta corylii* Engelmann;'' ''*Cuscuta exalta* Engelmann;'' ''*Cuscuta obtusiflora* Humboldt, Bonpland, & Kunth,'' ''*Cuscuta rostrata* Shuttleworth ex Engelmann,'' ''*Cuscuta umbellata* Humboldt, Bonpland, & Kunth,'' and ''*Cuscuta vetchii* Brandegee'' to read as set forth below.

d. In paragraph (c), by removing the entries for ''*Digitaria scalarum* (Schweinfurth) Chiovenda (African couchgrass, fingergrass),'' ''*Homeria* spp.,'' and ''*Mimosa invisa* Martius (giant sensitive plant)''.

e. In paragraph (c), by revising the entries for ''*Digitaria velutina* (Forsskal) Palisot de Beauvois (velvet fingergrass, annual conchgrass),'' ''*Drymaria arenariodes* Humboldt & Bonpland ex Roemer & Schultes (lightning weed),'' ''*Imperata cylindrica* (Linnaeus) Raeuschel (cogongrass),'' ''*Mikania micrantha* Humboldt, Bonpland, & Kunth,'' ''*Prosopis farcta* (Solander ex Russell) Macbride,'' ''*Prosopis pallida* (Humboldt & Bonpland ex Willdenow) Humboldt, Bonpland, & Kunth,'' ''*Setaria pallide-fusca* (Schumacher) Stapf & Hubbard (cattail grass),'' and ''*Spermacoce alata* (Aublet) de Candolle'' to read as set forth below.

f. In paragraph (c), by adding, in alphabetical order, entries for ''*Acacia nilotica* (Linnaeus) Wildenow ex Delile (prickly acacia),'' ''*Ageratina riparia* (Regel) R.M. King and H. Robinson (mistflower),'' ''*Arctotheca calendula* (Linnaeus) Levyns (capeweed),'' ''*Digitaria abyssinica* (Hochstetter ex A. Richard) Stapf (African couchgrass, fingergrass),'' ''*Euphorbia terracina* Linnaeus (false caper),'' ''*Inula britannica* Linnaeus (British elecampane),'' ''*Mimosa diplotricha* C. Wright (giant sensitive-plant),'' ''*Moraea collina* Thunberg (apricot tulp),'' ''*Moraea flaccida* (Sweet) Steudel (one-leaf Cape-tulip),'' ''*Moraea miniata* Andrews (two-leaf Cape-tulip),'' ''*Moraea ochroleuca* (Salisbury) Drapiez (red tulp),'' ''*Moraea pallida* (Baker) Goldblatt (yellow tulp),'' ''*Onopordum acaulon* Linnaeus (stemless thistle),'' and ''*Onopordum illyricum* Linnaeus (Illyrian thistle)''.

§ 360.200 Designation of noxious weeds.

The Administrator has determined that it is necessary to designate the following plants [1] as noxious weeds to prevent their introduction into the

[1] One or more of the common names of weeds are given in parentheses after most scientific names to help identify the weeds represented by such scientific names; however, a scientific name is intended to include all subordinate taxa within the taxon. For example, taxa listed at the genus level include all species, subspecies, varieties, and forms within the genus; taxa listed at the species level include all subspecies, varieties, and forms within the species.

United States or their dissemination within the United States:

(a) * * *

Caulerpa taxifolia (Vahl) C. Agardh, Mediterranean strain (killer algae)

* * * * *

Eichhornia azurea (Swartz) Kunth

* * * * *

Melaleuca quinquenervia (Cavanilles) S.T. Blake

* * * * *

(b) * * *

Cuscuta ceanothi Behr

Cuscuta cephalanthi Engelmann

* * * * *

Cuscuta coryli Engelmann

* * * * *

Cuscuta exaltata Engelmann

* * * * *

Cuscuta obtusiflora Kunth

* * * * *

Cuscuta rostrata Shuttleworth ex Engelmann & Gray

* * * * *

Cuscuta umbellata Kunth

* * * * *

Cuscuta veatchii Brandegee

* * * * *

(c) * * *

Digitaria velutina (Forsskal) Palisot de Beauvois (velvet fingergrass, annual couchgrass)

Drymaria arenariodes Humboldt & Bonpland ex J.A. Schultes (lightning weed)

* * * * *

Imperata cylindrica (Linnaeus) Palisot de Beauvois (cogongrass)

* * * * *

Mikania micrantha Kunth

* * * * *

Prosopis farcta (Banks & Solander) J.F. Macbride

* * * * *

Prosopis pallida (Humboldt & Bonpland ex Willdenow) Kunth

* * * * *

Setaria pumila (Poir.) Roem. & Schult. subsp. *pallidefusca* (Schumach.) B.K. Simon (cattail grass)

* * * * *

Spermacoce alata Aublet

* * * * *

17. Section 360.300 is revised to read as follows:

§ 360.300 Notice of restrictions on movement of noxious weeds.

(a) No person may move a Federal noxious weed into or through the United States, or interstate, unless:

(1) He or she applies for a permit to move a noxious weed in accordance with § 360.301;

(2) The permit application is approved; and

(3) The movement is consistent with the specific conditions contained in the permit.

(b) Persons who move noxious weeds into or through the United States, or interstate, without complying with paragraph (a) of this section will be subject to such criminal and civil penalties as are provided by the Plant Protection Act (7 U.S.C. 7701 *et seq.*). (Approved by the Office of Management and Budget under control number 0579–0054)

18. New §§ 360.301 through 360.305, 360.400, 360.500, and 360.501 are added to read as follows:

§ 360.301 Information required for applications for permits to move noxious weeds.

(a) *Permit to import a noxious weed into the United States.* A responsible person must apply for a permit to import a noxious weed into the United States.[2] The application must include the following information:

(1) The responsible person's name, address, telephone number, and (if available) e-mail address;

(2) The taxon of the noxious weed;

(3) Plant parts to be moved;

(4) Quantity of noxious weeds to be moved per shipment;

(5) Proposed number of shipments per year;

(6) Origin of the noxious weeds;

(7) Destination of the noxious weeds;

(8) Whether the noxious weed is established in the State of destination;

(9) Proposed method of shipment;

(10) Proposed port of first arrival in the United States;

(11) Approximate date of arrival;

(12) Intended use of the noxious weeds;

(13) Measures to be employed to prevent danger of noxious weed dissemination; and

(14) Proposed method of final disposition of the noxious weeds.

(b) *Permit to move noxious weeds interstate.* A responsible person must apply for a permit to move a noxious weed interstate.[3] The application must include the following information:

(1) The responsible person's name, address, telephone number, and (if available) e-mail address;

(2) The taxon of the noxious weed;

(3) Plant parts to be moved;

(4) Quantity of noxious weeds to be moved per shipment;

(5) Proposed number of shipments per year;

(6) Origin of the noxious weeds;

(7) Destination of the noxious weeds;

(8) Whether the noxious weed is established in the State of destination;

(9) Proposed method of shipment;

(10) Approximate date of movement;

(11) Intended use of the noxious weeds;

(12) Measures to be employed to prevent danger of noxious weed dissemination; and

(13) Proposed method of final disposition of the noxious weeds.

(c) *Permits to move noxious weeds through the United States.* Permits to move noxious weeds through the United States must be obtained in accordance with part 352 of this chapter.

§ 360.302 Consideration of applications for permits to move noxious weeds.

Upon the receipt of an application made in accordance with § 360.301 for a permit for movement of a noxious weed into the United States or interstate, the Administrator will consider the application on its merits.

(a) *Consultation.* The Administrator may consult with other Federal agencies or entities, States or political subdivisions of States, national governments, local governments in other nations, domestic or international organizations, domestic or international associations, and other persons for views on the danger of noxious weed dissemination into the United States, or interstate, in connection with the proposed movement.

(b) *Inspection of premises.* The Administrator may inspect the site where noxious weeds are proposed to be handled in connection with or after their movement under permit to determine whether existing or proposed facilities will be adequate to prevent noxious weed dissemination if a permit is issued.

§ 360.303 Approval of an application for a permit to move a noxious weed; conditions specified in permit.

The Administrator will approve or deny an application for a permit to move a noxious weed. If the application is approved, the Administrator will issue the permit including any conditions that the Administrator has determined are necessary to prevent dissemination of noxious weeds into the United States or interstate. Such conditions may include requirements for inspection of the premises where the noxious weed is to be handled after its movement under the permit, to determine whether the facilities there are adequate to prevent noxious weed

[2] Information on applying for a permit to import a noxious weed into the United States is available at *http://www.aphis.usda.gov/plant_health/permits/plantproducts.shtml.*

[3] Information on applying for a permit to move a noxious weed interstate is available at *http://www.aphis.usda.gov/plant_health/permits/plantproducts.shtml.*

dissemination and whether the conditions of the permit are otherwise being observed. Before the permit is issued, the Administrator will require the responsible person to agree in writing to the conditions under which the noxious weed will be safeguarded.

§ 360.304 Denial of an application for a permit to move a noxious weed; cancellation of a permit to move a noxious weed.

(a) The Administrator may deny an application for a permit to move a noxious weed when the Administrator determines that:

(1) No safeguards adequate or appropriate to prevent dissemination of the noxious weed can be implemented; or

(2) The destructive potential of the noxious weed, should it escape despite proposed safeguards, outweighs the probable benefits to be derived from the proposed movement and use of the noxious weed; or

(3) The responsible person, or the responsible person's agent, as a previous permittee, failed to maintain the safeguards or otherwise observe the conditions prescribed in a previous permit and failed to demonstrate the ability or intent to observe them in the future; or

(4) The movement could impede an APHIS eradication, suppression, control, or regulatory program; or

(5) A State plant regulatory official objects to the issuance of the permit on the grounds that granting the permit will pose a risk of dissemination of the noxious weed into the State.

(b) The Administrator may cancel any outstanding permit when:

(1) After the issuance of the permit, information is received that constitutes cause for the denial of an application for permit under paragraph (a) of this section; or

(2) The responsible person has not maintained the safeguards or otherwise observed the conditions specified in the permit.

(c) If a permit is orally canceled, APHIS will provide the reasons for the withdrawal of the permit in writing within 10 days. Any person whose permit has been canceled or any person who has been denied a permit may appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the cancellation or denial. The appeal must state all of the facts and reasons upon which the person relies to show that the permit was wrongfully canceled or denied. The Administrator will grant or deny the appeal, in writing, stating the reasons for the decision as promptly as circumstances allow. If there is a conflict as to any material fact, a hearing will be held to resolve the conflict. Rules of practice concerning such a hearing will be adopted by the Administrator.

§ 360.305 Disposal of noxious weeds when permits are canceled.

When a permit for the movement of a noxious weed is canceled by the Administrator and not reinstated under § 360.304(c), further movement of the noxious weed covered by the permit into or through the United States, or interstate, is prohibited unless authorized by another permit. The responsible person must arrange for disposal of the noxious weed in question in a manner that the Administrator determines is adequate to prevent noxious weed dissemination. The Administrator may seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of, in such manner as the Administrator deems appropriate, any noxious weed that is moved without compliance with any conditions in the permit or after the permit has been canceled whenever the Administrator deems it necessary in order to prevent the dissemination of any noxious weed into or within the United States.

§ 360.400 Treatments.

(a) Seeds of *Guizotia abyssinica* (niger seed) are commonly contaminated with noxious weed seeds listed in § 360.200, including (but not limited to) *Cuscuta* spp. Therefore, *Guizotia abyssinica* seeds may be imported into the United States only if:

(1) They are treated in accordance with part 305 of this chapter at the time of arrival at the port of first arrival in the United States; or

(2) They are treated prior to shipment to the United States at a facility that is approved by APHIS [4] and that operates in compliance with a written agreement between the treatment facility owner and the plant protection service of the exporting country, in which the treatment facility owner agrees to comply with the provisions of § 319.37–6 and allow inspectors and representatives of the plant protection service of the exporting country access to the treatment facility as necessary to monitor compliance with the regulations. Treatments must be certified in accordance with the conditions described in § 319.37–13(c) of this chapter.

(b) [Reserved]

[4] Criteria for the approval of heat treatment facilities are contained in part 305 of this chapter.

§ 360.500 Petitions to add a taxon to the noxious weed list.

A person may petition the Administrator to have a taxon added to the noxious weeds lists in § 360.200. Details of the petitioning process for adding a taxon to the lists are available on the Internet at *http://www.aphis.usda.gov/plant_health/plant_pest_info/weeds/downloads/listingguide.pdf.* Persons who submit a petition to add a taxon to the noxious weed lists must provide their name, address, telephone number, and (if available) e-mail address. Persons who submit a petition to add a taxon to the noxious weed lists are encouraged to provide the following information, which can help speed up the review process and help APHIS determine whether the specified plant taxon should be listed as a noxious weed:

(a) *Identification of the taxon.* (1) The taxon's scientific name and author;

(2) Common synonyms;

(3) Botanical classification;

(4) Common names;

(5) Summary of life history;

(6) Native and world distribution;

(7) Distribution in the United States, if any (specific States, localities, or Global Positioning System coordinates);

(8) Description of control efforts, if established in the United States; and

(9) Whether the taxon is regulated at the State or local level.

(b) *Potential consequences of the taxon's introduction or spread.* (1) The taxon's habitat suitability in the United States (predicted ecological range);

(2) Dispersal potential (biological characteristics associated with invasiveness);

(3) Potential economic impacts (*e.g.,* potential to reduce crop yields, lower commodity values, or cause loss of markets for U.S. goods); and

(4) Potential environmental impacts (*e.g.,* impacts on ecosystem processes, natural community composition or structure, human health, recreation patterns, property values, or use of chemicals to control the taxon).

(c) *Likelihood of the taxon's introduction or spread.* (1) Potential pathways for the taxon's movement into and within the United States; and

(2) The likelihood of survival and spread of the taxon within each pathway.

(d) List of references.

§ 360.501 Petitions to remove a taxon from the noxious weed lists.

A person may petition the Administrator to remove a taxon from the noxious weeds lists in § 360.200. Details of the petitioning process for removing a taxon from the lists are

available at *http://www.aphis.usda.gov/plant_health/plant_pest_info/weeds/downloads/delistingguide.pdf.* Persons who submit a petition to remove a taxon from the noxious weed lists would be required to provide their name, address, telephone number, and (if available) e-mail address. Persons who submit a petition to remove a taxon from the noxious weed lists are encouraged to provide the following information, which can help speed up the review process and help APHIS determine whether the specified plant taxon should not be listed as a noxious weed:

(a) Evidence that the species is distributed throughout its potential range or has spread too far to implement effective control.

(b) Evidence that control efforts have been unsuccessful and further efforts are unlikely to succeed.

(c) For cultivars of a listed noxious weed, scientific evidence that the cultivar has a combination of risk elements that result in a low pest risk. For example, the cultivar may have a narrow habitat suitability, low dispersal potential, evidence of sterility, inability to cross-pollinate with introduced wild types, or few if any potential negative impacts on the economy or environment of the United States.

(d) List of references.

PART 361—IMPORTATION OF SEED AND SCREENINGS UNDER THE FEDERAL SEED ACT

19. The authority citation for part 361 continues to read as follows:

Authority: 7 U.S.C. 1581–1610; 7 CFR 2.22, 2.80, and 371.3.

20. In § 361.6, paragraph (a)(1) is amended as follows:

a. By removing the entries for ''*Caulerpa taxifolia* (Mediterranean clone)'', ''*Homeria* spp.'', and ''*Mimosa invisa* Martius''.

b. By revising the entries for ''*Digitaria abyssinica* (=*D. scalarum*)'', ''*Drymaria arenariodes* Humboldt & Bonpland ex Roemer & Schultes'', ''*Imperata cylindrica* (L.) Raeuschel'', ''*Mikania micrantha* Humboldt, Bonpland, & Kunth'', ''*Prosopis farcta* (Solander ex Russell) Macbride'', ''*Prosopis pallida* (Humboldt & Bonpland ex Willdenow) Humboldt, Bonpland, & Kunth'', ''*Setaria pallidefusca* (Schumacher) Stapf & Hubbard'', and ''*Spermacoce alata* (Aublet) de Candolle'' to read as set forth below.

c. By adding, in alphabetical order, entries for ''*Acacia nilotica* (Linnaeus) Wildenow ex Delile'', ''*Ageratina riparia* (Regel) R.M. King and H. Robinson'', ''*Arctotheca calendula* (Linnaeus) Levyns'', ''*Digitaria abyssinica* (Hochstetter ex A. Richard) Stapf'', ''*Euphorbia terracina* Linnaeus'', ''*Inula britannica* Linnaeus'', ''*Mimosa diplotricha* C. Wright'', ''*Moraea collina* Thunberg'', ''*Moraea flaccida* (Sweet) Steudel'', ''*Moraea miniata* Andrews'', ''*Moraea ochroleuca* (Salisbury) Drapiez'', ''*Moraea pallida* (Baker) Goldblatt'', ''*Onopordum acaulon* Linnaeus'', and ''*Onopordum illyricum* Linnaeus''.

§ 361.6 Noxious weed seeds.

(a) * * *

(1) * * *

Digitaria abyssinica (Hochstetter ex A. Richard) Stapf

* * * * *

Drymaria arenariodes Humboldt & Bonpland ex J.A. Schultes

* * * * *

Imperata cylindrica (Linnaeus) Palisot de Beauvois

* * * * *

Mikania micrantha Kunth

* * * * *

Prosopis farcta (Banks & Solander) J.F. Macbride

* * * * *

Prosopis pallida (Humboldt & Bonpland ex Willdenow) Kunth

* * * * *

Setaria pumila (Poir.) Roem. & Schult. subsp. *pallidefusca* (Schumach.) B.K. Simon

* * * * *

Spermacoce alata Aublet

* * * * *

Done in Washington, DC, this 3rd day of June 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–13507 Filed 6–9–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1220

[Doc. No. AMS–LS–09–0026]

Soybean Promotion and Research: Amend the Order To Adjust Representation on the United Soybean Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would adjust the number of members on the United Soybean Board (Board) to reflect changes in production levels that have occurred since the Board was last reapportioned in 2006. As required by the Soybean Promotion, Research, and Consumer Information Act (Act), membership on the Board is reviewed every 3 years and adjustments are made accordingly. This proposed change would result in an increase in Board membership for one State, increasing the total number of Board members from 68 to 69. These changes would be reflected in the Soybean Promotion and Research Order (Order) and would be effective for the 2010 appointment process.

DATES: Comments must be received by August 10, 2009.

ADDRESSES: Comments should be posted online at *http://www.regulations.gov.* Comments received will be posted without change, including any personal information provided. All comments should reference the docket number, AMS–LS–09–0026; the date of submission; and the page number of this issue of the **Federal Register.** Comments may also be sent to Kenneth R. Payne, Chief, Marketing Programs Branch, Livestock and Seed Program, Agricultural Marketing Service (AMS), Department of Agriculture (USDA), Room 2628–S, STOP 0251, 1400 Independence Avenue, SW., Washington, DC 20250–0251.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Payne, Chief, Marketing Programs Branch, Livestock and Seed Program, AMS, USDA, Room 2628–S, STOP 0251, 1400 Independence Avenue, SW., Washington, DC 20250–0251; Telephone 202/720–1115; Fax 202/720–1125; or e-mail to *Kenneth.Payne@ams.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This proposed rule was reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect. This action would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1971 of the Act, a person subject to the Order may file a petition with USDA stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order,

is not in accordance with the law and request a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing, USDA would rule on the petition. The Act provides that district courts of the United States in any district in which such person is an inhabitant, or has their principal place of business, has jurisdiction to review USDA's ruling on the petition, if a complaint for this purpose is filed within 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act

AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), because it only adjusts representation on the Board to reflect changes in production levels that have occurred since the Board was last reapportioned in 2006. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. As such, these changes will not impose a significant impact on persons subject to the program.

There are an estimated 589,182 soybean producers and an estimated 10,000 first purchasers who collect the assessment, most of whom would be considered small businesses under the criteria established by the Small Business Administration (SBA) [13 CFR 121.201]. SBA defines small agricultural producers as those having annual receipts of less than $750,000.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the reporting and recordkeeping requirements included in 7 CFR part 1220 were previously approved by OMB and were assigned control number 0581–0093.

Background and Proposed Changes

The Act (7 U.S.C. 6301–6311) provides for the establishment of a coordinated program of promotion and research designed to strengthen the soybean industry's position in the marketplace, and to maintain and expand domestic and foreign markets and uses for soybeans and soybean products. The program is financed by an assessment of 0.5 percent of the net market price of soybeans sold by producers. Pursuant to the Act, an Order was made effective July 9, 1991. The Order established an initial Board with 60 members. For purposes of establishing the Board, the United States was divided into 31 States and geographical units. Representation on the Board from each unit was determined by the level of production in each unit. The initial Board was appointed on July 11, 1991. The Board is composed of soybean producers.

Section 1220.201(c) of the Order provides that at the end of each 3-year period, the Board shall review soybean production levels in the geographic units throughout the United States. The Board may recommend to the Secretary of Agriculture (Secretary) modification in the levels of production necessary for Board membership for each unit.

Section 1220.201(d) of the Order provides that at the end of each 3-year period, the Secretary must review the volume of production of each unit and adjust the boundaries of any unit and the number of Board members from each such unit as necessary to conform with the criteria set forth in § 1220.201(e): (1) To the extent practicable, States with annual average soybean production of less than 3,000,000 bushels shall be grouped into geographically contiguous units, each of which has a combined production level equal to or greater than 3,000,000 bushels, and each such group shall be entitled to at least one member on the Board; (2) units with at least 3,000,000 bushels, but fewer than 15,000,000 bushels shall be entitled to one board member; (3) units with 15,000,000 bushels or more but fewer than 70,000,000 bushels shall be entitled to two Board members; (4) units with 70,000,000 bushels or more but fewer than 200,000,000 bushels shall be entitled to three Board members; and (5) units with 200,000,000 bushels or more shall be entitled to four Board members.

The Board was last reapportioned in 2006. The total Board membership increased from 64 to 68 members, with Nebraska, North Dakota, Pennsylvania, and Virginia each gaining one additional member. Additionally, Florida was grouped with the Eastern Region due to lower production levels. These changes were effective with the 2007 appointments.

Currently, the Board has 68 members representing 30 geographical units. This membership is based on average production levels for the years 2001–2005 (excluding crops in years that production was the highest and that production was the lowest) as reported by USDA's National Agricultural Statistics Service (NASS).

This proposed rule would increase total membership on the Board from 68 to 69. Production data for years 2003–2008 (excluding the crops in years in which production was the highest and in which production was the lowest) was gathered from NASS. This change would not affect the number of geographical units.

This proposed rule would adjust representation on the Board as follows:

State	Current representation	Proposed representation
Ohio	3	4

Board adjustments as proposed by this rulemaking would become effective, if adopted, with the 2010 appointment process.

List of Subjects in 7 CFR 1220

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Soybeans and soybean products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that Title 7, part 1220 be amended as follows:

PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR Part 1220 continues to read as follows:

Authority: 7 U.S.C. 6301–6311 and 7 U.S.C. 7401.

2. In § 1220.201, the table immediately following paragraph (a) is revised to read as follows:

§ 1220.201 Membership of board.

* * * * *

Unit	Number of members
Illinois	4
Iowa	4
Minnesota	4
Indiana	4
Nebraska	4
Ohio	4
Missouri	3
Arkansas	3
South Dakota	3
Kansas	3
Michigan	3
North Dakota	3
Mississippi	2
Louisiana	2
Tennessee	2
North Carolina	2
Kentucky	2
Pennsylvania	2
Virginia	2
Maryland	2
Wisconsin	2
Georgia	1
South Carolina	1
Alabama	1

Unit	Number of members
Delaware	1
Texas	1
Oklahoma	1
New York	1

Unit	Number of members
Eastern Region:	
(Florida, Massachusetts, New Jersey,Connecticut, Florida, Rhode Island, Vermont, New Hampshire, Maine, West Virginia, District of Columbia, and Puerto Rico	1
Western Region:	
(Montana, Wyoming, Colorado, New Mexico, Idaho, Utah, Arizona, Washington, Oregon, Nevada, California, Hawaii, and Alaska)	1

* * * * *

Dated: June 3, 2009.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. E9–13533 Filed 6–9–09; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2009–0162]

RIN 3150–AI62

List of Approved Spent Fuel Storage Casks: Standardized NUHOMS® System Revision 10

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its spent fuel storage cask regulations by revising the Transnuclear, Inc. (TN), Standardized NUHOMS® System listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 10 to Certificate of Compliance (CoC) Number 1004. Amendment No. 10 would modify the CoC to add a dry shielded canister (DSC) designated the NUHOMS®–61BTH DSC, add a dry shielded canister designated the NUHOMS®–32PTH1 DSC, add an alternate high-seismic option of the horizontal storage module (HSM) for storing the 32PTH1 DSC, allow storage of Westinghouse 15×15 Partial Length Shield Assemblies in the NUHOMS®–24PTH DSC, allow storage of control components in the NUHOMS®–32PT DSC, and add a new Technical Specification, which applies to Independent Spent Fuel Storage Installation sites located in a coastal marine environment, that any load bearing carbon steel component which is part of the HSM must contain at least 0.20 percent copper as an alloy addition.

DATES: Comments on the proposed rule must be received on or before July 10, 2009.

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.

Federal e-Rulemaking Portal: Go to *http://www.regulations.gov* and search for documents filed under Docket ID [NRC–2009–0162]. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

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

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.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm 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 O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents 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, 301–415–4737 or by e-mail to *pdr.resource@nrc.gov.* An electronic copy of the proposed CoC No. 1004, the proposed technical specifications (TS), and the preliminary safety evaluation report (SER) can be found under ADAMS Package Number ML090400180.

The proposed CoC No. 1004, the proposed TS, the preliminary SER, and the environmental assessment are available for inspection at the NRC PDR, 11555 Rockville Pike, Rockville, MD. Single copies of these documents may be obtained from Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *Jayne.McCausland@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *Jayne.McCausland@nrc.gov.*

SUPPLEMENTARY INFORMATION: For additional supplementary information, see the direct final rule published in the Rules and Regulations section of this **Federal Register**.

Procedural Background

This rule is limited to the changes contained in Amendment No. 10 to CoC No. 1004 and does not include other aspects of the Standardized NUHOMS® System design. Because NRC considers this action noncontroversial and routine, the NRC is publishing this proposed rule concurrently as a direct final rule in the Rules and Regulations section of this **Federal Register**. Adequate protection of public health and safety continues to be ensured. The direct final rule will become effective on August 24, 2009. However, if the NRC receives significant adverse comments on the direct final rule by July 10, 2009, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to the proposed revisions in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action

in the event the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the rule, CoC, or TS.

For additional procedural information and the regulatory analysis, see the direct final rule published in the Rules and Regulations section of this **Federal Register**.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Hazardous waste, Nuclear materials, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended, and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR Part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Public Law 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Public Law 95–601, sec. 10, 92 Stat. 2951 as amended by Public Law 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Public Law -190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Public Law 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Public Law 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Public Law 109–58, 119 Stat. 806–10 (42 U.S.C. 2014, 2021, 2021b, 2111).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Public Law 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Public Law 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Public Law 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Public Law 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1004 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1004.
Initial Certificate Effective Date: January 23, 1995.
Amendment Number 1 Effective Date: April 27, 2000.
Amendment Number 2 Effective Date: September 5, 2000.
Amendment Number 3 Effective Date: September 12, 2001.
Amendment Number 4 Effective Date: February 12, 2002.
Amendment Number 5 Effective Date: January 7, 2004.
Amendment Number 6 Effective Date: December 22, 2003.
Amendment Number 7 Effective Date: March 2, 2004.
Amendment Number 8 Effective Date: December 5, 2005.
Amendment Number 9 Effective Date: April 17, 2007
Amendment Number 10 Effective Date: August 24, 2009.
SAR Submitted by: Transnuclear, Inc.
SAR Title: Final Safety Analysis Report for the Standardized NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel.
Docket Number: 72–1004.
Certificate Expiration Date: January 23, 2015.
Model Number: NUHOMS®–24P, –24PHB, –24PTH, –32PT, –32PTH1, –52B, –61BT, and –61BTH.

* * * * *

Dated at Rockville, Maryland, this 28th day of May, 2009.

For the Nuclear Regulatory Commission.

R.W. Borchardt,

Executive Director for Operations.

[FR Doc. E9–13578 Filed 6–9–09; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1212

RIN 2590–AA19

Post-Employment Restriction for Senior Examiners

AGENCY: Federal Housing Finance Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Housing Finance Agency (FHFA) proposes to issue a regulation that cross-references the Supplemental Standards of Ethical Conduct for Employees of FHFA and that sets forth post-employment restrictions for senior examiners of FHFA pursuant to 12 U.S.C. 4517(e).

DATES: Comments regarding the Notice of Proposed Rulemaking must be received on or before July 27, 2009. For additional information, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: You may submit your comments on the proposed rulemaking, identified by ''RIN 2590–AA19,'' by any of the following methods:

- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA19, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.
- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA19, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- *E-mail:* Comments to Alfred M. Pollard, General Counsel, may be sent by e-mail to *RegComments@fhfa.gov*. Please include ''RIN 2590–AA19'' in the subject line of the message.

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by e-mail to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the agency. Include the following information in the subject line of your submission: Comments/RIN 2590–AA19.

FOR FURTHER INFORMATION CONTACT: Janice A. Kullman, Assistant General Counsel, telephone (202) 414–8970 (not a toll-free number), Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Comments

The Federal Housing Finance Agency (FHFA) invites comment on all aspects of the proposed regulation, and will consider all relevant comments before issuing the final regulation. Copies of all comments will be posted without change, including any personal information you provide, such as your name and address, on the FHFA Web site at *http://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m. at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 414–3751.

II. Background

The Housing and Economic Recovery Act of 2008 (HERA), Public Law No. 110–289, 122 Stat. 2654, amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*) (Safety and Soundness Act) to establish FHFA as an independent agency of the Federal Government.[1] FHFA was established to oversee the prudential operations of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (collectively, the Enterprises), and the Federal Home Loan Banks (Banks) (collectively, the regulated entities), and to ensure that they operate in a safe and sound manner including being capitalized adequately; foster liquid, efficient, competitive and resilient national housing finance markets; comply with the Safety and Soundness Act and rules, regulation, guidelines and orders issued under the Safety and Soundness Act, and the respective authorizing statutes of the regulated entities; and carry out their missions through activities authorized and consistent with the Safety and Soundness Act and their authorizing statutes; and, that the activities and operations of the regulated entities are consistent with the public interest. FHFA also has regulatory authority over the Office of Finance under 12 U.S.C 4511.

Section 6303(b) of the Intelligence Reform and Terrorism Prevention Act of 2004, Public Law No. 108–458 (Dec. 17, 2004), in amending section 10 of the Federal Deposit Insurance Act, established a post-employment restriction for senior examiners of the Office of the Comptroller of the Currency, Federal Reserve System, Federal Deposit Insurance Corporation, and Office of Thrift Supervision.[2] In response, the Board of Governors of the Federal Reserve System (Federal Reserve) and the other financial regulators issued regulations on November 17, 2005, to reflect the new post-employment restriction.

The Safety and Soundness Act provides that each examiner of FHFA ''shall be subject to the same disclosures, prohibitions, obligations and penalties as are applicable to examiners employed by the Federal Reserve Banks.'' 12 U.S.C. 4517(e). In light of that provision, this proposed regulation sets forth post-employment restrictions that are essentially the same as the restrictions in the post-employment regulation of the Federal Reserve at 12 CFR part 264a, including penalty provisions.

The Federal Reserve relies on section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) for the penalty enforcement section of its regulation. FHFA relies on similar provisions in section 1376 and 1377 of the Safety and Soundness Act (12 U.S.C. 4636 and 4636a, respectively).

III. Section-by-Section Analysis

The following is a section-by-section analysis of the proposed regulation.

Subpart A

Subpart A would be reserved. FHFA intends to cross-reference the Supplemental Standards of Ethical Conduct for Employees of the Federal Housing Finance Agency when such standards are published.

Subpart B—Post-Employment Restriction for Senior Examiners

Section 1212.1 Purpose and scope

Proposed § 1212.1 would provide that the purpose of subpart B is to set forth special post-employment restrictions that are applicable to senior examiners that are in addition to the post-employment restriction for FHFA employees under section 12 U.S.C. 4523, which is restated in 5 CFR part 9001. The post-employment restriction applicable to FHFA employees under 12 U.S.C. 4523 provides that officers and employees of FHFA who are compensated at a certain salary level are not permitted to accept compensation from the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (Enterprises) for a period of two years after leaving FHFA.

Section 1212.2 Definitions

This proposed section would set forth definitions applicable to subpart B.

Consultant would be defined as a person who works directly on matters for, or on behalf of, a regulated entity, or the Office of Finance.

Director would mean the Director of FHFA or his or her designee.

Employee would be defined as an officer or employee of FHFA, including a special Government employee.

Federal Home Loan Bank or *Bank* would be defined as a Bank established under the Federal Home Loan Bank Act; the term ''Federal Home Loan Banks'' means, collectively, all the Federal Home Loan Banks.

Office of Finance would be defined as the Office of Finance of the Federal Home Loan Bank System.

Regulated entity would be defined as the Federal National Mortgage Association and any affiliate thereof, the Federal Home Loan Mortgage Corporation and any affiliate thereof, or any Federal Home Loan Bank; the term ''regulated entities'' would be defined to mean, collectively, the Federal National Mortgage Association and any affiliate thereof, the Federal Home Loan Mortgage Corporation and any affiliate thereof, and the Federal Home Loan Banks.

Safety and Soundness Act would be defined as the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended by the Federal Housing Finance Regulatory Reform Act of 2008, Division A of the Housing and Economic Recovery Act of 2008, Public Law No. 110–289, 122 Stat. 2654 (2008).

Senior examiner would be defined as an FHFA employee who has been:

[1] *See* Division A, titled the ''Federal Housing Finance Regulatory Reform Act of 2008,'' Title I, Section 1101 of HERA.

[2] 12 U.S.C. 1820(k).

- Authorized by FHFA to conduct examinations or inspections on behalf of FHFA;
- Assigned continuing, broad and lead responsibility for examining a regulated entity or the Office of Finance; and
- Assigned responsibilities for examining, inspecting, and supervising the regulated entity or the Office of Finance that—
  - Represents a substantial portion of the employee's assigned responsibilities; and
  - Requires the employee to interact routinely with officers or employees of the regulated entity or the Office of Finance.

To be considered a ''senior examiner,'' an employee must meet each of the criteria listed above. Thus, an examiner who spends a substantial portion of his or her time conducting or leading a targeted examination, but who does not have broad and lead responsibility for the overall examination program with respect to a regulated entity or the Office of Finance would not be considered a ''senior examiner'' with respect to that regulated entity or the Office of Finance. An examiner who divides his or her time across a portfolio of regulatory entities, each of which does not represent a substantial portion of the examiner's responsibilities, also would not be considered a ''senior examiner.'' Such an examiner is not likely to develop the type and degree of relationship with any one regulated entity or the Office of Finance that the proposed post-employment restriction is designed to address. FHFA believes that an examiner has continuing responsibility for a regulated entity or the Office of Finance only when the examiner's responsibilities for the regulated entity or the Office of Finance are expected to continue for a period of time that would enable the examiner to develop a meaningful, dedicated, and sustained relationship with the regulated entity or the Office of Finance. FHFA believes that such a period of time would be at least two months.

To help examiners comply with the post-employment restrictions, FHFA intends that the designated agency ethics official (DAEO) or the alternate DAEO would notify examiners in writing if they are subject to either the one-year post-employment restriction or the two-year post-employment restriction under 12 U.S.C. 4523, or both. The DAEO or alternate DAEO would also provide examiners information about how to conform to one or both of the restrictions.

FHFA expects that the examiner-in-charge (EIC) of a Bank or the Office of Finance would be subject to the one-year post-employment restriction from working at the Bank or Office of Finance for which he or she served as EIC, but not necessarily other Banks which he or she may examine. In addition, the portfolio managers, who each generally oversee four Banks, would be subject to the one-year post-employment restriction for each Bank they oversee. These two groups of employees are responsible for establishing the scope of annual exams and assigning the composite rating for the Banks and therefore meet the definition of senior examiner. There may be rare instances of other examiners who meet the definition, but FHFA would not expect that an examiner supervising one aspect of safety and soundness for all the Banks would fall into the definition of the term ''senior examiner.'' Such a subject matter examiner would not have substantial enough contacts with any one particular bank to warrant a post-employment restriction. FHFA estimates that approximately 15 examiners who serve as EICs and portfolio managers for the Banks and the Office of Finance would be considered ''senior examiners'' for the purposes of this proposed regulation.

Examiners who examine the Enterprises are subject to the two-year post-employment restriction set forth in 12 U.S.C. 4523 if they earn a certain salary, as is every FHFA employee. This two-year post-employment restriction would subsume the one-year post-employment restriction with respect to accepting employment at the Enterprises because any examiner who is a ''senior examiner'' would already be precluded from accepting employment from an Enterprise because of his or her salary level. While there are approximately 30 examiners whose salary is below the threshold that would trigger the two-year post-employment restriction, those examiners do not have broad and lead responsibility for examining a regulated entity or the Office of Finance and therefore would not meet the definition of ''senior examiner.'' FHFA believes that any examiner of an Enterprise who is a ''senior examiner'' would also be subject to the two-year post-employment restriction under 12 U.S.C. 4523.

Section 1212.3 Post-employment restriction for senior examiners

Proposed § 1212.3 would prohibit a senior examiner from knowingly accepting compensation as an employee, officer, director, or consultant of a regulated entity or the Office of Finance for one year after leaving the employment of FHFA if he or she has examined the regulated entity or the Office of Finance for two or more months during the last 12 months of employment at FHFA.

A person would be deemed to be a consultant for purposes of the one-year post-employment restriction if such person ''directly works on matters for, or on behalf of'' the relevant regulated entity or the Office of Finance. FHFA intends this provision to mean that a former senior examiner who joins a consulting or other firm or is self-employed as a consultant may not, during the one-year post-employment period, participate in any work that the firm is conducting for a regulated entity or the Office of Finance that the former senior examiner would be prohibited from doing directly. The former senior examiner would not, however, violate the post-employment restrictions by joining a firm that performs work for such a regulated entity or the Office of Finance as long as the former senior examiner does not personally participate in any such work.

The proposed post-employment restriction would not apply to any officer or employee of FHFA or any former officer or employee of FHFA who ceased to be an officer or employee of FHFA before the effective date of subpart B of this part.

Section 1212.4 Waiver

Proposed § 1212.4 would allow the Director, at the written request of a former senior examiner, to waive in writing, application of the one-year post-employment restriction, on a case-by-case basis, if the Director determines that granting the waiver would not affect the integrity of the supervisory program of FHFA. FHFA expects that waivers would be granted only in special circumstances.

Section 1212.5 Penalties

Proposed § 1212.5 would require FHFA to seek one or both of the following penalties against a former senior examiner who violates the one-year post-employment restriction:

(1) An order removing the individual from his or her position at, or prohibiting the individual from further participation in the affairs of, the regulated entity or the Office of Finance for a period of up to five years, and prohibiting the individual from participating in the conduct of the affairs of any regulated entity or the Office of Finance for a period of up to five years; or (2) a civil money penalty of not more than $250,000.

The former senior examiner against whom FHFA seeks to impose these penalties would have the procedural rights set forth in 12 U.S.C. 4636 and 4636a, as applicable, and any implementing regulations issued by FHFA.

Regulatory Impacts

Paperwork Reduction Act

The proposed regulation does not contain any information collection requirement that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation does not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the proposed regulation under the Regulatory Flexibility Act. FHFA certifies that the proposed regulation is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable only to employees and officers and former employees and officers of FHFA, who are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR part 1212

Administrative practice and procedure, Conflicts of interest, Ethics, Federal Housing Finance Agency.

Accordingly, for the reasons stated in the preamble, under the authority of 12 U.S.C. 4526 and 4517(e), FHFA proposes to amend 12 CFR Chapter XII by adding part 1212 to Subchapter A to read as follows:

PART 1212—POST-EMPLOYMENT RESTRICTION FOR SENIOR EXAMINERS

Subpart A—[Reserved]

Subpart B—Post-Employment Restriction for Senior Examiners

Sec.
1212.1 Purpose and scope.
1212.2 Definitions.
1212.3 Post-employment restriction for senior examiners.
1212.4 Waiver.
1212.5 Penalties.

Authority: 12 U.S.C. 4526, 12 U.S.C. 4517(e).

Subpart A—[Reserved]

Subpart B—Post-Employment Restriction for Senior Examiners

§ 1212.1 Purpose and scope.

This subpart sets forth a one-year post-employment restriction applicable to senior examiners of the Federal Housing Finance Agency (FHFA). This restriction is in addition to the post-employment restriction applicable to employees of FHFA under section 12 U.S.C. 4523.

§ 1212.2 Definitions.

For purposes of subpart B of this part, the term:

Consultant means a person who works directly on matters for, or on behalf of, a regulated entity or the Office of Finance.

Director means the Director of FHFA or his or her designee.

Employee means an officer or employee of FHFA, including a special Government employee.

Federal Home Loan Bank or *Bank* means a Bank established under the Federal Home Loan Bank Act; the term ''Federal Home Loan Banks'' means, collectively, all the Federal Home Loan Banks.

Office of Finance means the Office of Finance of the Federal Home Loan Bank System, or any successor thereto.

Regulated entity means the Federal National Mortgage Association and any affiliate thereof, the Federal Home Loan Mortgage Corporation and any affiliate thereof, any Federal Home Loan Bank; the term ''regulated entities'' means, collectively, the Federal National Mortgage Association and any affiliate thereof, the Federal Home Loan Mortgage Corporation and any affiliate thereof, and the Federal Home Loan Banks.

Safety and Soundness Act means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended by the Federal Housing Finance Regulatory Reform Act of 2008, Division A of the Housing and Economic Recovery Act of 2008, Public Law No. 110–289, 122 Stat. 2654 (2008).

Senior examiner means an employee of FHFA who has been:

(1) Authorized by FHFA to conduct examinations or inspections on behalf of FHFA;

(2) Assigned continuing, broad and lead responsibility for examining a regulated entity or the Office of Finance; and,

(3) Assigned responsibilities for examining, inspecting and supervising the regulated entity or the Office of Finance that—

(i) Represents a substantial portion of the employee's assigned responsibilities; and

(ii) Requires the employee to interact routinely with officers or employees of the regulated entity or the Office of Finance.

§ 1212.3 Post-employment restriction for senior examiners.

(a) *Prohibition.* An employee of FHFA who serves as the senior examiner of a regulated entity or the Office of Finance for two or more months during the last 12 months of his or her employment with FHFA may not, within one year after leaving the employment of FHFA, knowingly accept compensation as an employee, officer, director, or consultant from a regulated entity or the Office of Finance unless the Director grants a waiver pursuant to § 1212.4.

(b) *Effective date.* The post-employment restriction in paragraph (a) of this section shall not apply to any officer or employee of FHFA or any former officer or employee of FHFA who ceased to be an officer or employee of FHFA before the effective date of Subpart B of this part.

§ 1212.4 Waiver.

At the written request of a senior examiner or former senior examiner, the Director may waive the post-employment restriction in § 1212.3 if he or she certifies, in writing, and on a case-by-case basis, that granting a waiver of such restriction would not affect the integrity of the supervisory program of FHFA.

§ 1212.5 Penalties.

(a) *General.* A senior examiner who, after leaving the employment of FHFA, violates the restriction set forth in § 1212.3 shall be subject to one or both of the following penalties—

(1) An order:

(i) Removing the individual from office at the regulated entity or the Office of Finance or prohibiting the individual from further participation in the affairs of the relevant regulated entity or the Office of Finance for a period of up to five years; and

(ii) Prohibiting the individual from participating in the affairs of any regulated entity or the Office of Finance for a period of up to five years; and/or

(2) A civil money penalty of not more than $250,000.

(b) *Other penalties.* The penalties set forth in paragraph (a) of this section are not exclusive, and a senior examiner

who violates the restrictions in § 1212.3 also may be subject to other administrative, civil, or criminal remedies or penalties as provided in law.

(c) *Procedural rights.* The procedures applicable to actions under paragraph (a) of this section are those provided in the Safety and Soundness Act under section 1376, in connection with the imposition of a civil money penalty; under section 1377, in connection with a removal and prohibition order (12 U.S.C. 4636 and 4636a, respectively); and under any regulations issued by FHFA implementing such procedures.

Dated: May 27, 2009.

James B. Lockhart III,

Director, Federal Housing Finance Agency.

[FR Doc. E9–13620 Filed 6–9–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0525; Directorate Identifier 2009–NM–027–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above that would supersede an existing AD. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated 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:

AD CF–2002–12 [which corresponds to FAA AD 2003–04–21, amendment 39–13070] mandated installation of revised overwing emergency exit placards showing that the exit door should be opened and disposed from a seated position. However, it was later discovered that the new placards illustrated an incorrect hand position for removal of the exit upper handle cover. These incorrect instructions could cause difficulty or delay when opening the overwing emergency exit.

As a result, the timely and safe evacuation of passenger and crew may be impeded. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by July 10, 2009.

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

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

For service information identified in this proposed AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Christopher Alfano, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7340; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0525; Directorate Identifier 2009–NM–027–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

On February 19, 2003, we issued AD 2003–04–21, Amendment 39–13070 (68 FR 9509, February 28, 2003). A correction of that AD was published in the **Federal Register** on March 25, 2003 (68 FR 14309). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2003–04–21, it was discovered that the new placards illustrated an incorrect hand position for removal of the exit upper handle cover. Transport Canada Civil Aviation, which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2009–02, dated January 19, 2009 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

AD CF–2002–12 [which corresponds to FAA AD 2003–04–21] mandated installation of revised overwing emergency exit placards showing that the exit door should be opened and disposed from a seated position. However, it was later discovered that the new placards illustrated an incorrect hand position for removal of the exit upper handle cover. These incorrect instructions could cause difficulty or delay when opening the overwing emergency exit.

As a result, the timely and safe evacuation of passenger and crew may be impeded. The required actions include replacing the incorrect placards with revised placards. You may obtain further information by examining the MCAI in the AD docket.

This NPRM adds certain airplanes to the applicability; we have determined that these additional airplanes are affected by the identified unsafe condition. These airplanes were added as they also have the same interior configuration. This NPRM also removes certain airplanes from the applicability; airplanes with serial numbers 7075, 7099, 7136, 7140, 7152, 7176, and 7351 have been removed because they have different placards installed.

Relevant Service Information

Bombardier has issued Service Bulletin 601R–11–088, Revision 'A,' dated March 24, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a note within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 664 products of U.S. registry.

We estimate that it would take about 1 work-hour per product to comply with the new basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $128 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $138,112, or $208 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); 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 proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–13070 (68 FR 9509, February 28, 2003), corrected at 68 FR 14309, March 25, 2003, and adding the following new AD:

Bombardier, Inc. (Formerly Canadair): Docket No. FAA–2009–0525; Directorate Identifier 2009–NM–027–AD.

Comments Due Date

(a) We must receive comments by July 10, 2009.

Affected ADs

(b) The proposed AD supersedes AD 2003–04–21 R1, Amendment 39–13070.

Applicability

(c) This AD applies to Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 400) airplanes, serial numbers 7003 through 7074 inclusive, 7076 through 7098 inclusive, 7100 through 7135 inclusive, 7137 through 7139 inclusive, 7141 through 7151 inclusive, 7153 through 7175 inclusive, 7177 through 7350 inclusive, 7352 through 7583 inclusive, 7585 through 7638 inclusive, 7640 through 7716 inclusive, 7718 through 7845 inclusive, 7847 through 8042 inclusive, 8044 through 8047 inclusive, 8050, 8058, 8059, 8061, 8062, and 8064; certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 11: Placards and markings.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

AD CF–2002–12 [which corresponds to FAA AD 2003–04–21] mandated installation of revised overwing emergency exit placards showing that the exit door should be opened and disposed from a seated position. However, it was later discovered that the new placards illustrated an incorrect hand position for removal of the exit upper handle cover. These incorrect instructions could cause difficulty or delay when opening the overwing emergency exit.

As a result, the timely and safe evacuation of passenger and crew may be impeded. The required action includes replacing the incorrect placards with revised placards.

Actions and Compliance

(f) Unless already done, within 24 months after the effective date of this AD, replace the existing overwing emergency exit placards with new placards, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–11–088, Revision 'A,' dated March 24, 2009.

(g) Replacement of the overwing emergency exit placards with new placards accomplished before the effective date of this AD in accordance with Bombardier Service Bulletin 601R–11–088, dated June 25, 2008, is considered acceptable for compliance with the corresponding action specified in this AD.

FAA AD Differences

NOTE 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(h) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Christopher Alfano, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7340; fax (516) 794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(i) Refer to MCAI Canadian Airworthiness Directive CF–2009–02, dated January 19, 2009; and Bombardier Service Bulletin 601R–11–088, Revision 'A,' dated March 24, 2009; for related information.

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

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–13506 Filed 6–9–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0526; Directorate Identifier 2009–NM–029–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated 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:

Four aircraft have experienced a dual AC generator shutdown, caused by a broken propeller de-ice bus bar which short-circuited with the backplate assembly.

* * * A short circuit can cause a dual AC generator shutdown that, particularly in conjunction with an engine failure in icing conditions, could result in reduced controllability of the aircraft.

* * * * *

Reduced controllability of the airplane in certain operating conditions affects continued safe flight and landing. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by July 10, 2009.

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

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

For service information identified in this proposed AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Wing Chan, Aerospace Engineer, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7311; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2009–0526; Directorate Identifier 2009–NM–029–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2009–01, dated January 19, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

Four aircraft have experienced a dual AC generator shutdown, caused by a broken propeller de-ice bus bar which short-circuited with the backplate assembly.

It was subsequently determined that any friction or contact between a propeller de-ice bus bar and the backplate assembly can cause an intermittent short circuit. Such a short circuit can cause a dual AC generator shutdown that, particularly in conjunction with an engine failure in icing conditions, could result in reduced controllability of the aircraft.

This directive mandates revision of the Airplane Flight Manual (AFM) to introduce a procedure that restores AC power following a failure of No. 1 and No. 2 AC generators with propeller de-ice on. Additionally, in

order to prevent similar dual AC generator shutdowns, it mandates the application of sealant as insulation between the propeller de-ice bus bars and the backplate assembly.

Reduced controllability of the airplane in certain operating conditions affects continued safe flight and landing. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier has issued Service Bulletin 84–61–03, Revision 'A,' dated September 18, 2008; and Bombardier Temporary Amendment (TA) 14, Issue 1, dated May 10, 2006, to the Dash 8 Q400 Airplane Flight Manual PSM 1–84–1A. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 62 products of U.S. registry. We also estimate that it would take about 6 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $29,760, or $480 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); 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 proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket No. FAA–2009–0526; Directorate Identifier 2009–NM–029–AD.

Comments Due Date

(a) We must receive comments by July 10, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model DHC–8–400, DHC–8–401, and DHC–8–402 airplanes, certificated in any category, serial numbers 4001, 4003, 4004, 4006, and 4008 through 4154 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 61: Propellers/Propulsors.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Four aircraft have experienced a dual AC generator shutdown, caused by a broken propeller de-ice bus bar which short-circuited with the backplate assembly.

It was subsequently determined that any friction or contact between a propeller de-ice bus bar and the backplate assembly can cause an intermittent short circuit. Such a short circuit can cause a dual AC generator shutdown that, particularly in conjunction with an engine failure in icing conditions, could result in reduced controllability of the aircraft.

This directive mandates revision of the Airplane Flight Manual (AFM) to introduce a procedure that restores AC power following a failure of No. 1 and No. 2 AC generators with propeller de-ice on. Additionally, in order to prevent similar dual AC generator shutdowns, it mandates the application of sealant as insulation between the propeller de-ice bus bars and the backplate assembly.

Reduced controllability of the airplane in certain operating conditions affects continued safe flight and landing.

Actions and Compliance

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

(1) Within 30 days after the effective date of this AD, revise the Limitations section of the AFM by inserting a copy of Bombardier Temporary Amendment (TA) 14, Issue 1, dated May 10, 2006, to the Dash 8 Q400 AFM PSM 1–84–1A. When the information in Bombardier TA 14, Issue 1, dated May 10, 2006, is included in the general revisions of the AFM, the general revisions may be inserted in the AFM and the TA may be removed.

(2) Within 5,000 flight hours after the effective date of this AD: Apply sealant between the bus bar assemblies and the backplate assembly by incorporating Modsum 4W163047, Revision B, dated August 11, 2008, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–61–03, Revision 'A,' dated September 18, 2008.

(3) Incorporating Bombardier DHC–8–S400 Modification Summary Package 4W163047 before the effective date of this AD in accordance with Bombardier Service Bulletin 84–61–03, dated April 27, 2007, is considered acceptable for compliance with the requirements of paragraph (f)(2) of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Wing Chan, Aerospace Engineer, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7311; fax (516) 794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Canadian Airworthiness Directive CF–2009–01, dated January 19, 2009; and Bombardier Service Bulletin 84–61–03, Revision 'A,' dated September 18, 2008; for related information.

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

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–13505 Filed 6–9–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[USCG–2009–0436]

RIN 1625–AA08

Special Local Regulations; Great Lakes Annual Marine Events

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend special local regulations for annual regattas and marine parades in the Captain of the Port Buffalo zone. This action is necessary to protect the public and participants from hazards associated with regattas and marine parades. This proposed rule is intended to ensure safety of life on the navigable waters immediately prior to, during, and immediately after regattas or marine parades.

DATES: Comments and related materials must reach the Coast Guard on or before July 10, 2009.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2009–0436 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online: http://www.regulations.gov.*

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

(3) *Hand delivery:* Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

FOR FURTHER INFORMATION CONTACT: CDR Joseph Boudrow, Prevention Dept. Chief, Sector Buffalo, 1 Fuhrmann Blvd., Buffalo, NY 14203; 716–843–9385.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–0436), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name, mailing address, and an e-mail address or other contact information in the body of your document to ensure that you can be identified as the submitter. This also allows us to contact you in the event further information is needed or if there are questions. For example, if we cannot read your submission due to technical difficulties and you cannot be contacted, your submission may not be considered. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* at any time, click on ''Search for Dockets,'' and enter the docket number for this rulemaking (USCG–2009–0436) in the Docket ID box, and click enter. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

C. Privacy Act

Anyone can 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 the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://DocketsInfo.dot.gov*.

SUPPLEMENTARY INFORMATION:

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commander, Coast Guard Sector Buffalo at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register.**

Background and Purpose

This proposed rule will remove from table 1 found in 33 CFR 100.901, Great Lakes annual marine events, all entries under Group Buffalo, N.Y. These events no longer occur annually or are not regattas or marine parades. This proposed rule will also add new sections not previously listed in 33 CFR Part 100. The new sections are: § 100.926 Syracuse Hydrofest, Syracuse, N.Y.; § 100.927 Swim the Bay, Presque Isle Bay, Erie, PA; § 100.928 Carly's Crossing, Lake Erie, Buffalo, N.Y.; § 100.929 Thunder on the Niagara, Niagara River, North Tonawanda, N.Y.; and § 100.930 Antique Boat Show, Niagara River, Grand Island, N.Y.

Discussion of Proposed Rule

The proposed rule is necessary to ensure the safety of vessels and people during annual regattas and marine parades in the Captain of the Port Buffalo area of responsibility that may pose a hazard to the public. This rule proposes the removal of regulations currently published in 33 CFR part 100.901 under Group Buffalo and adds new events never before published in the CFR.

The proposed safety zones will be enforced only immediately before, during, and after events that pose hazard to the public, and only upon notice by the Captain of the Port.

The Captain of the Port will inform the public about the details of each regatta or marine parade covered by these special local regulations using a variety of means, including, but is not limited to, Broadcast Notices to Mariners and Local Notices to Mariners. The Captain of the Port will issue a Broadcast Notice to Mariners notifying the public when enforcement of the special local regulation for each event is terminated.

Regulatory Evaluation

This proposed 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.

The Coast Guard's use of these special local regulations will be periodic in nature, of short duration, and designed to minimize the impact on navigable waters. These special local regulations will only be enforced immediately before and during the time the marine events are occurring. Furthermore, these special local regulations have been designed to allow vessels to transit portions of the waterways not affected by the special local regulations. The Coast Guard expects insignificant adverse impact to mariners from the activation of these special local regulations.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed 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 proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: The owners of operators of vessels intending to transit or anchor in the areas designated as special local regulations in paragraphs (4) through (13) during the dates and times the special local regulations are being enforced.

These special local regulations would not have a significant economic impact on a substantial number of small entities for the following reasons. The special local regulations in this proposed rule would be in effect for short periods of time, and only once per year. The special local regulations have been designed to allow traffic to pass safely around the zone whenever possible and vessels will be allowed to pass through the zones with the permission of the Captain of the Port.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact CDR Joseph Boudrow, Prevention Dept. Chief, Sector Buffalo, 1 Fuhrmann Blvd., Buffalo, NY 14203; 716–843–9385. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

This proposed 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 proposed 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 proposed rule will not result in such expenditure, we nevertheless discuss its effects elsewhere in this preamble.

Taking of Private Property

This proposed rule will not affect the 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 proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed 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

The Coast Guard recognizes the treaty rights of Native American Tribes. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies and to mitigate tribal concerns. We have determined that these safety zones and fishing rights protection need not be incompatible. We have also determined that this proposed 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. Nevertheless, Indian Tribes that have questions concerning the provisions of this proposed rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

Energy Effects

We have analyzed this proposed 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 proposed 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 Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 023–01, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is not likely to have a significant effect on the human environment. An environmental analysis checklist supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

§ 100.901 [Amended]

2. Amend § 100.901 Table 1 as follows:

a. Under the entry *''Group Buffalo, NY'':*

1. Remove *''Group Buffalo, NY''.*

2. Remove in their entirety the entries: Fireworks by Grucci, Flagship International Kilo Speed Challenge, Flagship International Offshore Challenge, Friendship Festival Airshow, NFBRA Red Dog Kilo Time Trials, Sodus Bay 4th of July Fireworks, Tallship Erie, Thomas Graves Memorial Fireworks Display, Thunder Island Offshore Challenge, We Love Erie Days Fireworks.

3. Add § 100.926 to read as follows:

§ 100.926 Syracuse Hydrofest, Syracuse, NY.

(a) Regulated Area. A regulated area is established to include all waters of Onondaga Lake located at 43°06′00″ N, 076°12′35″ W, South to 43°05′26″ N, 076°13′05″ W, South West to 43°04′09″ N, 076°11′29″ W, North to 43°04′33″ N, 076°10′59″ W.

(b) Special Local Regulations. The regulations of § 100.901 apply. No vessel may enter, transit through, or anchor within the regulated area without the permission of the Coast Guard Patrol Commander.

(c) Effective Date. This event occurs the second weekend in July. The exact dates and times for this event will be determined annually and published via Local Notice to Mariners and Broadcast Notice to Mariners.

4. Add § 100.927 to read as follows:

§ 100.927 Swim the Bay, Presque Isle Bay, Erie, PA.

(a) Regulated Area. A regulated area is established to include all waters of Presque Isle Bay, Erie, PA starting in position 42°07′28″ N, 080°07′50″ W heading northwest to position 42°07′21″ N, 080°08′44″ W then south to 42°07′13″ N, 080°08′46″ W then east to 042°07′15″ N, 080°08′06″ W. The starting and finishing positions are the Erie Yacht Club.

(b) Special Local Regulations. The regulations of § 100.901 apply. No vessel may enter, transit through, or anchor within the regulated area without the permission of the Coast Guard Patrol Commander.

(c) Effective Date. This event occurs the last week in June. The exact dates and times for this event will be determined annually and published via Local Notice to Mariners and Broadcast Notice to Mariners.

5. Add § 100.928 to read as follows:

§ 100.928 Carly's Crossing, Lake Erie, Buffalo, NY.

(a) Regulated Area. A regulated area is established to include all waters of Lake Erie extending two miles to the break wall outside of Gallagher Beach. The positions of the race course are as follows; starting 42°50′47″ N, 078°51′44″ W headed North East to position 42°50′27″ N, 078°52′23″ W West to 42°50′19″ N, 078°52′10″ W then finishing South at position 42°50′27″ N, 078°51′35″ W (NAD 83).

(b) Special Local Regulations. The regulations of § 100.901 apply. No vessel may enter, transit through, or anchor within the regulated area without the permission of the Coast Guard Patrol Commander.

(c) Effective Date. This event occurs the third Saturday in August. The exact times for this event will be determined annually and published via Local Notice to Mariners and Broadcast Notice to Mariners.

6. Add § 100.929 to read as follows:

§ 100.929 Thunder on the Niagara, Niagara River, North Tonawanda, NY.

(a) Regulated Area. A regulated area is established to include all waters of the Upper Niagara River, North Tonawanda, NY within two miles of the Grand Island Bridge located at 43°03′36″ N, 078°54′45″ W to 43°03′09″ N, 078°55′21″ W to 43°03′00″ N, 078°53′42″ W to 43°02′42″ N, 078°54′09″ W.

(b) Special Local Regulations. The regulations of § 100.901 apply. No vessel may enter, transit through, or anchor within the regulated area without the permission of the Coast Guard Patrol Commander.

(c) Effective Date. This event occurs the last week of August. The exact dates and times for this event will be determined annually and published via Local Notice to Mariners and Broadcast Notice to Mariners.

7. Add § 100.930 to read as follows:

§ 100.930 Antique Boat Show, Niagara River, Grand Island, NY.

(a) Regulated Area. A regulated area is established to include all waters of the Niagara River, Grand Island, NY from the S. Grand Island Bridge to Motor Island; coordinates 42°59′59″ N, 078°56′22″ W, East to 42°59′54″ N, 078°56′14″ W, South to 42°57′54″ N, 078°56′04″ W, West to 42°57′48″ N, 078°56′22″ W.

(b) Special Local Regulations. The regulations of § 100.901 apply. No vessel may enter, transit through, or anchor within the regulated area without the permission of the Coast Guard Patrol Commander.

(c) Effective Date. This event occurs the first Saturday in September after Labor Day. The exact dates and times for this event will be determined annually and published via Local Notice to Mariners and Broadcast Notice to Mariners.

Dated: May 27, 2009.

R.S. Burchell,

Captain, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. E9–13534 Filed 6–9–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–1262]

RIN 1625–AA00

Safety Zone; AVI September Fireworks Display; Laughlin, NV

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes a safety zone on the navigable waters of the lower Colorado River, Laughlin, NV, in support of a fireworks display near the AVI Resort and Casino. 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: Comments and related material must be submitted on or before July 10, 2009

ADDRESSES: You may submit comments identified by docket number USCG–2008–1262 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

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

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Petty Officer Shane Jackson, USCG, Waterways Management, U.S. Coast Guard Sector San Diego at (619) 278–2767. 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:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2008–1262), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand delivery, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* select the Advanced Docket Search option on the right side of the screen, insert ''USCG–2008–1262'' in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We

will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* select the Advanced Docket Search option on the right side of the screen, insert USCG–2008–1262 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit either the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or the U.S. Coast Guard Sector San Diego, 2710 N. Harbor Drive, San Diego, CA 92101 between 8 a.m. and 2 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can 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 a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Public Meeting

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

Background and Purpose

The Coast Guard is establishing a temporary safety zone on the navigable waters of the Lower Colorado River, Laughlin, NV in support of a fireworks show in the navigational channel of the Lower Colorado River, Laughlin, NV. The fireworks show is being sponsored by the AVI Resort and Casino. The safety zone is set at a 1,000 foot radius around the anchored firing barge. This temporary safety zone is necessary to provide for the safety of the show's crew, spectators, participants of the event, participating vessels, and other vessels and users of the waterway.

Discussion of Proposed Rule

The Coast Guard proposes a safety zone that would be enforced from 8 p.m. to 9:45 p.m. on September 6, 2009. The limits of the safety zone is to include all navigable waters within 1,000 feet of the firing location adjacent to the AVI Resort and Casino centered in the channel between Laughlin Bridge and the northwest point of AVI Resort and Casino Cove in position: 35°00′45″ N, 114°38′16″ W.

This safety zone is necessary to provide for the safety of the crews, spectators, and participants of the event and to protect other vessels and users 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.

U.S. Coast Guard personnel would enforce this safety zone. Other Federal, State, or local agencies may assist the Coast Guard, including the Coast Guard Auxiliary. Vessels or persons violating this rule would be subject to both criminal and civil penalties.

Regulatory Analyses

We developed this proposed 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 proposed 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. Although the safety zone will restrict boating traffic within the navigable waters of the Lower Colorado River, Laughlin, NV, the effect of this regulation will not be significant as the safety zone will encompass only a small portion of the waterway and will be very short in duration. The entities most likely to be affected are pleasure craft engaged in recreational activities and sightseeing. As such, the Coast Guard expects the economic impact of this rule to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed 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 proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in the region of the lower Colorado River adjacent to AVI Resort and Casino from 8 p.m. to 9:45 p.m. on September 6, 2009.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. The safety zone only encompasses a small portion of the waterway, it is short in duration at a relatively late hour when commercial traffic is low, and the Captain of the Port may authorize entry into the zone, if necessary. 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 VFH before the safety zone is enforced.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Petty Officer Shane Jackson, USCG, Waterways Management, U.S. Coast Guard Sector San Diego at (619) 278–7267. 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 proposed rule would call 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 proposed 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this proposed 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 proposed 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 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves a safety zone. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 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. 122, 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; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. A new temporary safety zone § 165.T11–166

§ 165.T11–166 AVI September Fireworks Display; Laughlin, Nevada.

(a) *Location.* The limits of the proposed safety zone are as follows: is to include all navigable waters within 1000 feet of the firing location adjacent to the AVI Resort and Casino centered in the channel between Laughlin Bridge and the northwest point of AVI Resort and Casino Cove in position: 35°00′45″ N, 114°38′16″ W.

(b) *Enforcement Period.* This section will be enforced from 8 p.m. to 9:45 p.m. on September 6, 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, and 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 Patrol Commander (PATCOM). The PATCOM 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: May 5, 2009.

T.H. Farris,

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

[FR Doc. E9–13529 Filed 6–9–09; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–RO4–OAR–2008–0159(a); FRL–8912–8]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; City of Memphis, TN; Control of Emissions From Existing Hospital/Medical/Infectious Waste Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the City of Memphis, Tennessee plan submitted by the Memphis and Shelby County Health Department (MSCHD) on February 16, 2006. The plan establishes emission limitations for Hospital/Medical/Infectious Waste Incinerators (HMIWI) for which construction commenced on or before June 20, 1996, and provides for the implementation and enforcement of those limitations.

In the final rules section of this **Federal Register,** the EPA is approving the State's request as a direct final rule without prior proposal because the Agency views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's request is set forth in the direct final rule. The direct final rule will become effective without further notice unless EPA receives relevant adverse written comment on this action. Should the EPA receive such comment, it will publish a final rule informing the public that the direct final rule will not take effect and such public comment received will be addressed in a subsequent final rule based on this proposed rule. If no adverse written comments are received, the direct final rule will take effect on the date stated in that document and no further activity will be taken on this proposed rule. EPA does not plan to institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before July 10, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2008–0159 by one of the following methods:

1. *http://www.regulations.gov:* Follow the online instructions for submitting comments.

2. *E-mail: louis.egide@epa.gov.*

3. *Fax:* (404) 562–9095.

4. *Mail:* ''EPA–R04–OAR–2008–0159'' Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

5. *Hand Delivery or Courier:* Dr. Egide N. Louis, Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division 12th floor, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Dr. Egide Louis, Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9240. Dr. Louis can also be reached via electronic mail at *louis.egide@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules Section of this **Federal Register.**

Dated: April 10, 2009.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

[FR Doc. E9–13596 Filed 6–9–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–1200; MB Docket No. 09–70; RM–11534]

Television Broadcasting Services; Amarillo, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a channel substitution proposed by Amarillo Junior College District (''Amarillo Jr. College''), the licensee of noncommercial educational station KACV–DT, DTV channel *8, Amarillo, Texas. Amarillo Jr. College requests the substitution of DTV channel *9 for post-transition DTV channel *8 at Amarillo.

DATES: Comments must be filed on or before June 25, 2009, and reply comments on or before July 6, 2009.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Jerold L. Jacobs, Esq., Cohn and Marks LLP, 1920 N Street, NW., Suite 300, Washington, DC 20036–1622.

FOR FURTHER INFORMATION CONTACT: Adrienne Y. Denysyk, *adrienne.denysyk@fcc.gov,* Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 09–70, adopted May 19, 2009, and released May 28, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via the Internet *http://www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202)

418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622(i) [Amended]

2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Texas, is amended by adding DTV channel *9 and removing DTV channel *8 at Amarillo.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E9–13649 Filed 6–9–09; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 387

[Docket No. FMCSA–2006–26262]

RIN 2126–AB05

Minimum Levels of Financial Responsibility for Motor Carriers

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) proposes amendments to its regulations concerning minimum levels of financial responsibility for motor carriers to allow Canada-domiciled carriers to maintain, as acceptable evidence of financial responsibility, insurance policies issued by Canadian insurance companies legally authorized to issue such policies in the Canadian Province or Territory where the motor carrier has its principal place of business. Currently, Canada-domiciled motor carriers operating in the U.S. must maintain as evidence of financial responsibility, insurance policies issued by U.S. insurance companies. The proposed change would not affect the required minimum levels of financial responsibility that carriers must now maintain under the regulations. This action is in response to a petition for rulemaking filed by the Government of Canada.

DATES: Public comments are requested on all aspects of this proposed rule by August 10, 2009.

ADDRESSES: You may submit comments identified by Docket No. FMCSA–2006–26262 and/or RIN 2126–AB05, by any of the following methods—Internet, facsimile, regular mail, or hand-deliver.

- *Federal eRulemaking Portal:* Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov.* The FDMS is the preferred method for submitting comments, and we urge you to use it. In the *Comment or Submission* section, type Docket ID Number ''FMCSA–2006–26262'', select ''Go'', and then click on ''Send a Comment or Submission.'' You will receive a tracking number when you submit a comment.
- *Mail, Courier, or Hand-Deliver:* U.S. Department of Transportation, Docket Operations (M–30), West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.
- *Docket:* Comments and material received from the public, as well as background information and documents mentioned in this preamble, are part of docket FMCSA–2006–26262, and are available for inspection and copying on the Internet at *http://www.regulations.gov.* You may also view and copy documents at the U.S. Department of Transportation's, Docket Operations Unit, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave SE., Washington, DC.

Privacy Act: All comments will be posted without change including any personal information provided to the Federal Docket Management System (FDMS) at *http://www.regulations.gov.* Anyone can search the electronic form of all our dockets in FDMS, by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). The DOT's complete Privacy Act Statement was published in the **Federal Register** on April 11, 2000 (65 FR 19476), and can be viewed at *http://docketsinfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, FMCSA Driver and Carrier Operations. Telephone (202) 366–4325 or e-mail *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Legal Basis for the Rulemaking

Section 30 of the Motor Carrier Act of 1980 (1980 Act) (Pub. L. 96–296, 94 Stat. 793, 820, July 1, 1980) authorized the Secretary of Transportation (Secretary) to prescribe regulations establishing minimum levels of financial responsibility covering public liability, property damage, and environmental restoration for the transportation of property for compensation by motor vehicles in interstate or foreign commerce. Section 30(c) of the 1980 Act provided that motor carrier financial responsibility may be established by evidence of one or a combination of the following if acceptable to the Secretary: (1) Insurance; (2) a guarantee; (3) a surety bond issued by a bonding company authorized to do business in the United States; and (4) qualification as a self-insurer (49 U.S.C. 31139(f)(1)). Section 30(c) required the Secretary to establish, by regulation, methods and procedures to assure compliance with these requirements.

In June 1981, the Secretary issued regulations implementing section 30, which are codified at 49 CFR part 387, subpart A. The Form MCS–90

endorsement for motor carriers transporting property is entitled ''Endorsement for Motor Carrier Policies of Insurance for Public Liability Under Sections 29 and 30 of the Motor Carrier Act of 1980.'' (See 49 CFR 387.15.)

Section 18 of the Bus Regulatory Reform Act of 1982 (Bus Act) (Pub. L. 97–261, 96 Stat. 1102, 1120, September 20, 1982) directed the Secretary to prescribe regulations establishing minimum levels of financial responsibility covering public liability and property damage for the transportation of passengers for compensation by motor vehicle in interstate or foreign commerce. Section 18(d) of the Bus Act provided that such motor carrier financial responsibility may be established by evidence of one or a combination of the following if acceptable to the Secretary: (1) Insurance, including high self-retention; (2) a guarantee; and (3) a surety bond issued by a bonding company authorized to do business in the United States (49 U.S.C. 31138(c)(1)). Section 18(d) required the Secretary to establish, by regulation, methods and procedures to assure compliance with these requirements.

In November 1983, the Secretary issued regulations implementing section 18 of the Bus Act. The regulations implementing that law are found at 49 CFR part 387, subpart B. The Form MCS–90B endorsement for for-hire motor carriers of passengers is entitled ''Endorsement for Motor Carrier Policies of Insurance for Public Liability Under Section 18 of the Bus Regulatory Reform Act of 1982.'' (See 49 CFR 387.39.)

This notice of proposed rulemaking (NPRM) is based on the Secretary's authority to establish methods and procedures to ensure that certain motor carriers of property and passengers maintain the minimum financial responsibility liability coverage mandated by 49 U.S.C. 31138(c)(1) and 31139(f)(1). This authority was delegated to FMCSA by the Secretary pursuant to 49 CFR 1.73(f).

Background

The Government of Canada (Canada) Petition for Rulemaking

On September 29, 2005, Canada submitted a petition for rulemaking to amend 49 CFR part 387. Canada specifically requested that FMCSA amend § 387.11, which provides that a policy of insurance or surety bond does not satisfy FMCSA's financial responsibility requirements unless the insurer or surety furnishing the policy or bond is—

(a) Legally authorized to issue such policies or bonds in each State in which the motor carrier operates; or

(b) Legally authorized to issue such policies or bonds in the State in which the motor carrier has its principal place of business or domicile, and is willing to designate a person upon whom process, issued by or under the authority of any court having jurisdiction of the subject matter, may be served in any proceeding at law or equity brought in any State in which the motor carrier operates; or

(c) Legally authorized to issue such policies or bonds in any State of the United States and eligible as an excess or surplus lines insurer in any State in which business is written, and is willing to designate a person upon whom process, issued by or under the authority of any court having jurisdiction of the subject matter, may be served in any proceeding at law or equity brought in any State in which the motor carrier operates.

Canada asked FMCSA to consider amending this provision to permit insurance companies, licensed either provincially or Federally in Canada, to write motor vehicle liability insurance policies for Canada-domiciled motor carriers of property operating in the U.S. and to issue the Form MCS–90 endorsement for public liability to meet FMCSA's financial responsibility requirements. Form MCS–90 is the endorsement for motor carrier policies of insurance for public liability, which for-hire motor carriers of property must maintain at their principal place of business. Motor carriers domiciled in Canada and Mexico must also carry a copy of the Form MCS–90 on board each vehicle operated in the United States.

At present, the combined effects of §§ 387.7 and 387.11 require Canada-domiciled motor carriers of property operating in the United States to either: (1) Obtain insurance through a Canada-licensed insurer, which enters into a ''fronting agreement'' with a U.S.-licensed insurer, whereby the U.S. insurer permits the Canadian insurer to sign the Form MCS–90 as its agent, and the entire risk is contractually ''reinsured'' back to the Canadian insurer by the U.S. insurer; or (2) obtain two separate insurance policies, one valid in Canada written by a Canadian insurer and one valid in the United States written by a U.S. insurer. Canada indicates that the first option is by far the most common. It suggests that the result of these requirements is an additional administrative burden, inconvenience, and cost not faced by U.S.-domiciled motor carriers operating into Canada. FMCSA estimates there are approximately 9,000 Canada-domiciled for-hire motor carriers of property and passengers and freight forwarders actively operating commercial motor vehicles (CMVs) in the United States that are subject to the current financial responsibility rules.

Canada requested that FMCSA amend 49 CFR part 387 so that an insurance policy issued by a Canadian insurance company satisfies the financial responsibility requirements. The insurance company must be legally authorized to issue such a policy in the Province or Territory of Canada in which the Canadian motor carrier has its principal place of business or domicile. The company must also be willing to designate a person upon whom process, issued by or under the authority of any court having jurisdiction of the subject matter, may be served in any proceeding at law or equity brought in any State in which the motor carrier operates.

Canada's proposal, if adopted through this rulemaking, would eliminate the need for Canadian insurance companies to link with a U.S. insurance company to legally insure Canadian motor carriers of property that operate in the United States. It should be noted that although Canada's petition only seeks to amend 49 CFR 387.11, its proposal necessarily implicates other sections of part 387, which would need to be changed for the sake of consistency. Section 387.35 applies the § 387.11 requirements to motor passenger carriers, which must obtain a Form MCS–90B endorsement. Furthermore, § 387.315 imposes the same requirements on motor carriers who must file evidence of insurance with FMCSA, and § 387.409 applies similar financial responsibility requirements on freight forwarders. Therefore, FMCSA proposes to amend those sections for consistency.

Canada explained that, for many years, it has recognized and accepted non-commercial motor vehicle liability policies issued in either country as acceptable proof of financial responsibility. All jurisdictions in Canada accept the signing and filing of a Power of Attorney and Undertaking (PAU) by U.S.-licensed insurers as valid proof of financial responsibility for U.S.-domiciled motor vehicles of all categories. In essence, the PAU provides that the U.S. insurer will comply with and meet the minimum coverage and policy limits required in any Canadian jurisdiction in which a crash involving its insured occurs. The PAU is similar to FMCSA's requirements under §§ 387.11 and 387.15 (MCS–90 Form).

The Security and Prosperity Partnership of North America

The Security and Prosperity Partnership of North America (SPP) is an effort to increase security and enhance prosperity among the Untied States, Canada, and Mexico through greater cooperation and information sharing. The President of the United States, the Prime Minister of Canada, and the President of Mexico (the Leaders) announced this initiative on March 23, 2005. Among other things, the initiative reflects the goal of improving the availability and affordability of insurance coverage for motor carriers engaged in cross-border commerce in North America.

On June 27, 2005, a Report to the Leaders was signed on behalf of the United States by the Secretaries of Homeland Security, Commerce, and State. See *http://www.spp.gov,* and click on link to ''2005 Report to Leaders.'' One of the Prosperity Priorities of the SPP is to ''Seek ways to improve the availability and affordability of insurance coverage for carriers engaged in cross-border commerce in North America.'' At *http://www.spp-psp.gc.ca/progress/prosperity_08_06-en.aspx,* the following key milestone is stated for this initiative:

> ''U.S. and Canada to work towards possible amendment of the U.S. Federal Motor Carrier Safety Administration Regulation to allow Canadian insurers to directly sign the MCS–90 form concerning endorsement for motor carrier policies of insurance for public liability: by June 2006.''

Canada advocates a change to part 387 to assist in meeting the stated goals of the SPP. Achieving a seamless motor vehicle liability insurance policy between Canada and the United States for motor carriers would contribute to enhancing the competitive and efficient position of North American businesses. FMCSA recognized the importance of considering these requests and granted the petition by initiating a rulemaking proceeding to solicit public comment on Canada's proposal.

Advance Notice of Proposed Rulemaking

On December 15, 2006 (71 FR 75433), FMCSA published an advance notice of proposed rulemaking (ANPRM) in response to Canada's petition for rulemaking to amend 49 CFR part 387. The ANPRM also requested public comment on a petition for rulemaking from the Property Casualty Insurers of America (PCI) which requested that FMCSA make revisions to the Forms MCS–90 and MCS–90B endorsements to clarify that language in the endorsements imposing liability for negligence ''on any route or in any territory authorized to be served by the insured or elsewhere'' does not include liability connected with transportation within Mexico.

The PCI petition was the result of a Federal District Court decision holding that the Form MCS–90B endorsement applied to a crash that occurred in Mexico. As a result, PCI requested that the endorsement be amended by inserting the phrase: ''Within the United States of America, its territories, possessions, Puerto Rico, and Canada'' following the words ''or elsewhere.''

However, in September 2007, the U.S. Court of Appeals for the Fifth Circuit issued a decision, *Lincoln General Ins. Co.* v. *De La Luz Garcia,* 501 F.3d 436 (5th Cir., 2007), effectively overturning the District Court decision that had prompted PCI to file its petition. Because the Court of Appeals decision essentially provided PCI with the relief requested in its petition, and because the issues raised in that petition are different from the issues raised in Canada's petition, FMCSA has decided that a regulatory change need not be considered at this time, and this issue will not be addressed further in this NPRM.

Discussion of the Comments Received on the ANPRM

FMCSA received comments on the ANPRM from the following parties: The American Insurance Association (AIA), the Insurance Bureau of Canada (IBC), the Canadian Trucking Alliance (CTA), the Holland America Line, Inc. (HAL), the National Association of Professional Surplus Lines Offices, Ltd. (NAPSLO), and the Public Utilities Commission of Ohio (PUCO). The Canadian Government and the Property Casualty Insurers of America submitted supplemental comments.

Generally, the commenters agree with the amendments requested by Canada. For example, AIA believes that ''* * * granting [Canada's] petition is in the public interest.'' HAL believes that whatever rules FMCSA adopts the Agency should apply the rules to both motor carriers of property and motor carriers of passengers.

One commenter opposed the granting of the petition. NAPSLO expressed concerns that changes to the regulations may expose U.S. carriers and motorists to ''a potential increase in risk in connection with foreign carriers.''

Specific Concerns Raised by Commenters

NAPSLO argues there is already a process for Canadian companies to do business in the U.S. NAPSLO states:

> The [National Association of Insurance Commissioners (NAIC)] has adopted a streamlined application process for foreign companies in its International Insurance Department [(IID)]. Through the application process, the Canadian companies would become approved surplus lines insurers, and thus, meet the existing criteria. By obtaining approval from the NAIC's IID, a Canadian carrier would become approved as a surplus lines writer in the vast majority of states. The reason for this process is to streamline the approval process. A Canadian insurer could become approved in the vast majority of states through a single application process. The other states have an established process for alien insurance companies desiring to operate in their states. Thus, there is a long established process for alien companies intending to operate in the U.S.

Although not opposed to the Canada petition for rulemaking, PUCO believes FMCSA should ensure that policies of insurance maintained by foreign motor carriers operating in the United States are as ''reliable and comprehensive'' as those currently required. PUCO emphasizes that the enforceability of the rules must be seamless and efficient.

FMCSA Response:

FMCSA acknowledges the commenters' concerns but does not, however, believe maintaining the status quo is appropriate or necessary to ensure financial protection for U.S. citizens in the event of a crash involving a Canada-domiciled motor carrier.

Currently, Canada-domiciled carriers have two options for satisfying the U.S. insurance requirements. The first is to obtain two separate insurance policies, one with a Canadian insurance company for its operations in Canada and the other with a U.S. insurance company for its operations in the U.S. The second option is to obtain insurance from a Canadian insurer under contract with a U.S. insurer through a fronting arrangement. Both options result in the imposition of costs on Canada-based motor carriers that are significantly greater than the costs for U.S.-based carriers operating in Canada. FMCSA estimates that this rulemaking would result in discounted net benefits of approximately $273 million over a 10-year period, or $30,000 for each Canada-based motor carrier that conducts operations in the U.S. during this period. As noted above, there are approximately 9,000 such carriers.

While the approach that NAPSLO supports may provide a solution, it would require each Canadian insurance

company to essentially seek authority from State insurance commissioners to issue policies in the U.S. Based on the information provided by NAPSLO it is not clear that this approach would necessarily provide the needed coverage for Canada-domiciled carriers in each State in which the insured Canadian carrier intends to operate in the U.S. if the NAIC's IID is not recognized in certain States.

FMCSA believes the proposed rulemaking is needed to provide reciprocity between the U.S. and Canada and that it is inappropriate to impose on Canada-based carriers and insurance companies requirements that Canada does not impose on U.S.-based motor carriers and insurance companies.

Under the current fronting arrangements between U.S. and Canadian insurance companies, Canadian insurance companies are under contract to pay claims against public liability policies that include the Form MCS–90/MCS–90B endorsement executed by a U.S. insurance company. The fact that the fronting arrangements exist is an indication that there are sufficient legal processes in place to assure U.S. insurance companies that their Canadian counterparts could be forced to honor their contractual obligations in the event that the Canadian insurance company attempted to avoid paying a claim for a crash that occurred in the U.S. The continued use of these fronting arrangements over the years also suggests that Canadian insurers typically honor their contractual obligations without the need for legal actions—it is unlikely that U.S. insurance companies would continue to sign such arrangements if the Canadian insurance companies they were dealing with exhibited a reluctance to honor their commitments. Therefore, FMCSA believes the experience U.S. insurance companies have had with Canadian insurance companies through fronting arrangements serves as proof Canadian insurers have the financial ability and the corporate values to honor their commitments without the need for legal action. The only apparent need for the current fronting arrangements is to fulfill FMCSA's insurance requirements, not because of problems obtaining payments from Canadian insurance companies.

With regard to PUCO's comments, FMCSA believes that the regulatory change sought by Canada would not compromise the financial protection provided under the current insurance regime. The legal processes between the U.S. and Canada that support the fronting arrangements, combined with the demonstrated willingness of Canadian insurance companies to honor their financial obligations, suggests there will continue to be financial protection for U.S. citizens who file claims following a crash involving a commercial motor vehicle operated by a Canada-domiciled motor carrier insured by a Canadian insurance company.

Discussion of Response to Specific Questions Included in the ANPRM

FMCSA specifically requested that comments provide responses to questions and issues raised in the ANPRM. The questions and the responsive comments are set out below.

Question 1:

- What has been the experience in collecting damage claims filed with Canadian insurance companies for incidents that occur in the United States, particularly as it relates to motorists or other claimants for crashes involving passenger cars driven in the United States but insured by Canadian firms?

Comments (IBC and Canada): Canada and IBC indicated that U.S. citizens and businesses that file claims against the drivers of passenger cars insured by Canadian insurers receive the same quality of claims service and settlement as from U.S. insurance companies. Both stated that they were not aware of any cases where legitimate damage claims involving passenger cars driven in the U.S. and insured by Canadian insurance companies were not paid to U.S. citizens or businesses.

FMCSA Response:

The comments suggest that claims involving Canada-domiciled carriers would be honored by Canadian insurers. Although the commenters discuss current experiences involving passenger cars operating under a substantially lower threshold of financial responsibility than motor carriers are required to maintain, the full cooperation of Canadian insurers in these matters is a good indicator that the insurers would provide comparable levels of cooperation in the event claims are filed by U.S. citizens.

In addition, the on-going practice of fronting arrangements between U.S. insurers and Canadian insurers provides a strong indicator that Canadian insurance companies are fully capable of providing the required levels of financial responsibility for Canada-domiciled motor carriers operating in the U.S. It is unlikely that U.S. insurers would take financial risks of entering into a fronting agreement with Canadian insurers without some assurances that the Canadian insurance companies are willing and able to pay claims.

Question 2:

- How does Canada's consumer protection system ensure that claims filed by U.S. citizens and businesses receive proper consideration?

Comments (IBC): The IBC stated that legal and regulatory insurance systems in Canada require that a Canadian insurance company that issues an automobile insurance policy respond to a claim arising from an incident in Canada or in the U.S. The Canadian provincial and territorial Superintendents of Insurance are responsible under their respective insurance laws for the market conduct of all insurers licensed in their jurisdictions. Market conduct includes the fair and prompt settlement of claims.

FMCSA Response:

FMCSA agrees with IBC that Canada's requirements for automobile insurance provide protection for U.S. citizens in the event of an automobile crash. Based on the information available to FMCSA and included in the docket referenced at the beginning of this notice, there is no indication that Canadian insurance companies would be non-responsive to claims filed by U.S. citizens or businesses against Canadian-domiciled carriers. As indicated above, Canadian insurance companies currently honor their commitments under their fronting agreements with U.S. insurance companies and there is no reason to conclude that these companies would be less likely to honor claims filed directly with them.

FMCSA is engaged in an on-going process with its Canadian counterparts to identify opportunities for establishing reciprocity arrangements, whenever practicable, concerning certain motor carrier requirements. Based upon the information currently available and the comments to the ANPRM, the Agency has preliminarily determined that the Canadian processes for providing consumer protection in the event of a crash between a commercial vehicle and a passenger car are comparable to what is provided in the U.S. We believe U.S. entities would have their claims processed in a timely manner in the event they obtain a final judgment against a Canadian-insured, Canada-domiciled motor carrier in a U.S. court.

Question 3:

- Would it be more difficult to execute a U.S. court judgment against a Canadian motor carrier insured by a Canadian insurance company, as compared to a Canadian motor carrier insured by a U.S. insurance company?

Comments (IBC): The IBC believes it would not be more difficult because Canadian insurers, as a normal business

practice, pay U.S. judgments against their policyholders. In insuring Canadian motor carriers which operate in the U.S., Canadian insurance companies know the insurance product they are selling to these motor carriers includes a promise to pay U.S. judgments. IBC is not aware of any instance where a Canadian-licensed insurer has refused or failed to pay a judgment against its Canadian policy holder to a U.S. citizen, to the full extent of its legal obligation.

FMCSA Response:

FMCSA agrees with IBC that Canadian insurers, as a normal business practice, pay U.S. judgments against their policy holders. The Agency is not aware of any instances in which a U.S. insurance company, operating in a fronting arrangement with a Canadian insurance company, has experienced problems with a Canadian partner fulfilling its financial obligations to satisfy judgments against a Canada-domiciled motor carrier. The extensive experience that U.S. insurers have had in working with Canadian insurers provides significant assurance that in the event of a judgment against a Canada-domiciled carrier, the Canadian insurer will pay, up to the applicable limits on the Form MCS–90 or MCS–90B, any legitimate claims filed by U.S. citizens or businesses.

Question 4:

- Under Canadian law, would Canadian insurance companies be legally bound to make payment to U.S. claimants based on a final judgment issued by a U.S. court?

Comments (IBC): The IBC stated that a Canadian insurance company would be legally bound to make payments to U.S. claimants based on a final judgment issued by a U.S. court. It points out that legislation pertaining to automobile insurance in each of Canada's provinces and territories provides that coverage under automobile insurance policies is provided when the vehicle is in Canada or the United States or while being transported between those countries. It is therefore clear from this wording of this legislation that it is intended that the liability coverage under a Canadian automobile insurance policy will cover crashes in the U.S.

FMCSA Response:

FMCSA believes that fronting arrangements between U.S. and Canadian insurance companies would not exist unless there were sufficient legal processes to ensure that U.S. insurance companies could take action to receive payment from any Canadian company that refused to honor its contractual obligations. While the specific legal processes to ensure that Canadian insurance companies honor their contractual obligations may differ from the legal processes that would be used by a U.S. entity filing a claim directly against a Canadian insurance policy, the track record of Canadian insurance companies does not suggest that U.S. entities would need to resort to legal actions to have their claims honored. Canadian insurance companies have been working cooperatively with U.S. insurance companies for years and there is no reason to believe that the Canadian companies would adopt new practices to avoid paying claims if this rulemaking proceeds.

Question 5:

- If Canadian insurance companies were allowed to write coverage for Canadian motor carriers operating in the United States, would there likely be economic impacts associated with a potential increase in unpaid claims?

Comments (IBC): The only change FMCSA is proposing would be the name of the insurance company that signs the endorsement for Form MCS–90 or Form MCS–90B. There would be no change in the payment of claims because there would be no change in which insurance company has the contractual obligation to pay claims. IBC does not foresee an increase in unpaid claims, and it does not anticipate adverse economic impacts on U.S. entities.

FMCSA Response:

FMCSA does not believe there would be an increased likelihood of unpaid claims if Canada-domiciled carriers operating in the U.S. are allowed to operate under insurance policies issued by Canadian companies. The Forms MCS–90 and MCS–90B require that the insurer pay any final judgment against the motor carrier. Therefore, if there is a court decision against a Canada-domiciled motor carrier concerning a commercial motor vehicle crash, the Canadian insurer must pay the claim. Canadian insurance companies, through fronting arrangements described above, are currently fulfilling the financial obligations associated with satisfying U.S. judgments against Canada-domiciled carriers. There is no reason to believe that they would be financially unable to, or refuse to fulfill their financial obligations if they execute the Forms MCS–90 or MCS–90B as the insurer rather than as an agent of a U.S. insurer.

Question 6:

- Although the petition proposes amending only § 387.11, is there any reason why the rulemaking should not be extended to include insurance policies issued to Canadian passenger carriers and freight forwarders?

Comments (CTA, HAL, AIA, and IBC): Generally, the commenters support including Canadian passenger carriers and freight forwarders in the proposed changes.

FMCSA Response:

FMCSA agrees with commenters that the rulemaking should not be limited to insurance for motor carriers of property. Accordingly, this proposal would permit Canada-domiciled motor carriers of passengers and freight forwarders to operate in the U.S. under insurance policies issued by Canadian insurance companies.

The Proposed Rule

FMCSA proposes amendments to 49 CFR 387.11 to allow Canadian insurance companies, licensed in the province or territory where the motor carrier has its principal place of business, to issue proof of financial responsibility for Canada-domiciled motor carriers by executing the Forms MCS–90 and MCS–90B directly rather than as the agent of a U.S. insurer. FMCSA also proposes amendments to other sections of part 387 to ensure consistency within part 387. These include § 387.35, which applies the requirements of § 387.11 to motor passenger carriers; § 387.315, which imposes the same requirements on motor carriers that must file evidence of insurance with FMCSA; and 49 CFR 387.409, which applies these requirements to freight forwarders.

In order to implement this proposal, FMCSA proposes to revise §§ 387.11 and 387.35 to add a new paragraph (d), that would allow an insurance policy to satisfy the financial responsibility requirements of the subpart if the insurer is:

- Legally authorized to issue a policy of insurance in the Province or Territory of Canada in which a motor carrier has its principal place of business or domicile, and is willing to designate a person upon whom process, issued by or under the authority of any court having jurisdiction of the subject matter, may be served in any proceeding at law brought in any State in which the motor carrier operates.

The Agency would also revise § 387.315 to add a new paragraph (d) that would allow a certificate of insurance to be accepted by FMCSA if issued by an insurance company that is authorized to issue insurance policies:

- In the Province or Territory of Canada in which a motor carrier has its principal place of business or domicile, and will designate in writing upon request by FMCSA, a person upon whom process, issued by or under the authority of a court of competent jurisdiction, may be served in any proceeding at law brought in any State in which the carrier operates.

The Agency would also revise § 387.409 to add a new paragraph (d) that would allow a certificate of insurance to be accepted by FMCSA if issued by an insurance company that is authorized to issue insurance policies:

(d) In the Province or Territory of Canada in which a freight forwarder has its principal place of business or domicile, and will designate in writing upon request by FMCSA, a person upon whom process, issued by or under the authority of a court of competent jurisdiction, may be served in any proceeding at law brought in any State in which the freight forwarder operates.

The conforming amendments to part 387 would enable Canadian insurers to execute the Forms MCS–90 and MCS–90B endorsements, and allow Canadian insurers to file certificates of insurance required under part 387, to protect the public and to ensure that anyone injured or killed by a Canada-domiciled motor carrier is compensated after a claim is filed. In the event that the matter requires court action to determine fault in the crash, the payment would typically be made after a settlement agreement is reached, or a U.S. claimant receives a final judgment issued by a U.S. court against the Canada-domiciled motor carrier. Filing of the FMCSA insurance forms and endorsements by Canadian insurers would subject Canada-domiciled motor carriers to all applicable Federal laws and regulations that require minimum levels of financial responsibility to cover public liability and property damage for the transportation by commercial motor vehicle in the U.S.

Methods and Databases (Technologies) for Ensuring the Validity of Canadian Insurers

Before an insurance company can submit certificates of insurance or other evidence of financial security to the FMCSA, it must first be assigned a filer account number. The account number is also used to bill a service fee to the insurance companies ($10 fee for each filing).

For example, procedures for assigning a Canadian insurance company an account filer number would include the following:

- The Canadian insurance company must submit a request to FMCSA in writing to open a filer account. The letter must include the home office address of the insurance company. FMCSA will also need a billing address if the address is different from the home office address, the name of a contact person within that insurance company, their telephone number, e-mail address and fax number.
- The Canadian insurance company must provide a copy of its license to write insurance policies.
- FMCSA staff will verify with the Canadian Government point of contact whether the Canadian insurance company is licensed or admitted in Canada to write insurance policies for Canadian motor carriers.

After all the above information is received, FMCSA will then assign the Canadian insurance company a filer account number.

If the proposed rule is implemented, Canadian insurers would sign the Forms MCS–90 and MCS–90B, including any other form or documentation required under part 387 to be filed on behalf of motor carriers, thereby satisfying the minimum public liability requirements of FMCSA. Canada's Department of Finance has indicated that Canadian insurers are all monitored for financial solvency by Provincial or Federal insurance regulators, and the regulator can provide FMCSA with a short statement confirming that the Canadian insurer seeking to sign the MCS–90 form, or any other security authorized by part 387, is supervised for financial solvency. A Canadian agency would: (a) Respond to verification requests on demand when an insurer new to FMCSA seeks to sign the MCS–90 form and all other MCS and BMC insurance forms required by part 387; (b) on an annual basis, verify a list of Canadian insurers that have signed the MCS–90 form and all other MCS and BMC forms required by part 387 to ensure that the list is still accurate; and (c) respond to re-verification requests on demand if there were a specific concern (for example, a news article on the financial health of a particular company). Canadian insurers would also assume responsibility for insurance filings on behalf of their clients as a result of this rulemaking.

Approaches Considered

After reviewing the comments received in response to the ANPRM, FMCSA considered two options: (1) Issue a proposed rule to amend part 387 to allow Canadian insurance companies to issue insurance policies for Canada-domiciled carriers and freight forwarders, and (2) maintain the status quo which would entail withdrawal of the ANPRM. The Agency chose the option of publishing an NPRM amending part 387, including changes to §§ 387.11, 387.35, 387.315, and 387.409 to ensure consistency throughout part 387 for the insurance requirements for motor carriers of property and passengers and freight forwarders. Based on the comments received, there was no discernible adverse impact on U.S. entities that would likely result from proceeding with an NPRM, as requested by the Canadian government in its petition.

Costs and Benefits of the Proposed Rule

Regulatory Impact Analyses

In examining the economic impact of this rulemaking, FMCSA considered two options: (1) The Agency's proposed amendments to 49 CFR Part 387 that would permit Canadian insurance companies to issue insurance policies for Canada-domiciled carriers and freight forwarders operating CMVs in the U.S., and (2) the Agency's alternative of maintaining the status quo which would entail withdrawal of the ANPRM. Under the first option, FMCSA decided to include within the scope of the proposal active Canada-domiciled for-hire motor carriers of property and passengers and freight forwarders. It is assumed that a small proportion of Canada-domiciled motor carriers and freight forwarders may elect to continue with the status quo, at least in the short term, and choose not to seek direct insurance representation by a Canadian insurance company for their U.S. operations. Those carriers and freight forwarders are assumed to be a negligible percentage of the total affected entities and are thus not considered in the analysis.

The RIA examines the direct costs of implementing the proposed rule in terms of administrative costs incurred by the FMCSA and in forgone revenue by U.S. insurance companies (of which there are approximately five) currently representing Canadian motor carriers and freight forwarders. In addition, the RIA examines the functional impact of rule compliance under this option from the perspectives of the FMCSA's Enforcement and Compliance Division and the Canadian motor carriers.

Under the second option, the same population of Canadian motor carriers is considered. The RIA examines the direct costs of maintaining the status quo, which consist mainly of compliance costs currently incurred by Canadian motor carriers. The RIA specifically analyzes the comparative cost burden currently being borne by Canadian motor carriers versus that currently being borne by U.S. motor carriers. FMCSA will continue to seek information to refine its estimates of the cost burden. FMCSA specifically requests comments from U.S. insurers on these cost issues. Any additional information will be included in the docket referenced at the beginning of this notice.

FMCSA notes that cost information used in its analyses was obtained from the Agency's data base, Canada Finance, the American Insurance Association, the Property Casualty Insurers Association of America and publicly available information.

The RIA also examines the benefits of this rulemaking which are largely the relief of a disproportional cost and administrative burden and inconvenience currently being borne by Canada-domiciled motor carriers in comparison to their U.S. counterparts. Other benefits include the elimination of trade barriers (i.e., disproportionate cost burden) in accordance with the goals of the North American Free Trade Agreement (NAFTA), and increased cooperation among the U.S. and Canada pursuant to the Security and Prosperity Partnership (SPP) of North America.

This analysis is conducted under the assumption that there are approximately 9,000 [1] active Canada-domiciled motor carriers and freight forwarders conducting CMV operations in the U.S. The FMCSA Licensing and Insurance (L&I) system provides up-to-date information about authorized for-hire motor carriers who must register with FMCSA under 49 U.S.C. §§ 13901 and 13902. The L&I database was the primary database utilized in the analysis because it does not include overlapping carrier data. Under MCMIS, a motor carrier may have multiple carrier classifications and thus may be counted more than once. The Agency did, however, use MCMIS as a source to obtain the number of Canada-domiciled for-hire carriers exempt from registration under 49 U.S.C. 13901 and 13902 since they are not found in the L&I database.

The RIA finds that the proposed rulemaking yields a positive discounted net benefit of $273 million estimated over a 10-year period. This amounts to approximately $30,000 per carrier over that period. These quantified net benefits accrue to the Canada-domiciled for-hire motor carriers and freight forwarders which are impacted by this rulemaking, of which there are approximately 9,000 actively operating CMVs in the U.S. The essential impact of this rulemaking would be the relief of a disproportional cost burden which, in turn, is the expected net benefit of approximately $273 million over a 10-year period.

[1] Licensing and Insurance database, at *http://li-public.fmcsa.dot.gov*, and the Motor Carrier Management Information System (MCMIS) database, at *http://MCMIS.fmcsa.dot.gov*, as of February 20, 2009.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

For purposes of Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), FMCSA has made a preliminary determination that this action is not a significant regulatory action within the meaning of that Executive Order from an economic standpoint or otherwise. While the Agency estimates a positive discounted net benefit of approximately $273 million over a 10-year period, the net benefits are for Canada-domiciled motor carriers. Because the benefits pertain to foreign entities, they are not considered for the purposes of determining whether the rulemaking is significant under Executive Order 12866. Therefore, the Agency has determined this action is not an economically significant regulatory action under section 3(f), Regulatory Planning and Review, because it would not have an annual effect on the United States' economy of $100 million.

FMCSA acknowledges that U.S. insurance companies would experience a reduction in revenues because they would no longer receive payments for the fronting arrangements with Canadian insurance companies. However, the Agency believes that a significant portion of the payments they received from Canadian insurance companies were used to offset the legal and administrative costs the U.S. companies incurred to participate in the fronting arrangement. Although there may be some degree of financial loss to U.S. companies, the amount of the loss is expected to be small, as evidenced by the fact that, except for NAPSLO, the U.S. insurance industry has not expressed opposition to Canada's petition. FMCSA requests comments on this issue.

A full regulatory evaluation has been prepared in support of this rulemaking. The regulatory evaluation is included in the docket referenced at the beginning of this notice.

Regulatory Flexibility Act

FMCSA has considered whether this rulemaking action would have a significant impact under the Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement and Fairness Act (RFA) (Pub. L. 104–121), and has preliminarily determined this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 13132 (Federalism)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (64 FR 43255, August 10, 1999). E.O. 13132 does not require a Federalism assessment under any circumstances. We have determined that this proposed action would not affect the States' ability to discharge traditional State government functions.

International Trade and Investment

The Trade Agreement Act of 1979 (19 U.S.C. 2531–2533) prohibits Federal agencies from establishing standards that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives such as safety are not considered unnecessary obstacles. In developing rules, the Trade Act requires agencies to consider international standards and where appropriate, that they be the basis of U.S. standards. FMCSA has assessed the potential effect of the proposed rule and determined that that the expected economic impact of this rule is minimal and should not affect trade opportunities for U.S. firms doing business in Canada or for Canadian firms doing business in the United States.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Public Law 104–4; 2 U.S.C. 1532) requires each agency to assess the effects of its regulatory actions on State, local, and tribal governments and the private sector. Any agency promulgating a final rule likely to result in a Federal mandate requiring expenditures by a State, local, or tribal government, or by the private sector of $136.1 million or more in any one year, must prepare a written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act. FMCSA has preliminarily determined that this proposal would not have an impact of $136.1 million or more in any one year.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), a Federal agency must obtain approval from the Office of Management and Budget for each collection of information it conducts, sponsors, or requires through regulations. FMCSA has determined this action would not have an impact on OMB Control Number 2126–0008, ''Financial Responsibility for Motor Carriers of Passengers and Motor Carriers of Property,'' an information

collection burden which is currently approved at 4,529 annual burden hours per year through March 31, 2010.

National Environmental Policy Act

The Agency analyzed this proposed rule for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations Implementing NEPA (40 CFR parts 1500 to 1508), and FMCSA's NEPA Implementation Order 5610.1 (issued on March 1, 2004, 69 FR 9680). This action is categorically excluded (CE) from further environmental documentation under Appendix 2.6.v. of Order 5610.1, which contain categorical exclusions for regulations prescribing the minimum levels of financial responsibility required to be maintained by motor carriers operating in interstate, foreign, or intrastate commerce. In addition, FMCSA believes the proposed action would not involve extraordinary circumstances that would affect the quality of the environment. Thus, the proposed action does not require an environmental assessment or an environmental impact statement.

We have also analyzed this proposed rule under the Clean Air Act (CAA), as amended, section 176(c), (42 U.S.C. 7401 *et seq.*) and implementing regulations promulgated by the Environmental Protection Agency. Approval of this proposed action is exempt from the CAA's general conformity requirement since it involves policy development and civil enforcement activities, such as investigations, inspections, examinations, and the training of law enforcement personnel. See 40 CFR 93.153(c)(2). It would not result in any emissions increase or result in emissions that are above the general conformity rule's *de minimis* emission threshold levels, because the action merely relates to insurance coverage across international borders between the U.S. and Canada.

Environmental Justice

FMCSA has considered the environmental effects of this proposed rule in accordance with Executive Order 12898 and DOT Order 5610.2 on addressing Environmental Justice for Minority Populations and Low-Income Populations, published April 15, 1997 (62 FR 18377) and has preliminarily determined that there are no environmental justice issues associated with this proposed rule nor any collective environmental impact resulting from its promulgation. Environmental justice issues would be raised if there were ''disproportionate'' and ''high and adverse impact'' on minority or low-income populations. None of the regulatory alternatives considered in this proposed rulemaking would result in high and adverse environmental impacts.

Executive Order 12630 (Taking of Private Property)

The Agency has analyzed this proposed rule under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. We do not anticipate that this proposed action would effect a taking of private property or otherwise have implications under Executive Order 12630.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this proposed rule.

Executive Order 13211 (Energy Supply, Distribution, or Use)

FMCSA has analyzed this proposed action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has preliminarily determined that it is not a significant energy action within the meaning of section 4(b) of the Executive Order and would not likely have a significant adverse effect on the supply, distribution, or use of energy. Therefore, the Agency would not anticipate that a Statement of Energy Effects would be required.

Executive Order 12988 (Civil Justice Reform)

FMCSA has preliminarily determined that this proposed rulemaking 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.

Privacy Impact Assessment

FMCSA conducted a privacy impact assessment of this proposed rule as required by section 522(a)(5) of the Transportation, Treasury, Independent Agencies, and General Government Appropriations Act, 2005, Public Law 108–447, div. H, 118 Stat. 2809, 3268, (December 8, 2004) [set out as a note to 5 U.S.C. 552a]. The assessment considers any impacts of the proposed rule on the privacy of information in an identifiable form and related matters. FMCSA has preliminarily determined this proposal contains no privacy impacts.

Executive Order 13045 (Protection of Children)

FMCSA has analyzed this proposal under Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks.'' The Agency has preliminarily determined that this proposed rulemaking would not cause any environmental risk to health or safety that may disproportionately affect children.

Executive Order 13175 (Tribal Consultation)

FMCSA has analyzed this action under Executive Order 13175, dated November 6, 2000, and has preliminarily determined that the proposed action would not have substantial direct effects on one or more Indian tribes; would not impose substantial compliance costs on Indian tribal governments; and would not preempt tribal law. Therefore, a tribal summary impact statement would not be required.

List of Subjects in 49 CFR Part 387

Buses, Freight, Freight forwarders, Hazardous materials transportation, Highway safety, Insurance, Intergovernmental relations, Motor carriers, Motor vehicle safety, Moving of household goods, Penalties, Reporting and recordkeeping requirements, Surety bonds.

For the reasons discussed above, FMCSA proposes to amend title 49, Code of Federal Regulations, chapter III, subchapter B, as set forth below:

PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

1. The authority citation for part 387 continues to read as follows:

Authority: 49 U.S.C. 13101, 13301, 13906, 14701, 31138, and 31139; and 49 CFR 1.73.

2. In § 387.11:

a. In paragraph (c), in the last line, remove the period at the end of the sentence, and add in its place ''; or''; and

b. Add paragraph (d) to read as follows:

§ 387.11 State authority and designation of agent.

* * * * *

(d) A Canadian insurance company legally authorized to issue a policy of insurance in the Province or Territory of Canada in which a Canadian motor carrier has its principal place of

business or domicile, and that is willing to designate a person upon whom process, issued by or under the authority of any court having jurisdiction of the subject matter, may be served in any proceeding at law brought in any State in which the motor carrier operates.

3. In § 387.35:

a. In paragraph (c), in the last line, remove the period at the end of the sentence, and add in its place ''; or''; and

b. Add paragraph (d) to read as follows:

§ 387.35 State authority and designation of agent.

* * * * *

(d) A Canadian insurance company legally authorized to issue a policy of insurance in the Province or Territory of Canada in which a Canadian motor carrier has its principal place of business or domicile, and that is willing to designate a person upon whom process, issued by or under the authority of any court having jurisdiction of the subject matter, may be served in any proceeding at law brought in any State in which the motor carrier operates.

4. In § 387.315:

a. In paragraph (c), in the last line, remove the period at the end of the sentence, and add in its place ''; or''; and

b. Add paragraph (d) to read as follows:

§ 387.315 Insurance and surety companies.

* * * * *

(d) In the Province or Territory of Canada in which a Canadian motor carrier has its principal place of business or domicile, and will designate in writing upon request by FMCSA, a person upon whom process, issued by or under the authority of a court of competent jurisdiction, may be served in any proceeding at law brought in any State in which the carrier operates.

5. In § 387.409:

a. In paragraph (c), in the last line, remove the period at the end of the sentence, and add in its place ''; or''; and

b. Add paragraph (d) to read as follows:

§ 387.409 Insurance and surety companies.

* * * * *

(d) In the Province or Territory of Canada in which a Canadian freight forwarder has its principal place of business or domicile, and will designate in writing upon request by FMCSA, a person upon whom process, issued by or under the authority of a court of competent jurisdiction, may be served in any proceeding at law brought in any State in which the freight forwarder operates.

Issued on: June 4, 2009.

Rose A. McMurray,

Acting Deputy Administrator.

[FR Doc. E9–13581 Filed 6–9–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. NHTSA 2009–0085]

Preliminary Theft Data; Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Publication of preliminary theft data; request for comments.

SUMMARY: This document requests comments on data about passenger motor vehicle thefts that occurred in calendar year (CY) 2007 including theft rates for existing passenger motor vehicle lines manufactured in model year (MY) 2007. The preliminary theft data indicate that the vehicle theft rate for CY/MY 2007 vehicles (1.86 thefts per thousand vehicles) decreased by 10.6 percent from the theft rate for CY/MY 2006 vehicles (2.08 thefts per thousand vehicles).

Publication of these data fulfills NHTSA's statutory obligation to periodically obtain accurate and timely theft data, and publish the information for review and comment.

DATES: Comments must be submitted on or before August 10, 2009.

ADDRESSES: You may submit comments identified by Docket No. NHTSA–2009–0085 by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketsInfo.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: Ms. Deborah Mazyck, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590. Ms. Mazyck's telephone number is (202) 366–0846. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: NHTSA administers a program for reducing motor vehicle theft. The central feature of this program is the Federal Motor Vehicle Theft Prevention Standard, 49 CFR part 541. The standard specifies performance requirements for inscribing or affixing vehicle identification numbers (VINs) onto certain major original equipment and replacement parts of high-theft lines of passenger motor vehicles.

The agency is required by 49 U.S.C. 33104(b)(4) to periodically obtain, from the most reliable source, accurate and timely theft data, and publish the data for review and comment. To fulfill the § 33104(b)(4) mandate, this document reports the preliminary theft data for CY 2007 the most recent calendar year for which data are available.

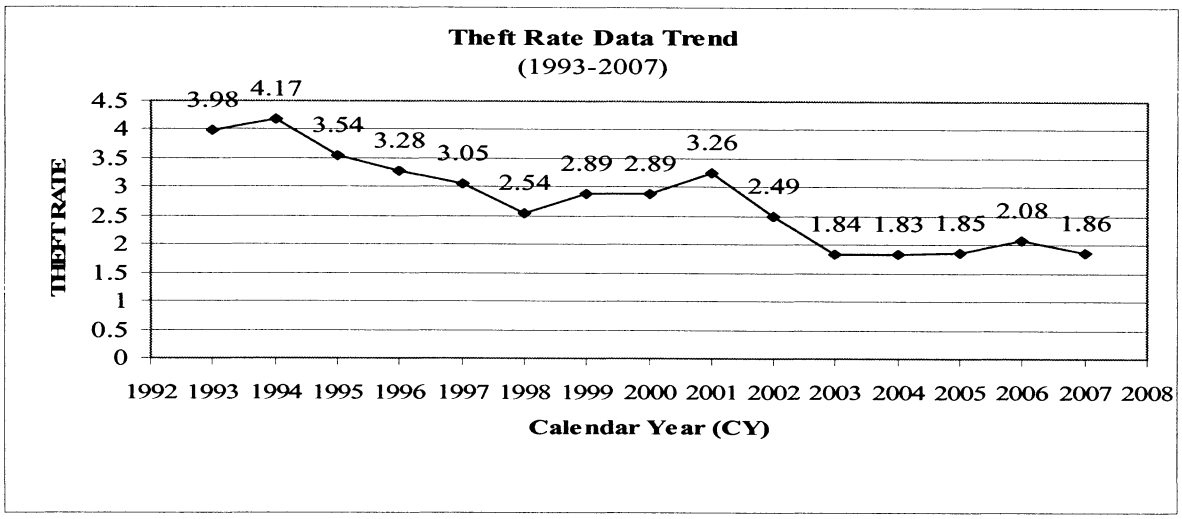
In calculating the 2007 theft rates, NHTSA followed the same procedures it has used since publication of the 1983/1984 theft rate data (50 FR 46669, November 12, 1985). The 2007 theft rate for each vehicle line was calculated by dividing the number of reported thefts of MY 2007 vehicles of that line stolen during calendar year 2007 by the total number of vehicles in that line manufactured for MY 2007, as reported to the Environmental Protection Agency

(EPA). As in all previous reports, NHTSA's data were based on information provided to NHTSA by the National Crime Information Center (NCIC) of the Federal Bureau of Investigation. The NCIC is a government system that receives vehicle theft information from approximately 23,000 criminal justice agencies and other law enforcement authorities throughout the United States. The NCIC data also include reported thefts of self-insured and uninsured vehicles, not all of which are reported to other data sources.

The preliminary 2007 theft data show a decrease in the vehicle theft rate when compared to the theft rate experienced in CY/MY 2006 (For 2006 theft data, see 73 FR 60633, October 14, 2008). The preliminary theft rate for MY 2007 passenger vehicles stolen in calendar year 2007 decreased to 1.86 thefts per thousand vehicles produced, a decrease of 10.6 percent from the rate of 2.08 thefts per thousand vehicles experienced by MY 2006 vehicles in CY 2006. For MY 2007 vehicles, out of a total of 204 vehicle lines, 15 lines had a theft rate higher than 3.5826 per thousand vehicles, the established median theft rate for MYs 1990/1991 (See 59 FR 12400, March 16, 1994). Of the 15 vehicle lines with a theft rate higher than 3.5826, 13 are passenger car lines, two are multipurpose passenger vehicle lines, and none are light-duty truck lines.

The agency believes that the theft rate reduction could be the result of several factors including the increased use of standard antitheft devices (i.e., immobilizers), vehicle parts marking, increased and improved prosecution efforts by law enforcement organizations and increased public awareness measures which may have contributed to the overall reduction in vehicle thefts. The preliminary MY 2007 theft rate reduction is consistent with the general decreasing trend of theft rates over the past 15 years as indicated by Figure 1.

Figure 1: Theft Rate Data Trend (1993-2007)



Theft rate per thousand vehicles produced

In Table I, NHTSA has tentatively ranked each of the MY 2007 vehicle lines in descending order of theft rate. Public comment is sought on the accuracy of the data, including the data for the production volumes of individual vehicle lines.

Comments must not exceed 15 pages in length (49 CFR 553.21). Attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and two copies from which the purportedly confidential information has been deleted should be submitted to Dockets. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for this document will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments on this document will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available for inspection in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

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

65, Number 70; Pages 19477–78) or you may visit *http://DocketsInfo.dot.gov*.

Authority: 49 U.S.C. 33101, 33102 and 33104; delegation of authority at 49 CFR 1.50.

PRELIMINARY REPORT OF THEFT RATES FOR MODEL YEAR 2007 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2007

	Manufacturer	Make/model (line)	Thefts 2007	Production (Mfr's) 2007	2007 Theft rate (per 1,000 vehicles produced)
1	CHRYSLER	DODGE MAGNUM	344	28059	12.2599
2	CHRYSLER	DODGE CHARGER	1148	120636	9.5162
3	GENERAL MOTORS	CHEVROLET MONTE CARLO	174	21689	8.0225
4	GENERAL MOTORS	PONTIAC GRAND PRIX	534	77689	6.8736
5	CHRYSLER	300	715	121529	5.8834
6	MITSUBISHI	LANCER	12	2355	5.0955
7	ROLLS ROYCE	PHANTOM	2	398	5.0251
8	MERCEDES–BENZ	215 (CL–CLASS)	43	9296	4.6256
9	FORD MOTOR CO	TAURUS	510	114616	4.4496
10	CHRYSLER	SEBRING	338	78059	4.3301
11	CHRYSLER	PT CRUISER	443	104546	4.2374
12	SUZUKI	FORENZA	133	34236	3.8848
13	GENERAL MOTORS	PONTIAC G6	629	164306	3.8282
14	GENERAL MOTORS	CHEVROLET MALIBU	487	127718	3.8131
15	MITSUBISHI	GALANT	103	27141	3.7950
16	MAZDA	6	201	56178	3.5779
17	VOLKSWAGEN	AUDI RS4	5	1475	3.3898
18	CHRYSLER	PACIFICA	197	60392	3.2620
19	GENERAL MOTORS	CHEVROLET COBALT	703	215663	3.2597
20	FORD MOTOR CO	MUSTANG	518	159345	3.2508
21	FORD MOTOR CO	LINCOLN TOWN CAR	114	35281	3.2312
22	CHRYSLER	DODGE CALIBER	560	175537	3.1902
23	KIA	OPTIMA	127	40914	3.1041
24	NISSAN	350Z	49	15831	3.0952
25	NISSAN	INFINITI FX35	40	13346	2.9972
26	GENERAL MOTORS	CADILLAC DTS	140	47396	2.9538
27	GENERAL MOTORS	CHEVROLET IMPALA	769	267375	2.8761
28	KIA	SPECTRA	171	64591	2.6474
29	KIA	RIO	83	31947	2.5981
30	MITSUBISHI	ECLIPSE	107	42300	2.5296
31	FORD MOTOR CO	FOCUS	576	229738	2.5072
32	GENERAL MOTORS	CHEVROLET AVEO	166	67104	2.4738
33	HYUNDAI	SONATA	302	123439	2.4466
34	VOLVO	S40	53	21905	2.4195
35	HYUNDAI	ELANTRA	192	80133	2.3960
36	NISSAN	MAXIMA	152	63601	2.3899
37	BMW	M6	8	3400	2.3529
38	MITSUBISHI	ENDEAVOR	30	12805	2.3428
39	NISSAN	SENTRA	225	96584	2.3296
40	FORD MOTOR CO	CROWN VICTORIA	17	7424	2.2899
41	CHRYSLER	JEEP LIBERTY	209	91466	2.2850
42	GENERAL MOTORS	CHEVROLET HHR	223	99681	2.2371
43	MERCEDES–BENZ	220 (S–CLASS)	91	41867	2.1735
44	TOYOTA	COROLLA	740	351414	2.1058
45	NISSAN	INFINITI FX45	1	475	2.1053
46	GENERAL MOTORS	CHEVROLET TRAILBLAZER	257	122918	2.0908
47	GENERAL MOTORS	BUICK LACROSSE/ALLURE	113	54938	2.0569
48	HUMMER	H3	95	46341	2.0500
49	NISSAN	ALTIMA	413	202162	2.0429
50	SUZUKI	RENO	62	30424	2.0379
51	FORD MOTOR CO	MERCURY GRAND MARQUIS	81	39757	2.0374
52	JAGUAR	XK8	6	2965	2.0236
53	KIA	SORENTO	64	31798	2.0127
54	MAZDA	5	33	16424	2.0093
55	GENERAL MOTORS	SATURN ION	185	94117	1.9656
56	VOLKSWAGEN	AUDI A8	10	5106	1.9585
57	HYUNDAI	ACCENT	86	44314	1.9407
58	GENERAL MOTORS	CADILLAC CTS	97	53360	1.8178
59	FORD MOTOR CO	FUSION	266	146464	1.8161
60	NISSAN	PATHFINDER	76	42137	1.8036
61	HYUNDAI	AZERA	40	22218	1.8003
62	CHRYSLER	DODGE CARAVAN/GRAND CARAVAN.	284	164003	1.7317
63	GENERAL MOTORS	CHEVROLET CORVETTE	65	37744	1.7221

PRELIMINARY REPORT OF THEFT RATES FOR MODEL YEAR 2007 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2007—Continued

	Manufacturer	Make/model (line)	Thefts 2007	Production (Mfr's) 2007	2007 Theft rate (per 1,000 vehicles produced)
64	BMW	M5	2	1163	1.7197
65	VOLKSWAGEN	JETTA	146	84922	1.7192
66	GENERAL MOTORS	PONTIAC G6	54	32894	1.6416
67	BMW	6	11	6779	1.6227
68	FORD MOTOR CO	FREESTAR VAN	30	18579	1.6147
69	NISSAN	INFINITI M35/M45	48	30144	1.5924
70	TOYOTA	YARIS	252	159292	1.5820
71	HONDA	ACCORD	664	421206	1.5764
72	CHRYSLER	DODGE NITRO	133	84441	1.5751
73	MAZDA	RX–8	9	5728	1.5712
74	FORD MOTOR CO	MERCURY MILAN	55	35375	1.5548
75	VOLKSWAGEN	AUDI A6/A6 QUATTRO/S6/S6 AVANT.	18	11660	1.5437
76	FORD MOTOR CO	FIVE HUNDRED	94	61270	1.5342
77	TOYOTA	AVALON	121	79137	1.5290
78	NISSAN	MURANO	137	92516	1.4808
79	TOYOTA	HIGHLANDER	148	100956	1.4660
80	TOYOTA	CAMRY/SOLARA	1003	685729	1.4627
81	NISSAN	INFINITI G35	83	57041	1.4551
82	GENERAL MOTORS	CHEVROLET UPLANDER VAN	87	60061	1.4485
83	GENERAL MOTORS	CADILLAC STS	24	16746	1.4332
84	GENERAL MOTORS	CADILLAC XLR	2	1400	1.4286
85	HONDA	S2000	7	4907	1.4265
86	KIA	AMANTI	6	4343	1.3815
87	MERCEDES–BENZ	208 (CLK–CLASS)	19	13825	1.3743
88	NISSAN	FRONTIER PICKUP	87	64010	1.3592
89	GENERAL MOTORS	CHEVROLET COLORADO PICK-UP.	95	70012	1.3569
90	GENERAL MOTORS	GMC CANYON PICKUP	25	18483	1.3526
91	BMW	7	22	16421	1.3397
92	TOYOTA	FJ CRUISER	112	83830	1.3360
93	MAZDA	3	153	114723	1.3336
94	GENERAL MOTORS	PONTIAC G5	107	80962	1.3216
95	SUBARU	IMPREZA	51	39198	1.3011
96	VOLKSWAGEN	AUDI A4/A4 QUATTRO/S4/S4 AVANT.	64	49645	1.2892
97	NISSAN	QUEST VAN	47	36661	1.2820
98	HONDA	ACURA TSX	29	22669	1.2793
99	KIA	SPORTAGE	58	45512	1.2744
100	TOYOTA	TACOMA PICKUP	206	165714	1.2431
101	FORD MOTOR CO	RANGER PICKUP	94	77539	1.2123
102	TOYOTA	4RUNNER	132	109124	1.2096
103	MERCEDES–BENZ	170 (SLK–CLASS)	9	7459	1.2066
104	GENERAL MOTORS	SATURN AURA	77	64851	1.1873
105	GENERAL MOTORS	PONTIAC TORRENT	35	29918	1.1699
106	HONDA	CIVIC	389	332639	1.1694
107	GENERAL MOTORS	CADILLAC FUNERAL COACH/HEARSE.	1	857	1.1669
108	MITSUBISHI	OUTLANDER	37	31873	1.1609
109	VOLKSWAGEN	AUDI A3/A3 QUATTRO	8	6992	1.1442
110	VOLKSWAGEN	GOLF/RABBIT/GTI	46	41314	1.1134
111	GENERAL MOTORS	CHEVROLET EQUINOX	94	87031	1.0801
112	HYUNDAI	TIBURON	15	13951	1.0752
113	VOLKSWAGEN	PASSAT	42	39867	1.0535
114	MERCEDES–BENZ	129 (SL–CLASS)	8	7648	1.0460
115	FORD MOTOR CO	MERCURY MONTEGO	16	15439	1.0363
116	GENERAL MOTORS	GMC ENVOY	38	36989	1.0273
117	HYUNDAI	TUCSON	45	44033	1.0220
118	HONDA	ACURA 3.2 TL	5	4905	1.0194
119	GENERAL MOTORS	BUICK TERRAZA VAN	8	7865	1.0172
120	FORD MOTOR CO	ESCAPE	110	108788	1.0111
121	JAGUAR	X–TYPE	3	3018	0.9940
122	HONDA	ACURA 3.5 RL	49	49471	0.9905
123	JAGUAR	VANDEN PLAS/SUPER V8	1	1010	0.9901
124	SUZUKI	SX4	15	15421	0.9727
125	VOLVO	S80	10	10805	0.9255
126	GENERAL MOTORS	PONTIAC VIBE	30	32499	0.9231

PRELIMINARY REPORT OF THEFT RATES FOR MODEL YEAR 2007 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2007—Continued

	Manufacturer	Make/model (line)	Thefts 2007	Production (Mfr's) 2007	2007 Theft rate (per 1,000 vehicles produced)
127	HONDA	ELEMENT	31	33688	0.9202
128	MAZDA	B SERIES PICKUP	3	3285	0.9132
129	BMW	5	47	51970	0.9044
130	GENERAL MOTORS	SATURN SKY	14	15546	0.9006
131	GENERAL MOTORS	BUICK LUCERNE	76	85922	0.8845
132	TOYOTA	LEXUS LS	31	35167	0.8815
133	HONDA	ACURA RDX	22	25159	0.8744
134	CHRYSLER	JEEP WRANGLER	88	100955	0.8717
135	FORD MOTOR CO	EDGE	105	121525	0.8640
136	KIA	RONDO	22	25524	0.8619
137	TOYOTA	LEXUS RX	82	98473	0.8327
138	VOLKSWAGEN	EOS	11	13406	0.8205
139	TOYOTA	RAV4	145	181051	0.8009
140	FORD MOTOR CO	FREESTYLE	30	38047	0.7885
141	HYUNDAI	SANTA FE	89	113815	0.7820
142	BMW	Z4/M	8	10568	0.7570
143	GENERAL MOTORS	PONTIAC SOLSTICE	16	21310	0.7508
144	SUZUKI	AERIO	4	5544	0.7215
145	PORSCHE	CAYMAN	4	5552	0.7205
146	PORSCHE	911	9	12521	0.7188
147	TOYOTA	LEXUS IS	41	57055	0.7186
148	MERCEDES–BENZ	203 (C–CLASS)	83	116282	0.7138
149	BENTLEY MOTORS	CONTINENTAL	3	4265	0.7034
150	BMW	X3	22	31365	0.7014
151	SUBARU	B9 TRIBECA	8	11538	0.6934
152	BMW	3	97	139966	0.6930
153	MAZDA	MAZDA CX–7	52	75137	0.6921
154	VOLVO	S60	14	20268	0.6907
155	CHRYSLER	JEEP PATRIOT	20	29421	0.6798
156	ASTON MARTIN	VANTAGE	1	1474	0.6784
157	KIA	SEDONA VAN	41	60873	0.6735
158	HONDA	FIT	46	68642	0.6701
159	SUBARU	LEGACY/OUTBACK	10	14963	0.6683
160	TOYOTA	SIENNA VAN	63	96072	0.6558
161	HONDA	ACURA MDX	35	53550	0.6536
162	FORD MOTOR CO	MERCURY MONTEREY VAN	1	1553	0.6439
163	FORD MOTOR CO	LINCOLN MKX	22	34571	0.6364
164	GENERAL MOTORS	BUICK RAINIER	3	4723	0.6352
165	SUBARU	OUTBACK	27	42747	0.6316
166	HONDA	PILOT	77	122033	0.6310
167	FORD MOTOR CO	LINCOLN ZEPHYR	20	32952	0.6069
168	JAGUAR	XKR	3	5030	0.5964
169	TOYOTA	LEXUS GS	17	28638	0.5936
170	VOLVO	V50	2	3373	0.5929
171	MERCEDES–BENZ	210 (E–CLASS)	31	52557	0.5898
172	MAZDA	MX–5 MIATA	7	13353	0.5242
173	VOLVO	XC90	15	30762	0.4876
174	GENERAL MOTORS	BUICK RENDEZVOUS	14	29187	0.4797
175	VOLKSWAGEN	NEW BEETLE	13	27249	0.4771
176	HYUNDAI	VERACRUZ	6	12726	0.4715
177	VOLVO	XC70	6	13197	0.4546
178	HONDA	CR–V	104	229378	0.4534
179	PORSCHE	BOXSTER	2	4427	0.4518
180	TOYOTA	LEXUS ES	54	121577	0.4442
181	SUBARU	FORESTER	19	43985	0.4320
182	BMW	MINI COOPER	15	38511	0.3895
183	JAGUAR	S–TYPE	1	2582	0.3873
184	TOYOTA	PRIUS	53	158715	0.3339
185	SAAB	9–3	7	22401	0.3125
186	HONDA	ODYSSEY VAN	64	208166	0.3074
187	FORD MOTOR CO	MERCURY MARINER	6	20842	0.2879
188	VOLVO	C70	1	5612	0.1782
189	TOYOTA	LEXUS SC	8	80617	0.0992
190	ASTON MARTIN	DB9	0	688	0.0000
191	BENTLEY MOTORS	ARNAGE	0	140	0.0000
192	BENTLEY MOTORS	AZURE	0	184	0.0000
193	FERRARI	141	0	364	0.0000

PRELIMINARY REPORT OF THEFT RATES FOR MODEL YEAR 2007 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2007—Continued

	Manufacturer	Make/model (line)	Thefts 2007	Production (Mfr's) 2007	2007 Theft rate (per 1,000 vehicles produced)
194	FERRARI	612 SCAGLIETTI	0	66	0.0000
195	FERRARI	430	0	1382	0.0000
196	GENERAL MOTORS	CADILLAC LIMOUSINE	0	648	0.0000
197	JAGUAR	XJ8/XJ8L	0	1645	0.0000
198	JAGUAR	XJR	0	221	0.0000
199	LAMBORGHINI	MURCIELAGO	0	164	0.0000
200	LAMBORGHINI	GALLARDO	0	558	0.0000
201	MASERATI	QUATTROPORTE	0	2176	0.0000
202	SAAB	9–5	0	4084	0.0000
203	SPYKER	C8	0	7	0.0000
204	VOLVO	V70	0	3899	0.0000

Issued on: June 4, 2009.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E9–13530 Filed 6–9–09; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 090218204–9956–03]

RIN 0648–AX71

Fisheries of the United States Exclusive Economic Zone Off Alaska; Fisheries of the Arctic Management Area; Bering Sea Subarea

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule that would implement the Fishery Management Plan for Fish Resources of the Arctic Management Area (Arctic FMP) and Amendment 29 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (Crab FMP). The Arctic FMP and Amendment 29 to the Crab FMP, if approved, would establish sustainable management of commercial fishing in the Arctic Management Area and move the northern boundary of the Crab FMP out of the Arctic Management Area south to Bering Strait. This action is necessary to establish a management framework for commercial fishing and to provide consistent management of fish resources in the Arctic Management Area before the potential onset of unregulated commercial fishing in the area. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMPs, and other applicable laws.

DATES: Written comments must be received by July 27, 2009.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified for this action by 0648–AX71 (PR), 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.

Copies of the Arctic FMP, Amendment 29 to the Crab FMP, maps of the action area and essential fish habitat, and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) for this action may be obtained from the Alaska Region at the mailing address above or from the Alaska Region website at *http://www.alaskafisheries.noaa.gov*.

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

SUPPLEMENTARY INFORMATION: The Bering Sea and Aleutian Islands King and Tanner crab fisheries are managed under the Crab FMP. The Arctic Management Area fisheries would be managed under the Arctic FMP. The North Pacific Fishery Management Council (Council) prepared the Crab FMP and has developed and adopted the proposed Arctic FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations implementing the FMPs appear at 50 CFR parts 679 and 680. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The Council submitted the Arctic FMP and Amendment 29 to the Crab FMP for review by the Secretary of Commerce, and a notice of availability of the Arctic FMP and Amendment 29 was published in the **Federal Register** on Mary 26, 2009 (74 FR 24757), with comments on the Arctic FMP and Amendment 29 invited through July 27, 2009. Comments may address the Arctic FMP, Amendment 29, the proposed rule, or all actions, but must be received by July 27, 2009, to be considered in the approval/disapproval decision on the Arctic FMP and Amendment 29. All comments received by that time, whether specifically directed to the Arctic FMP, to Amendment 29, or to the proposed rule, will be considered in the

approval/disapproval decision on the Arctic FMP and Amendment 29.

Background

If approved by NMFS, the Arctic FMP and Amendment 29 to the Crab FMP would provide for sustainable management of commercial fishing in the Arctic Management Area and eliminate management authority over the Arctic Management Area from the Crab FMP. The Arctic FMP would establish a management framework to sustainably manage future commercial fishing in the Arctic Management Area and would initially prohibit commercial fishing until new information regarding Arctic fish resources allows for authorization of a sustainable commercial fishery in the area. Amendment 29 to the Crab FMP would ensure consistent management of all crab species in the Arctic Management Area under the Arctic FMP.

In February 2009, the Council recommended the adoption of the Arctic FMP to implement a management framework that will protect the fish resources of the Arctic Management Area against the potential onset of unregulated commercial fishing by initially prohibiting commercial fishing until sufficient information is available to enable a sustainable commercial fishery to proceed, consistent with the Magnuson-Stevens Act . Global climate change is reducing the extent of sea ice in the Arctic Ocean, providing greater access to Arctic marine resources and increasing human activity in this sensitive marine environment of the U.S. Exclusive Economic Zone (EEZ). Under the Magnuson-Stevens Act (section 306(a)(3)), the State of Alaska may regulate commercial fishing in the adjacent EEZ waters if no FMP is in place. No FMP is yet in place for the Arctic Management Area, and the State does not allow state licensed vessels to commercially fish in the Arctic Management Area. However, the state authority for management in the EEZ pertains only to vessels registered under the law of the State of Alaska. Thus, absent an FMP, it is possible that unregistered vessels could commercially fish in the Arctic Management Area without any limitation or regulatory oversight. The Council chose to prevent this from occurring in the future; the proposed Arctic FMP would eliminate the potential for unregulated commercial fishing in the Arctic Management Area. This action would prevent potential adverse effects on the Arctic marine environment from unregulated commercial fishing. The Arctic FMP would be a precautionary, ecosystem-based approach to fisheries management in the Arctic Management Area.

The proposed Arctic FMP contains all required provisions and appropriate discretionary provisions for an FMP contained in sections 303(a), 303(b), and 313 of the Magnuson-Stevens Act. The conservation and management provisions in the Arctic FMP were developed in consideration of the National Standard guidelines. The following provides a summary of the main provisions of the proposed Arctic FMP that provide the authority for conservation and management of fish resources and for the provisions in this proposed rule.

The Arctic FMP would apply to commercial harvests of most fish resources in the waters of the Arctic Management Area (Figure 24 in this proposed rule). The geographic extent of the Arctic Management Area would be all marine waters in the U.S. EEZ of the Chukchi and Beaufort Seas from 3 nautical miles off the coast of Alaska or its baseline to 200 nautical miles offshore, north of Bering Strait (from Cape Prince of Wales to Cape Dezhneva) and westward to the 1990 U.S./Russia maritime boundary line and eastward to the U.S./Canada maritime boundary.

This proposed rule will not affect non-commercial fishing in the Arctic Management Area or commercial harvest of certain species that are managed pursuant to other legal authorities. This action would have no effect on subsistence harvest of marine resources in the Arctic Management Area. It also would have no effect on the commercial harvest of Pacific salmon and Pacific halibut. The commercial harvest of Pacific salmon in the Arctic Management Area is managed under the FMP for Salmon Fisheries in the EEZ off the Coast of Alaska (Salmon FMP), which prohibits commercial salmon fishing in the Arctic Management Area. Pacific halibut commercial fishing is managed by the International Pacific Halibut Commission (IPHC), which does not allow harvest of Pacific halibut in the Arctic Management Area.

The proposed Arctic FMP would establish two categories of species: target species and ecosystem component species. Target species are those that are most likely to be targeted in a foreseeable commercial fishery based on potential markets and available biomass in the Arctic Management Area. Arctic cod (Boreogadus saida), saffron cod (Eleginus gracilis), and snow crab (Chionoecetes opilio) are target species in the proposed Arctic FMP. The remainder of fish occurring in the Arctic Management Area are classified as ecosystem component species. As used in the FMP, fish are defined by section 3 of the Magnuson-Stevens Act as finfish, mollusks, crustaceans, and all other forms of marine plant and animal life other than marine mammals and birds.

The proposed Arctic FMP would provide the maximum sustainable yield (MSY) and optimum yield (OY) for commercial fishing for each target species. MSY is specified for each target species using the MSY control rule described in the proposed Arctic FMP. The OY for each target species is determined by reductions from MSY based on uncertainty, economic considerations, and ecosystem considerations. The MSYs for Arctic cod, saffron cod, and snow crab would be reduced by 100 percent based on economic costs of fishing. Uncertainty would reduce the MSY for each target species by an amount ranging from 36 to 61 percent. MSYs for Arctic cod and saffron cod also would be reduced based on ecosystem considerations. Arctic cod is a keystone species in the Arctic marine environment, with many higher trophic level predators (i.e., certain marine mammals and seabirds) dependent on Arctic cod as a principal prey species. The harvest of saffron cod likely would result in very high levels of Arctic cod bycatch (two tons of Arctic cod for each ton of saffron cod); therefore, the harvest of saffron cod likely would result in impacts on Arctic cod and on those species that depend on Arctic cod as prey. Because of the importance of Arctic cod to the Arctic food web, the lack of knowledge of the Arctic cod biomass needed to support commercial fishing and Arctic predators, and the potential high levels of bycatch of Arctic cod in a saffron cod fishery, the MSYs for Arctic cod and saffron cod would be reduced 100 percent based on ecosystem concerns.

Based on these reductions of the MSYs for the target species, the OY for commercial fishing in the Arctic Management Area for each target species is proposed to be zero. With an OY of zero for each target species, no quantity of target species is available for commercial harvest. The proposed Arctic FMP specifies the OY for each target species as the lowest amount of catch sufficient to allow for bycatch of Arctic cod, saffron cod, and snow crab in subsistence fisheries for other species.

Because the OYs for commercial fisheries for each target species are zero and because of the lack of information to manage sustainable fisheries for ecosystem component species, the Arctic FMP would prohibit commercial fishing on target and ecosystem

component species, except Pacific salmon and Pacific halibut for which other authorities prohibit commercial fishing, as explained above. Prohibiting commercial harvest of ecosystem component species would prevent adverse effects on the Arctic marine ecosystem, including the target species, that may result from unregulated commercial fishing on any ecosystem component species. This prohibition is a precautionary approach to fisheries management because little information is available to NMFS to determine either the ability of these species to support commercial fishing or the potential impacts from such fishing on the Arctic marine environment, including the target species.

Consistent with the Council's stated management policy and objectives, the proposed Arctic FMP includes non-target species in the ecosystem component category to ensure that the Arctic marine ecosystem is adequately protected and out of concern that unregulated commercial fishing for these species could detrimentally affect the target fishery. The inclusion of all non-target species in the Arctic Management Area in the ecosystem component category is consistent with the Magnuson-Stevens Act which: recognizes the increased importance of habitat conservation; calls for development of conservation and management measures to avoid irreversible or long-term adverse effects to the marine environment and to minimize bycatch to the extent practicable; permits inclusion in an FMP of management measures to conserve non-target species and habitats, considering the variety of ecological factors affecting fishery populations; and requires consideration of ecological factors and protection of the marine ecosystem in setting OY for stocks in the fishery. The National Standard 1 guidelines (50 CFR 600.310(d)(5)(i)) further encourage an ecosystem-based approach to management of fisheries, providing the Council and NMFS with broad discretion to determine whether stocks should be classified and included in an FMP as ecosystem component species for a series of reasons, including specifying OY and developing conservation and management measures for the associated fishery to address other ecosystem issues and to protect their associated role in the ecosystem with which the fishery interacts. Due to the lack of commercial fishing in the Arctic, these species are non-target species and are not generally retained for sale or for personal use. Moreover, these species are not likely to be overfished or be subject to overfishing in the absence of commercial fishing or conservation and management measures.

The Council's decision to create an ecosystem component category that includes all fish species in the Arctic Management Area, except the potential target species, and to prohibit commercial fishing for such species other than Pacific salmon and Pacific halibut, is based on ecosystem considerations and is intended to conserve target and non-target species and their habitats. The stated management objectives of the Arctic FMP provide a benchmark for NMFS' evaluation of the Council's proposed management measures. These objectives include a ''Biological Conservation Objective'' that seeks to ensure the long-term viability of fish populations by, among other things, preventing unregulated fishing and ''incorporating ecosystem-based considerations into fishery management decisions, as appropriate . . . .'' The prohibition on commercial fishing for ecosystem component species reflects such appropriate ecosystem-based considerations and does not constitute required conservation and management for purposes of including such species in the fishery.

The OY for each of the three potential target fisheries is de minimis and sufficient only to support subsistence fishing. NMFS shares the Council's concern that if the target species are caught as bycatch during unregulated commercial fishing for other species, removal of those target species could surpass OY. Similarly, NMFS shares the Council's concern that unregulated commercial fishing for ecosystem component species may affect the Arctic marine ecosystem in ways that are detrimental to the potential target fishery as well as non-target species and their habitats. For example, large-scale removal of biomass of important prey species for one or more target species, or removal of species that are otherwise ecologically connected to one or more target species, could adversely affect the target fishery populations. At present, the scientific understanding of the interdependence and trophic relationships between particular species in the Arctic marine ecosystem is rudimentary, relative to other marine ecosystems, as is the knowledge of particular habitats in the region that may be important to the continued health of the ecosystem and its various species. In particular, NMFS is concerned about the potential adverse effects of unregulated commercial fishing for non-target species on Arctic cod, which is found throughout the Arctic Management Area and is a keystone species that provides a crucial trophic link between the sea ice food web and marine mammals and birds.

These limitations on NMFS' understanding of ecological processes in the Arctic are compounded by the ongoing climatic changes in the region and physical changes in the marine environment. Global climate change is anticipated to continue altering the Arctic environment in fundamental ways, and before long may lead to a seasonally ice-free Arctic Ocean. As a result, there is great uncertainty regarding the ways in which current ecological relationships may change, irrespective of fishing pressure. Consistent with the Council's ecosystem-based management policy, NMFS believes it is appropriate to adopt management measures that will maximize the resilience of the target species and afford the greatest protection to the integrity of the Arctic ecosystem in the face of a changing climate. The prohibition on commercial fishing for ecosystem component species represents such a management measure.

Although there is uncertainty as to whether commercial fishing for ecosystem component species would diminish target fishery populations to an unacceptable degree, either due to bycatch of target species or impacts on the ecosystem, NMFS has determined that the Council appropriately adopted a precautionary approach that proposes prohibiting commercial fishing for any species of Arctic fish in the Arctic Management Area. Given the limited knowledge of ecological relationships and considerable uncertainty regarding the future, this will ensure that fishing does not interfere with important ecological relationships in the Arctic marine environment and thereby avoids the risk of harm to the potential target species, the broader ecosystem, and the habitat of fish species that may otherwise result from unregulated commercial fishing for ecosystem component species. NMFS will periodically review the status of ecosystem component species based on the best available scientific information to determine whether or not such species should be classified for active conservation and management as species or stocks in the fishery.

The proposed Arctic FMP prescribes the process the Council will follow and the criteria it will evaluate before authorizing a future commercial fishery. Consideration of a future commercial fishery would include the Council's

review of an analysis of the biological information on the potential target species and potential impacts from commercial fishing on the Arctic marine environment and on communities. An Arctic FMP amendment would be required to authorize a commercial fishery in the Arctic Management Area and to implement the specific conservation and management measures for the fishery.

If a commercial fishery is authorized in the Arctic Management Area, the proposed Arctic FMP would provide the general conservation and management measures to ensure sustainable fishing and to prevent overfishing of any target species. Determination criteria for overfishing levels (OFL) and acceptable biological catch levels (ABC) would be based on the type and quantity of information available.

The OFLs and ABCs would guide the Council and NMFS in setting harvest specifications for fishery management in the Arctic Management Area. The process for specifying OFLs, ABCs, and total allowable catch amounts (TACs) would include the development of a Stock Assessment and Fishery Evaluation report for the Council's consideration in recommending OFLs, ABCs, and TACs to the Secretary. At the time a commercial fishery is authorized by the amended Arctic FMP, the harvest specification regulations under § 679.20 would be revised to include the Arctic Management Area. This would ensure the latest method of determining harvest specifications would be used at the time the Arctic Management Area commercial fishery is authorized.

The National Standard 1 guidelines (74 FR 3178, January 16, 2009) require accountability measures and mechanisms to prevent overfishing. Because the proposed Arctic FMP initially prohibits commercial fishing in the Arctic Management Area, the prohibition on commercial fishing that would be implemented by this proposed rule would satisfy this requirement. If a commercial fishery is authorized in the future, the FMP would be amended to include specific accountability measures and mechanisms to prevent overfishing.

The process and criteria for issuing exempted fishing permits (EFPs) that would be implemented by this proposed rule will be found at 50 CFR part 679. EFPs provide exemptions to fishing regulations to allow commercial fishing in a manner not otherwise authorized. EFPs are granted for the purpose of allowing studies that provide information useful to the management of fisheries and are effective for a limited time. More information regarding EFPs is available from the NMFS Alaska Region website at *http://www.alaskafisheries.noaa.gov/ram/efp.htm*.

Essential fish habitat (EFH) is described for each target species in the proposed Arctic FMP. Once EFH is established, NMFS must be consulted on any federal action that may adversely impact EFH (Magnuson-Stevens Act section 305(b)(2)). The proposed EFH description for Arctic cod includes waters of the entire Arctic Management Area. Proposed EFH locations for snow crab and saffron cod are primarily in the Chukchi Sea. A description of non-fishing impacts on EFH is appended to the proposed Arctic FMP. This appendix describes potential adverse impacts of a variety of human activities that may occur in the Arctic Management Area and identifies possible mitigation measures to reduce such impacts.

To assist in the ecosystem approach to fisheries management, the proposed Arctic FMP includes habitat descriptions for several ecosystem component species. The species selected for habitat descriptions represent forage species and potential future target species based on Bering Sea commercial fishing.

The proposed Arctic FMP includes the latest information on the Arctic ecosystem and Chukchi and Beaufort Seas survey data. This information provides the basis for the MSY and OY specifications and informed the Council's decision to recommend adoption of the Arctic FMP.

Amendment 29 to the Crab FMP would move the northern boundary of the Crab FMP management area to Bering Strait. The Crab FMP northern boundary is currently located at Point Hope, north of Bering Strait and within the Arctic Management Area (Figure 24 in this proposed rule). This change in the Crab FMP northern boundary would allow the management of all crab species in the Arctic Management Area to be under the Arctic FMP. This change in the geographic scope of management authority under the Crab FMP would ensure consistent management authority and application of the conservation and management measures in the Arctic FMP to crab throughout the Arctic Management Area. The Crab FMP defers crab management to the State of Alaska with federal oversight. The management of crab stocks in the Bering Sea is based on survey and catch information, which is not available in the Arctic Management Area. The Arctic FMP's conservation and management measures were designed to address the unique Arctic marine environment and the paucity of information available for sustainable crab fisheries management.

Proposed Regulatory Amendments

The Council recommended, and the Secretary proposes, the following regulatory changes and additions to 50 CFR part 679 to implement the Arctic FMP.

1. Section 679.1 would be revised to add the title of the Arctic FMP and to describe the scope of the FMP as governing commercial fishing for Arctic fish in the Arctic Management Area by vessels of the United States. This addition would be necessary to expand the scope of the 50 CFR part 679 regulations to include implementation of the Arctic FMP.

2. Section 679.2 would be amended to add and revise definitions for the Arctic FMP and for Amendment 29 to the Crab FMP. A definition for ''Arctic fish'' would be added to distinguish in regulations the species under the authority of the Arctic FMP. The Arctic fish definition would include all fish as defined by the Magnuson-Stevens Act, excluding Pacific halibut and Pacific salmon. The Magnuson-Stevens Act defines ''fish'' as finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds. Commercial fishing for Pacific halibut and Pacific salmon in the EEZ off Alaska is authorized by the IPHC and under the Salmon FMP, respectively, and would not be managed under the Arctic FMP. Creating this definition would allow for the initial prohibition of commercial fishing for Arctic fish, as would be prescribed by the Arctic FMP.

A definition for the ''Arctic Management Area'' as described by the Arctic FMP would be added. The area would be described by text and would refer to Figure 24 in part 679. This definition is necessary to define the area within which the proposed Arctic FMP will manage commercial fishing.

The definition for the ''Bering Sea and Aleutian Islands Area'' for the purposes of king and Tanner crab management would be revised. This revision would implement Amendment 29 to the Crab FMP by moving the northern boundary of the Crab FMP fishery management area from Point Hope southward to Bering Strait. This revision is necessary to eliminate management authority in the Arctic Management Area from the Crab FMP so that all crab that occur within the Arctic Management Area would be managed under the Arctic FMP.

The definition of ''commercial fishing'' would be revised to include the catch of Arctic fish which is or is

intended to be sold or bartered, excluding subsistence fishing. This revision is necessary to manage, and initially prohibit, commercial fishing for Arctic fish and to ensure subsistence fishing is not affected by such management of commercial fishing.

The definition of ''management area'' would be revised to add the Arctic Management Area. This revision is necessary to list the Arctic Management Area with the Bering Sea and Aleutian Islands Management Area and the Gulf of Alaska. This revision would allow for fishery management within the scope of the regulations at § 679.1.

The definition of ''optimum yield'' would be revised by adding Arctic fish and referencing § 679.20(a)(1) where the optimum yield for target species identified in the Arctic FMP would be specified. This revision is necessary to establish the optimum yield for the target species and to support the prohibition on commercial fishing of target species.

The definition of ''subsistence fishing'' would be added to describe subsistence harvests in the Arctic Management Area of Arctic fish and Pacific salmon. Subsistence in terms of Pacific halibut is defined under regulations at 50 CFR 300.61 and would not be changed by this proposed definition. Subsistence fishing in the Arctic would be the harvest of Arctic fish and Pacific salmon for non-commercial, long-term, customary and traditional use necessary to maintain the life of the taker or those who depend upon the taker to provide them with such subsistence. This definition is consistent with the definition of subsistence in the Marine Mammal Protection Act. Adding this definition to 50 CFR part 679 would allow the subsistence harvest practices to be differentiated from commercial harvest practices, which would be prohibited. This addition is necessary to ensure the continued subsistence harvest of Arctic fish and Pacific salmon in the Arctic Management Area while differentiating such activity from commercial fishing. NMFS is requesting comments specific to this definition and any suggestions on how subsistence fishing may be better defined.

3. The introductory paragraph to § 679.6 addressing EFPs would be revised to add Arctic fish. EFPs currently are available for only groundfish exempted fishing. Because the Arctic FMP includes species other than groundfish and the Council intended that EFPs may be available for any type of fish resource occurring in the Arctic Management Area, the application of EFPs would be revised to include Arctic fish.

4. In § 679.7, a prohibition would be added to prevent commercial fishing for Arctic fish in the Arctic Management Area. A prohibition on commercial fishing for Arctic fish would be necessary to implement the Arctic FMP prohibition on commercial fishing on either target or ecosystem component species. NMFS currently works with the U.S. Coast Guard in surveillance of vessel activities in the Arctic Management Area. U.S. fishing vessels transiting Canadian waters are required to stow gear in a manner that makes the gear not readily available for fishing and easily visible during surveillance flights. NMFS may, in the future, consider this or other procedures that could facilitate enforcement of the commercial fishing prohibition in the Arctic Management Area and is interested in any public comment on possible future enforcement procedures.

5. In § 679.20(a), the OY for commercial fishing for Arctic Management Area target species would be added. The OY for commercial fishing would be set at zero mt for each of the target species, as provided in the Arctic FMP. This revision is necessary to implement the OYs specified in the Arctic FMP.

6. Figure 24 to part 679 would be added to show the Arctic Management Area as established by the Arctic FMP. This addition is necessary to clarify in the regulations the location of the Arctic Management Area and to differentiate the boundary of the Arctic Management Area from the Bering Sea and Aleutian Islands Management Area boundary shown in Figure 1 to part 679. The Chukchi Sea statistical area 400 would remain with the Bering Sea and Aleutian Islands statistical and reporting areas in Figure 1 to part 679 until the Arctic FMP is amended to authorize a commercial fishery in the Arctic Management Area. The Council recommended not establishing subareas for fisheries management in the Arctic Management Area at this time due to the lack of information to inform the boundaries of such subareas.

Classification

Pursuant to sections 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Acting Assistant Administrator has determined that this proposed rule is consistent with and necessary to implement the Arctic FMP, and Amendment 29 to the Crab FMP, and in accordance with 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 the purposes of Executive Order 12866.

NMFS prepared an initial regulatory flexibility analysis (IRFA), as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. Descriptions of the action, the reasons it is under consideration, and its objectives and legal basis, are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

This action would regulate commercial fishing for fish resources and not regulate subsistence, recreational, or personal use fishing in the action area. There is only one unverified, small, and poorly documented commercial fishery for red king crab in a portion of the Arctic Management Area in Kotzebue Sound.

A survey of the Alaska Department of Fish and Game fish ticket database back to 1985 identified a single fish ticket for this fishery. The ticket was for a very small amount of red king crab delivered in the summer of 2005. However, to the extent that fishing has occurred, landings in this fishery may not always have been reported on official state landings records (i.e., not legally recorded). The waters in which this fishery may have occurred were set apart from other waters for reporting purposes in 2005. From 2005 to 2007, three or four persons acquired the State of Alaska K09X permits that are required to fish commercially in this area. With the exception of the single anomalous fish ticket cited above, there have been no commercial fish tickets from the action area during 2005 through 2007. Thus, the number of permit holders, rather than the number of operations with fish tickets, is assumed to best represent the potential number of entities directly regulated by this action. All of these operations are believed to be small entities with annual gross revenues under $4 million.

The Council considered four alternatives and three options for this proposed action. The options have no effect on directly regulated small entities as the options are limited to different scientific and administrative processes for developing management measures for fisheries. Each option resulted in the same effect, because each would implement a management framework that initially prohibits

commercial fishing in the Arctic Management Area.

Alternative 1 is the status quo which would allow for the potential for unregulated commercial fishing to occur in the Arctic Management Area. Alternative 1 does not meet the objectives of the action to sustainably manage commercial fisheries in the Arctic Management Area.

Alternatives 3 and 4 would provide different mechanisms to provide for sustainable management of fish resources in the Arctic Management Area, but each alternative would exclude the small red king crab fishery in Kotzebue Sound from Arctic FMP management. Alternative 3 would have exempted the red king crab fishery from the Arctic FMP and from the Crab FMP while Alternative 4 would have provided for the continued management of the small red king crab fishery under the Crab FMP. Neither Alternative 3 nor Alternative 4 were chosen based on the lack of evidence of a currently existing small red king crab fishery in the Kotzebue Sound area and on the lack of information to ensure sustainable management of the potential red king crab stock in the Kotzebue Sound while not affecting subsistence use of the resource. Alternatives 1, 3, and 4 have no known impacts on directly regulated small entities.

Alternative 2 was chosen as the preferred alternative as it fully meets the objective to provide sustainable management for all fish resources of the Arctic Management Area. Alternative 2, which implements a management framework that initially prohibits all commercial fishing in the Arctic Management Area, initially would prohibit future crab fishing that may otherwise take place in the small and poorly documented fishery in Kotzebue Sound, until stocks have been assessed and harvest specifications (e.g., OFL, ABC, TAC) are established. At that time, an amendment to the Arctic FMP could be proposed to authorize commercial fishing. Based on permit issuance, it is possible that two to four small entities may fish in the small red king crab fishery in Kotzebue Sound in a year. Permit issuance does not necessarily indicate fishing activity, and only one fish ticket exists from this fishery since 1985. Income from this fishery is likely to be small.

This regulation does not impose new recordkeeping and reporting requirements on the regulated small entities.

The IRFA did not reveal any federal rules that duplicate, overlap, or conflict with the proposed action.

Executive Order (E.O.) 13175 of November 6, 2000 (25 U.S.C. 450 note), the Executive Memorandum of April 29, 1994 (25 U.S.C. 450 note), and the American Indian and Alaska Native Policy of the U.S. Department of Commerce (March 30, 1995) outline the responsibilities of NMFS in matters affecting tribal interests. Section 161 of Public Law (P.L.) 108–199 (188 Stat. 452), as amended by section 518 of P.L. 109–447 (118 Stat. 3267), extends the consultation requirements of E.O. 13175 to Alaska Native corporations. NMFS will contact tribal governments and Alaska Native corporations which may be affected by the proposed action, provide them with a copy of this proposed rule, and offer them an opportunity to consult.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: June 5, 2009.

Samuel D. Rauch III,

Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

For reasons set out in the preamble, NMFS proposes to amend 50 CFR part 679 as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

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

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

2. In § 679.1, add paragraph (l) to read as follows:

§ 679.1 Purpose and scope.

* * * * *

(l) *Fishery Management Plan for Fish Resources of the Arctic Management Area.* Regulations in this part govern commercial fishing for Arctic fish in the Arctic Management Area by vessels of the United States (see this subpart and subpart B of this part).

3. In § 679.2, add in alphabetical order definitions for ≥Arctic fish'', ''Arctic Management Area'', and ''Subsistence fishing'' and revise the definitions for the ''Bering Sea and Aleutian Islands Area'', ''Management area'', and paragraph (2) of the definition of ''Optimum yield'' and paragraph (3) to the definition of ''Commercial fishing'' to read as follows:

§ 679.2 Definitions.

* * * * *

Arctic fish means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals, birds, Pacific salmon, and Pacific halibut.

Arctic Management Area, for purposes of regulations governing the Arctic Management Area fisheries, means all marine waters in the U.S. EEZ of the Chukchi and Beaufort Seas from 3 nautical miles off the coast of Alaska or its baseline to 200 nautical miles offshore, north of Bering Strait (from Cape Prince of Wales to Cape Dezhneva) and westward to the 1990 U.S./Russia maritime boundary line and eastward to the U.S./Canada maritime boundary (see Figure 24 to this part).

* * * * *

Bering Sea and Aleutian Islands Area, for purposes of regulations governing the commercial king and Tanner crab fisheries in part 680 of this Chapter, means those waters of the EEZ off the west coast of Alaska lying south of the Chukchi Sea statistical area as described in the coordinates listed for Figure 1 to this part, and extending south of the Aleutian Islands for 200 nm west of Scotch Cap Light (164° 44′36″ W. long).

* * * * *

Commercial fishing means:

* * * * *

(3) For purposes of Arctic fish, the resulting catch of fish in the Arctic Management Area which either is, or is intended to be, sold or bartered but does not include subsistence fishing for Arctic fish, as defined in this subsection.

* * * * *

Management area means any district, regulatory area, subpart, part, or the entire GOA, BSAI, or Arctic Management Area.

* * * * *

Optimum yield means:

* * * * *

(2) *With respect to the groundfish and Arctic fisheries*, see § 679.20(a)(1).

* * * * *

Subsistence fishing for purposes of fishing in the Arctic Management Area means the harvest of Arctic fish and Pacific salmon for non-commercial, long-term, customary and traditional use necessary to maintain the life of the taker or those who depend upon the taker to provide them with such subsistence.

* * * * *

4. In § 679.6, revise paragraph (a) to read as follows:

§ 679.6 Exempted fisheries.

(a) *General.* For limited experimental purposes, the Regional Administrator may authorize, after consulting with the Council, fishing for groundfish or fishing for Arctic fish in the Arctic

Management Area in a manner that would otherwise be prohibited. No exempted fishing may be conducted unless authorized by an exempted fishing permit issued by the Regional Administrator to the participating vessel owner in accordance with the criteria and procedures specified in this section. Exempted fishing permits will be issued without charge and will expire at the end of a calendar year unless otherwise provided for under paragraph (e) of this section.

* * * * *

5. In § 679.7, add paragraph (p) to read as follows:

§ 679.7 Prohibitions.

* * * * *

(p) *Arctic Management Area.* Conduct commercial fishing for any Arctic fish in the Arctic Management Area.

6. In § 679.20, revise the introductory paragraph and paragraph (a)(1) to read as follows:

§ 679.20 General limitations.

This section applies to vessels engaged in directed fishing for groundfish in the GOA and/or the BSAI and to vessels engaged in commercial fishing for Arctic fish in the Arctic Management Area.

(a) * * *

(1) *OY* (i) *BSAI and GOA.* The OY for BSAI and GOA target species and the ''other species'' category is a range or specific amount that can be harvested consistently with this part, plus the amounts of ''nonspecified species'' taken incidentally to the harvest of target species and the ''other species'' category. The species categories are defined in Table 1 of the specifications as provided in paragraph (c) of this section.

(A) The OY for groundfish in the BSAI regulated by this section and by part 600 of this chapter is 1.4 million to 2.0 million mt.

(B) The OY for groundfish in the GOA regulated by this section and by part 600 of this chapter is 116,000 to 800,000 mt.

(ii) *Arctic Management Area.* The OY for each target fish species identified in the Fishery Management Plan for Fish Resources of the Arctic Management Area regulated by this section and by part 600 of this chapter is 0 mt.

* * * * *

7. Figure 24 is added to part 679 to read as follows:

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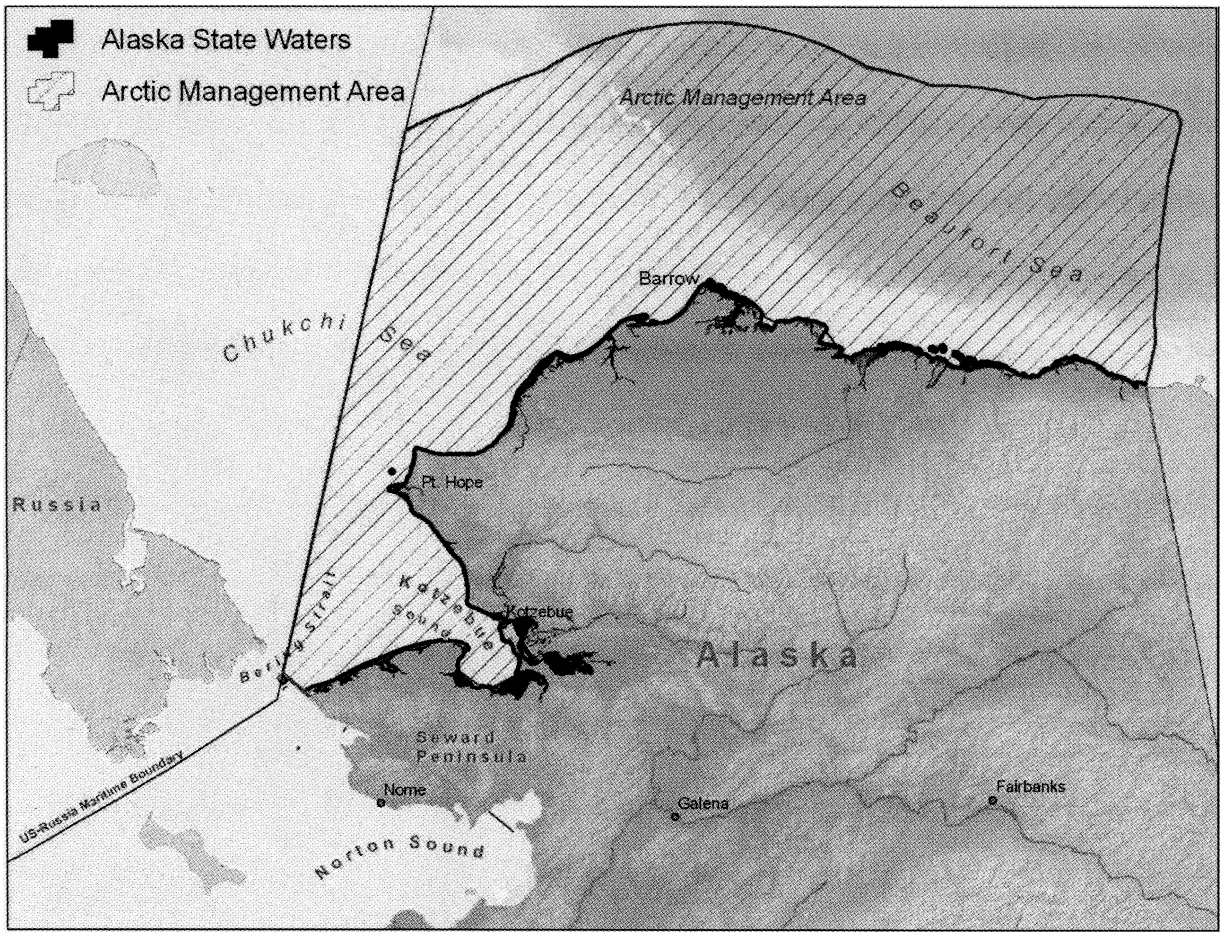
Figure 24 to Part 679– Arctic Management Area



[FR Doc. E9–13628 Filed 6–9–09; 8:45 am]

BILLING CODE 3510–22–C

Notices

Federal Register
Vol. 74, No. 110
Wednesday, June 10, 2009

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

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection: California Campfire Permit

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the new information collection, California Campfire Permit.

DATES: Comments must be received in writing on or before August 10, 2009 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Jason Kirchner, Public Affairs Staff, U.S. Forest Service Pacific Southwest Region, 1323 Club Drive, Vallejo, CA 94592.

Comments also may be submitted via facsimile to 707–562–9053 or by e-mail to: *jdkirchner@fs.fed.us.*

The public may inspect comments received at the Forest Service's Pacific Southwest Regional Office, 1323 Club Drive, Vallejo, CA during normal business days between the hours of 8:30 a.m. and 4 p.m. Visitors are encouraged to call ahead to 707–562–9014 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Jason Kirchner, Pacific Southwest Region, 707–562–9014. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: California Campfire Permit.

OMB Number: 0596–New.

Type of Request: New.

Abstract: The issuance of the California Campfire Permit by Forest Service and Bureau of Land Management offices in California is a requirement resulting from a formal agreement with the State of California. The agreement outlines fire management responsibilities for each party and results in enhanced cooperation for fire suppression and fire prevention activities across agency boundaries throughout the State. California State Law requires individuals to possess a permit to light, maintain, or use a campfire on the property of another person and also requires individuals to obtain a campfire permit issued under Forest Service authority for campfires on National Forest System lands. As part of a formal agreement with the State, the Forest Service, Bureau of Land Management, and the California Department of Forestry and Fire Protection (Cal Fire) have agreed to issue an interagency campfire permit that meets the intent of the State law.

California Public Resources Code 4433: Permits Required. A person shall not light, maintain, or use a campfire upon any brush-covered land, grass-covered land, or forest-covered land which is the property of another person unless he first obtains a written permit from the owner, lessee, or agent of the owner or lessee of the property.

If, however, campsites and special areas have been established by the property owner and posted as areas for camping, a permit is not necessary.

A written campfire permit duly issued by or under the authority of the United States Forest Service is necessary for use on land under the jurisdiction and control of the United States Forest Service.

The California Campfire Permit is issued in every Forest Service, Bureau of Land Management, and Cal Fire office in the State that is open to the public. The permit is required for any individual that intends to make a campfire on National Forest System lands or Bureau of Land Management lands. Only one permit is required per year per person. The permit requires individuals to provide their printed name and signature, which is used by designated law enforcement officials to verify that the permit belongs to a responsible individual that is present at a campfire. The information is not otherwise used or maintained for any purpose by the Forest Service, Bureau of Land Management or Cal Fire.

The California Campfire Permit is a valuable fire prevention tool that provides firefighting organizations in California an opportunity to educate members of the public on safe and responsible campfire use, and allows agencies to personally provide fire prevention messages to every individual that intends to build or maintain a campfire in the State. Without the Forest Service and Bureau of Land Management participating in the distribution of this permit, those agencies would lose an important fire prevention tool while making it impossible for individuals to comply with state law due to the language in the State law requiring a campfire permit to be issued under Forest Service authority for campfires on National Forest System lands.

Estimate of Annual Burden: Five minutes.

Type of Respondents: Individuals who use government facilities and services.

Estimated Annual Number of Respondents: 250,000 (per National Visitor Use Monitoring or NVUM).

Estimated Annual Number of Responses per Respondent: One.

Estimated Total Annual Burden on Respondents: 20,833 hours.

Comment is Invited: Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: June 1, 2009.

James Hubbard,

Deputy Chief, State and Private Forestry.

[FR Doc. E9–13550 Filed 6–9–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket 18–2009]

Proposed Foreign–Trade Zone - Kern County, California, Correction

The **Federal Register** notice published on May 4, 2009 (74 FR 20459) describing the application by the County of Kern Department of Airports to establish a general–purpose foreign–trade zone at sites in Kern County, California is corrected as follows:

In paragraph 2, line 19, the correct acreage for Site 2 is 247 acres and for line 24, the correct site is Site 23.

Dated: June 3, 2009.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–13616 Filed 6–9–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XP24

Schedules for Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops

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

ACTION: Notice of public workshops.

SUMMARY: NMFS announces free Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops to be held in July, August, and September of 2009. Certain fishermen and shark dealers are required to attend a workshop to meet regulatory requirements and maintain valid permits. Specifically, the Atlantic Shark Identification Workshop is mandatory for all federally permitted Atlantic shark dealers. The Protected Species Safe Handling, Release, and Identification Workshop is mandatory for vessel owners and operators who use bottom longline, pelagic longline, or gillnet gear, and have also been issued shark or swordfish limited access permits. Additional free workshops will be held in 2009 and announced in the **Federal Register**.

DATES: The Atlantic Shark Identification Workshops will be held July 2, August 6, and September 3, 2009.

The Protected Species Safe Handling, Release, and Identification Workshops will be held July 15, July 29, August 5, August 26, September 2, and September 30, 2009.

See **SUPPLEMENTARY INFORMATION** for further details.

ADDRESSES: The Atlantic Shark Identification Workshops will be held in Wilmington, NC; Richmond, TX; and Charleston, SC.

The Protected Species Safe Handling, Release, and Identification Workshops will be held in Ronkonkoma, NY; North Charleston, SC; Clearwater, FL; Kenner, LA; Peabody, MA; and Manahawkin, NJ.

See **SUPPLEMENTARY INFORMATION** for further details on workshop locations.

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson by phone: (727) 824–5399, or by fax: (727) 824–5398.

SUPPLEMENTARY INFORMATION: The workshop schedules, registration information, and a list of frequently asked questions regarding these workshops are posted on the internet at: *http://www.nmfs.noaa.gov/sfa/hms/workshops/*.

Atlantic Shark Identification Workshops

Since December 31, 2007, Atlantic shark dealers have been prohibited from receiving, purchasing, trading, or bartering for Atlantic sharks unless a valid Atlantic Shark Identification Workshop certificate is on the premises of each business listed under the shark dealer permit which first receives Atlantic sharks (71 FR 58057; October 2, 2006). Dealers who attend and successfully complete a workshop are issued a certificate for each place of business that is permitted to receive sharks. These certificate(s) are valid for three years.

Currently permitted dealers may send a proxy to an Atlantic Shark Identification Workshop. However, if a dealer opts to send a proxy, the dealer must designate a proxy for each place of business covered by the dealer's permit which first receives Atlantic sharks. Only one certificate will be issued to each proxy. A proxy must be a person who: is currently employed by a place of business covered by the dealer's permit; is a primary participant in the identification, weighing, and/or first receipt of fish as they are offloaded from a vessel; and fills out dealer reports. Atlantic shark dealers are prohibited from renewing a Federal shark dealer permit unless a valid Atlantic Shark Identification Workshop certificate for each business location which first receives Atlantic sharks has been submitted with the permit renewal application. The certificate(s) are valid for three years. Additionally, trucks or other conveyances which are extensions of a dealer's place of business must possess a copy of a valid dealer or proxy Atlantic Shark Identification Workshop certificate. Approximately 35 free Atlantic Shark Identification Workshops have been conducted since January 2007.

Workshop Dates, Times, and Locations

1. July 2, 2009, from 1 p.m. – 5 p.m., New Hanover County Library – Northeast Branch, Oak Room, 1241 Military Cutoff Road, Wilmington, NC 28405.

2. August 6, 2009, from 9:30 a.m. – 2 p.m., George Memorial Library – Room 2D, 1001 Golfview Drive, Richmond, TX 77469.

3. September 3, 2009, from 9 a.m. – 2 p.m., Center for Coastal Environmental Health and Bimolecular Research, 219 Fort Johnson Road, Charleston, SC 29412.

Registration

To register for a scheduled Atlantic Shark Identification Workshop, please contact Eric Sander by email at *esander@peoplepc.com* or by phone at (386) 852–8588.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring the following items to the workshop:

Atlantic shark dealer permit holders must bring proof that the individual is an agent of the business (such as articles of incorporation), a copy of the applicable permit, and proof of identification.

Atlantic shark dealer proxies must bring documentation from the shark dealer acknowledging that the proxy is attending the workshop on behalf of the permitted Atlantic shark dealer for a specific business location, a copy of the appropriate permit, and proof of identification.

Workshop Objectives

The shark identification workshops are designed to reduce the number of unknown and improperly identified sharks reported in the dealer reporting form and increase the accuracy of species–specific dealer–reported information. Reducing the number of unknown and improperly identified

sharks will improve quota monitoring and the data used in stock assessments. These workshops will train shark dealer permit holders or their proxies to properly identify Atlantic shark carcasses.

Protected Species Safe Handling, Release, and Identification Workshops

Since January 1, 2007, shark limited access and swordfish limited access permit holders who fish with longline or gillnet gear, have been required to submit a copy of their Protected Species Safe Handling, Release, and Identification Workshop certificate in order to renew either permit (71 FR 58057; October 2, 2006). These certificate(s) are valid for three years. As such, vessel owners who have not already attended a workshop and received a NMFS certificate, or vessel owners whose certificate(s) are due to expire in 2009, must attend one of the workshops offered in 2009 to fish with, or renew, their swordfish and shark limited access permits. Additionally, new shark and swordfish limited access permit applicants who intend to fish with longline or gillnet gear must attend a Protected Species Safe Handling, Release, and Identification Workshop and submit a copy of their workshop certificate before either of the permits will be issued.

In addition to certifying permit holders, all longline and gillnet vessel operators fishing on a vessel issued a limited access swordfish or limited access shark permit are required to attend a Protected Species Safe Handling, Release, and Identification Workshop and receive a certificate. The certificate(s) are valid for three years. Vessels that have been issued a limited access swordfish or limited access shark permit may not fish unless both the vessel owner and operator have valid workshop certificates onboard at all times. Approximately 65 free Protected Species Safe Handling, Release, and Identification Workshops have been conducted since 2006.

Workshop Dates, Times, and Locations

1. July 15, 2009, from 9 a.m. – 5 p.m., Holiday Inn, 3845 Veterans Memorial Highway, Ronkonkoma, NY 11779.
2. July 29, 2009, from 9 a.m. – 5 p.m., Holiday Inn, 5264 International Boulevard, North Charleston, SC 29418.
3. August 5, 2009, from 9 a.m. – 5 p.m., Holiday Inn, 3535 Ulmerton Road, State Route 688 W., Clearwater, FL 33762.
4. August 26, 2009, from 9 a.m. – 5 p.m., Hilton New Orleans Airport, 901 Airline Drive, Kenner, LA 70062.
5. September 2, 2009, from 9 a.m. – 5 p.m., Holiday Inn, 1 Newbury Street, Peabody, MA 01960.
6. September 30, 2009, from 9 a.m. – 5 p.m., Holiday Inn, 151 Route 72 East, Manahawkin, NJ 08050.

Registration

To register for a scheduled Protected Species Safe Handling, Release, and Identification Workshop, please contact Angler Conservation Education at (877) 411–4272, 1640 Mason Avenue, Daytona Beach, FL 32117.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring the following items with them to the workshop:

Individual vessel owners must bring a copy of the appropriate permit(s), a copy of the vessel registration or documentation, and proof of identification.

Representatives of a business owned or co–owned vessel must bring proof that the individual is an agent of the business (such as articles of incorporation), a copy of the applicable permit(s), and proof of identification.

Vessel operators must bring proof of identification.

Workshop Objectives

The protected species safe handling, release, and identification workshops are designed to teach longline and gillnet fishermen the required techniques for the safe handling and release of entangled and/or hooked protected species, such as sea turtles, marine mammals, and smalltooth sawfish. The proper identification of protected species will also be taught at these workshops in an effort to improve reporting. Additionally, individuals attending these workshops will gain a better understanding of the requirements for participating in these fisheries. The overall goal of these workshops is to provide participants with the skills needed to reduce the mortality of protected species, which may prevent additional regulations on these fisheries in the future.

Grandfathered Permit Holders

Participants in the industry–sponsored workshops on safe handling and release of sea turtles that were held in Orlando, FL (April 8, 2005) and in New Orleans, LA (June 27, 2005) were issued a NOAA workshop certificate in December 2006 that is valid for three years. These workshop certificates may be expiring in 2009. Vessel owners and operators whose certificates expire prior to permit renewal in 2009 must attend a workshop, successfully complete the course, and obtain a new certificate in order to renew their limited access shark and limited access swordfish permits. Failure to provide a valid NOAA workshop certificate could result in a permit denial.

Dated: June 2, 2009.

Alan D. Risenhoover,

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

[FR Doc. E9–13606 Filed 6–9–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Revised Great Salt Lake Minerals Corporation's Solar Evaporation Pond Expansion Project Within the Great Salt Lake, Box Elder County, UT

AGENCY: Department of the Army; U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA), the U.S. Army Corps of Engineers—Sacramento District (Corps) will prepare an Environmental Impact Statement (EIS) for Corps authorization actions for the proposed Revised Great Salt Lake Minerals Corporation Solar Evaporation Ponds Expansion project. The basic project purpose is potassium sulfate extraction/mining. The overall project purpose is to increase production/output of organically certified potassium sulfate to help meet the increasing demand for this type of fertilize. The applicant believes there is a need to increase production of potassium sulfate in order to maintain its market share over the next 50 years.

The proposed expansion would add approximately 91,000 acres of solar evaporative ponds, impacting approximately 80,000 acres of waters of the United States, including wetlands, and reduce the need to import raw potassium from other sources. The EIS will address impacts such as wildlife habitat, water quality, Great Salt Lake water elevations, wetlands, hydrology, cultural resources, transportation, endangered species and industry. The projected date for public release of the Draft EIS is October 30, 2009.

DATES: Four public scoping meetings will be held. The first scoping meeting will be held on June 4, 2009 from 5–8

p.m. at the Davis County Library, 725 South Main Street, Bountiful, Utah. The second public meeting will be on June 9, 2009 from 5–8 p.m. at the Comfort Suites Hotel, 2250 South 1200 West, Ogden, Utah. The third meeting will be held on June 11, 2009, from 5–8 p.m. at West High School, 241 North 300 West, Salt Lake City, Utah. The fourth meeting will be held on June 24, 2009, from 5–8 p.m. also at West High School, 241 North 300 West, Salt Lake City, Utah.

ADDRESSES: Public comments will be accepted at the scoping meetings or may be mailed to Mr. Jason Gipson, Nevada-Utah Regulatory Branch, 533 West 2600 South, Suite 150, Bountiful, Utah 84010, or e-mailed to: *jason.a.gipson@usace.army.mil.* All comments must be received on or before July 9, 2009.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and the DEIS should be directed to the Corps project manager, Mr. Jason Gipson at 801–295–8380 x14, or e-mail at *jason.a.gipson@usace.army.mil.* Please refer to identification number 200700121.

SUPPLEMENTARY INFORMATION: Great Salt Lake Minerals Corporation (GSL Minerals) currently operates approximately 47,000 acres of evaporative ponds located on the east and west shores of the Great Salt Lake. A 25,000-acre evaporation facility is located on the west shore of the North Arm of the Great Salt Lake and a 22,000-acre evaporation facility is located on the east shore of the Bear River Bay. The existing solar evaporation pond facilities are located within the Great Salt Lake, i.e., the ponds are located below 4205 feet mean sea level, which is below the high water mark of the Great Salt Lake. The company draws naturally occurring brine from the lake into shallow ponds and allows solar evaporation to produce sulfate of potash, as well as salt and magnesium chloride minerals. Sulfate of potash is a specialty fertilizer that improves the yield and quality of high-value crops such as fruits, vegetables, tea, tree nuts and turf grasses. The GSL Minerals facility has operated on the lake for 40 years.

The applicant originally proposed in late 2007 to construct three additional solar evaporation ponds totaling approximately 33,000 acres. The 2007 proposed project included adding two new solar ponds to the existing west side complex, an 18,000-acre Dolphin Island expansion pond and a 7,000-acre pond at the southern end of Clyman Bay between the Union Pacific Railway and several existing ponds. A new feed canal into the lake and a new pump station would be constructed on the north end of the proposed Dolphin Island pond. Diesel driven pumps, similar to those currently in use, would pump brine from the new feed canal to the new pond. Existing pumps would be used to pump brine from the new pond to an existing pond. The total 25,000-acre pond expansion on the west side would increase the concentration of brine transferred to an existing gravity-flow trench for transport to the east ponds in the Bear River Bay. Additionally under the 2007 proposal, an 8,000-acre pond would be constructed on the east side of the Great Salt Lake in the Bear River Bay. Brine would be pumped to and from the new pond with existing pump stations; however, the capacity of these pump stations would be increased proportional to the new pond acreage. Additional feed brine for this new pond would come from the North Arm of the Great Salt Lake (Gunnison Bay), flowing through existing east side ponds.

Under the 2007 proposal, dikes would be built to accommodate the pond expansion and impound the waters of the respective areas. On the east side of the lake, approximately 540,000 cubic yards of fill would be discharged into Bear River Bay to create the dikes. On the west side, approximately 900,000 cubic yards of fill would be discharged into open water in the vicinity of Clyman Bay to create dikes.

The 2009 revised project proposes to: (1) Retain the proposed construction of an 8,000-acre pond in Bear River Bay, (2) decrease the previously proposed 8,000 acre pond on the west shore of the lake along the north side of the railroad causeway to 6,000 acres, (3) increase the 18,000-acre pond to 23,000 acres, (4) add an additional 2,000-acre pond west of the above described 6,000-acre pond along the north side of the railroad causeway, (5) add a 14,000-acre pond on the south side of the railroad causeway, and (6) add an additional 38,000-acre pond in the Dolphin Island area of the lake. On the east side of the lake, approximately 540,000 cubic yards of fill would be discharged into Bear River Bay to create the dikes. On the west side, approximately 4.7 million cubic yards of fill would be discharged into open water in the vicinity of Clyman Bay to create dikes.

The total 83,000-acre West Pond Expansion (including Lakeside Lease areas) would increase the concentration of brine transferred to an existing gravity-flow trench (Behrens Trench) for transport to the GSL Minerals east solar evaporation ponds in the Bear River Bay (Figures 1, 2 and 3). Ultimately as part of the proposed project the efficiency of the Behrens Trench would be improved to reduce mixing of concentrated brine with lake water surrounding the trench by either improving the existing open Behrens Trench by excavating the trench wider and deeper or by laying pipes in the existing trench.

In addition the project includes the purchasing and transporting SOP from the U.S. Magnesium ponds located along the southwestern margin of the lake to the existing processing facility. GSL Minerals will also increase SOP production by constructing an SOP processing plant within the U.S. Magnesium pond area (Figure 4).

The proposed project habitat areas include saline open water, sporadically inundated playa lakebed, seasonally flooded playa, saline wetlands, potential freshwater springs, rip-rapped dikes and sandy upland habitats. These areas are located adjacent and to the north of the existing evaporation pond facilities. The Corps verified a jurisdictional wetland delineation for the 2007 proposed project on October 10, 2007, which identified approximately 34,180.08 acres of waters of the U.S., including 21.4 acres of saline wet meadow wetlands, 1,102.94 acres of seasonally inundated playa above the high water mark of the western side of the Great Salt Lake and 33,055.74 acres of seasonally or sporadically inundated playa lake bed below the high water mark of the Lake. A delineation of waters of the U.S. has not been completed or verified for the additional areas proposed under the 2009 revised application. However, it is estimated the additional 50,000 acres are all located within the ordinary high water mark of the Great Salt Lake, resulting in the same acreage of additional impacts to waters of the U.S. The proposed project would result in approximately 80,000 acres of permanent adverse impacts to waters.

The applicant has not proposed compensatory mitigation for project impacts. The determination of appropriate compensatory mitigation will be determined through public scoping and impact analysis of the EIS process.

The proposed project will not affect any federally-listed threatened or endangered species, however, it may affect state-listed special status species. Once a habitat assessment of the areas has been completed, the Corps will consult with state and Federal wildlife agencies. The Corps will also consult with the State Historic Preservation Officer under Section 106 of the National Historic Preservation Act for properties listed or potentially eligible

for listing on the National Register of Historic Places, as appropriate.

A number of on-site and off-site alternatives, including the no action alternative, will be evaluated in the DEIS in accordance with NEPA and the Section 404(b)(1) guidelines.

As part of the Corps 404 permitting process, pre-application interagency meetings have been held to provide information and identify issues and concerns. In addition, meetings have been held with local environmental organizations for the same purposes. Preliminary issues identified as part of this process include: Water quality, heavy metals, nutrient loading, fresh water exchange, changes in salinity, and brine shrimp habitat, economic issues and cultural resources. Additionally, potential avian impacts were identified to waterfowl, shorebirds, and raptors including the American white pelican, snowy plover, Canada goose, and others.

The above determinations are based on information provided by the applicant and upon the Corps' preliminary review. The Corps is soliciting verbal and written comments from the public, Federal, state and local agencies and officials, Native American tribes, and other interested parties in order to consider and evaluate the impacts of this proposed activity. The Corps' public involvement program includes multiple opportunities for interested parties to provide written and oral comments. Affected Federal, state, local agencies, Indian tribes, and other interested private organizations and the general public are invited to participate.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E9–13437 Filed 6–9–09; 8:45 am]

BILLING CODE 3720–58–P

U.S. ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: U.S. Election Assistance Commission.

ACTION: Notice of public meeting agenda.

DATE & TIME: Wednesday, June 17, 2009; 1 p.m.–4 p.m. EDT.

PLACE: U.S. Election Assistance Commission, 1225 New York Ave, NW., Suite 150, Washington, DC 20005 (Metro Stop: Metro Center).

AGENDA: The Commission will hold a public meeting to consider administrative matters. The Commission will receive an update on guidance to the States regarding 2009 requirements payments. The Commission will consider a report to Congress on the Election Data Collection Grants. The Commission will discuss a report to Congress on the Impact of the National Voter Registration Act. The Commission will discuss the 2010 Election Day Survey. Members of the public may observe but not participate in EAC meetings unless this notice provides otherwise.

Members of the public may use small electronic audio recording devices to record the proceedings. The use of other recording equipment and cameras requires advance notice to and coordination with the Commission's Communications Office.*

* View *EAC Regulations Implementing Government in the Sunshine Act*.

This Meeting Will be Open to the Public.

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener, Telephone: (202) 566–3100.

Alice Miller,

Chief Operating Officer, U.S. Election Assistance Commission.

[FR Doc. E9–13647 Filed 6–8–09; 11:15 am]

BILLING CODE 6820–KF–P

U.S. ELECTION ASSISTANCE COMMISSION

Publication of State Plan Pursuant to the Help America Vote Act

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Notice.

SUMMARY: Pursuant to sections 254(a)(11)(A) and 255(b) of the Help America Vote Act (HAVA), Public Law 107–252, the U.S. Election Assistance Commission (EAC) hereby causes to be published in the **Federal Register** changes to the HAVA State plan previously submitted by Illinois.

DATES: This notice is effective upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bryan Whitener, Telephone 202–566–3100 or 1–866–747–1471 (toll-free).

Submit Comments: Any comments regarding the plans published herewith should be made in writing to the chief election official of the individual State at the address listed below.

SUPPLEMENTARY INFORMATION: On March 24, 2004, the U.S. Election Assistance Commission published in the **Federal Register** the original HAVA State plans filed by the fifty States, the District of Columbia and the Territories of American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands. 69 FR 14002. HAVA anticipated that States, Territories and the District of Columbia would change or update their plans from time to time pursuant to HAVA section 254(a)(11) through (13). HAVA sections 254(a)(11)(A) and 255 require EAC to publish such updates. This is Illinois' third revision to its State plan.

The revised State plan from Illinois addresses changes in the respective budgets of the previously submitted State plans and accounts for the use of Fiscal Year 2008 requirements payments. In accordance with HAVA section 254(a)(12), all the State plans submitted for publication provide information on how the respective State succeeded in carrying out its previous State plan. The States all confirm that these changes to their respective State plans were developed and submitted to public comment in accordance with HAVA sections 254(a)(11), 255, and 256.

Upon the expiration of thirty days from June 10, 2009, the State is eligible to implement the changes addressed in the plan that is published herein, in accordance with HAVA section 254(a)(11)(C).

EAC wishes to acknowledge the effort that went into revising this State plan and encourages further public comment, in writing, to the State election official listed below.

Chief State Election Official

Mr. Daniel White, Executive Director, Illinois State Board of Elections, 1020 S. Spring Street, Springfield, Illinois 62704, Phone: (217) 782–4141, Fax: (217) 782–5959.

Thank you for your interest in improving the voting process in America.

Dated: June 4, 2009.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

BILLING CODE 6820–KF–P

HELP AMERICA VOTE ACT

STATE OF ILLINOIS

STATE PLAN

Daniel W. White
Executive Director
Illinois State Board of Elections

April 2009

The state plan is also available at
http://www.elections.il.gov/VotingInformation/HAVA.aspx

Daniel W. White
Executive Director
Illinois State Board of Elections

The State Board of Elections is an independent constitutional agency responsible for general supervision over the administration of the registration and election laws throughout the State of Illinois. The Board consists of eight members – four Democrat and four Republican. The Board appoints an Executive Director and Assistant Executive Director to oversee the day-to-day activities of the State Board of Elections. The Executive Director serves as the Chief Election Officer for the state.

During its thirty year existence, the legislature has expanded the duties of the State Board of Elections to include many other aspects of the election process. The Board oversees and provides services to 110 election jurisdictions throughout the state. With the passage of The Help America Vote Act of 2002 (HAVA), the Board will be responsible for ensuring the provisions of HAVA are implemented in a proper and timely fashion.

Legislation was passed and signed by the Governor to implement provisions under the Help America Vote Act of 2002. Among other things, Public Act 93-0574 established the Help Illinois Vote Act fund so that Illinois could receive federal funds; established new criteria in the Election Code for provisional voting; provided for the definition of a vote for punch card systems, optical scan systems and the Populex system; and authorized the use of direct recording electronic voting systems in Illinois.

The legislature passed, and the Governor signed, a bill which appropriated $253,803 from the General Revenue Fund to the State Board of Elections to fulfill the HAVA requirement that the state has appropriated funds for carrying out the activities for which the requirements payment is made in an amount equal to 5 percent and will allow the State Board of Elections to request federal FY 08 funding.

A computerized statewide voter registration system is in place and is now in compliance with HAVA. The State Board of Elections has certified to the Election Assistance Commission that it now meets all Title III Requirements.

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Illinois State Board of Elections
Preliminary State Plan

INTRODUCTION

The revised Illinois State Plan continues to outline how the state will distribute and monitor the monies received and how the state is meeting or will meet the requirements of the Act. It is designed to be a flexible document and subject to alteration as conditions might warrant.

The Illinois State Board of Elections is now in full compliance with the Help America Vote Act of 2002 and has certified to the Election Assistance Commission that it meets all Title III Requirements. The plan which follows is divided into the thirteen sections which are enumerated in Section 254 of the Act.

Section 1. Title III Requirements Payment

How the State will use the requirements payment to meet the requirements of Title III, and if applicable under section 251(a)(2), to carry out other activities to improve the administration of elections.

Section 301 Voting Systems Standards

Public Act 93-0574 (PA 93-0574) authorized the use of Direct Recording Electronic Voting systems (DRE) approved by the State Board of Elections. Rules were promulgated and staff has tested and certified accessible voting equipment for use in Illinois. Each election jurisdiction now complies with the HAVA requirement that one fully accessible machine be available in each polling place. These systems must be fully accessible to permit blind or visually impaired voters as well as physically disabled voters to exercise their right to vote in private and without assistance. All election jurisdictions now have at least one accessible voting system in every polling place for the federal elections. The election authorities are encouraged to ensure that each accessible voting machine is in working order and is fully accessible to voters with disabilities during the entire voting process.

Jurisdictions continue to purchase equipment (including software/hardware) as necessary for the proper administration of federal elections as funds are available to their jurisdiction. All voting systems purchased will meet Title III, Section 301 requirements. Any equipment purchased with newly appropriated HAVA funds made available after January 1, 2007 will meet the voting system standards for disability access. Funds will be made available to assist jurisdictions in paying maintenance costs on the voting equipment as well as storage and delivery of voting equipment. Four jurisdictions are required under the Voting Rights Act of 1965 to provide alternative language accessibility for all voting systems and will purchase items that pertain to the Act. All voting equipment must provide for a voter verified paper trail.

Election jurisdictions will continue educating the election judges as well as training voters on the election process as well as new voting equipment. The Election Judge manual includes information on assisting voters with disabilities. Videos, powerpoint presentations and other creative ideas will be used to train judges and voters on the above. This portion suggests common courtesies and guidelines for the election judges in assisting voters. In addition, the SBE distributed to all election authorities a disability etiquette booklet published by the Eastern Paralyzed Veterans Association. This booklet provides tips on interacting with people with disabilities.

Illinois State Board of Elections
Preliminary State Plan

In addition to the one accessible voting system in every polling place, all 110 election jurisdictions are now using a voting system that does not use punch card equipment. These systems meet HAVA requirements in that they 1) permit the voter to verify their vote before the ballot is cast and counted, 2) provide the voter with the opportunity to change the ballot before it is cast and counted, and 3) provide notice to the voter of an overvote with an opportunity to correct the ballot before it is cast and counted. All jurisdictions have equipment that meets the error rate standards established under section 3.2.1 of the voting systems standards issued by the Federal Election commission.

All voting systems currently produce a permanent paper record. PA 93-0574 also requires a permanent paper record on the DRE's.

Pursuant to Public Act 93-0574, the State Board of Elections, in evaluating the feasibility of any new voting system, shall seek and accept public comment from persons of the disabled community, including but not limited to organizations of the blind.

Illinois applied for and received the Election Assistance for Individuals for Disabilities grants for FY 03, FY 04, FY 05, FY 06, FY 07 and FY 08. These grants together amounted to $2,483,527. Election authorities will continue to audit polling places on a regular basis to ascertain if they meet accessibility standards and also publish the polling places that are accessible. Illinois will strive to have all polling places 100% accessible. This should include the ability for a voter with a disability to voter privately and independently in the polling place. The Board will encourage the election authorities to utilize federal funds available for this purpose and consider recommendations from the disabled community and advocates.

Section 302 Provisional Voting and Voting Information Requirements

Public Act 93-0574 provided statutory language authorizing provisional voting in Illinois. All provisional voting requirements for this provision are now met. Funds will be used to support the provisional voting requirement. Election authorities shall continue to train election judges on implementing this new provision. As provided in Section 302(a)(5)(3), the State Board of Elections, continues to provide a toll free telephone number for election authorities to utilize for voters who cast provisional ballots to access to discover whether his or her vote was counted. The SBE also provides for a system which allows a voter to access the SBE website with an access code to determine if their vote was counted. The majority of the jurisdictions utilize this website to report provisional voting for all federal elections. Illinois law also allows for provisional voting if the polls remain open after closing time due to a Federal or State court order. Electronic pollbooks enable election judges to verify voter registration status and

precinct information immediately, allowing for faster and more accurate processing of provisional ballots.

All election jurisdictions were notified of the requirement for posting Voting Information Requirements in each polling place on the day of each election for Federal office.

The revised voter registration form includes instructions for mail-in registrants and first time voters. An Administrative Complaint procedure is in place that allows individuals who feel their rights have been violated to seek recourse.

Section 303 Computerized Statewide Voter Registration List Requirements and Requirements for Voters Who Register By Mail.

Illinois has completed the single, uniform, official centralized statewide voter registration database. Legislation was passed in the Spring of 2005 that limited the spending authority for the database to an amount of $8,650,000. This legislation also prohibits the electronic transfer of voter registrations from the Secretary of State to the State Board of Elections. We have coordinated with the Department of Public Health and Department of Corrections for the transfer of deaths and felons via electronic means. Illinois will continue to work with its primary vendor, Catalyst Consulting to perform technical upgrades on the statewide database.

The revised voter registration form allows for the applicant's driver's license number or, if no driver's license, the last 4 digits of the applicant's social security number or their full Secretary of State ID number. Measures are provided for in determining the validity of the numbers provided in the statewide voter registration database.

The HAVA requirement that every legally registered voter in the State be assigned a unique identifier is now provided for with the statewide voter registration database.

The State Board of Elections and the Office of the Secretary of State have entered into an agreement for the sharing of information in the databases. The Secretary of State's office has entered into an agreement with the Social Security office as required by HAVA.

Illinois law now provides for all requirements for a person who has registered by mail. Persons who registered to vote by mail may vote by mail-in absentee, provided they supply sufficient proof of identity. Persons who apply to register to vote by mail but provide inadequate ID shall be notified by the election authority that the registration is not complete and that the person remains ineligible to vote in person or absentee until such proof is presented.

Illinois State Board of Elections
Preliminary State Plan

Section 3. Voter Education Programs

How the state will provide for programs for voter education, election official education and training, and poll worker training which will assist the State in meeting the requirements of title III.

I. Voter Education

Voter education is essential to any plan for election reform. The purpose of the voter education program must be to increase voter familiarity with the requirements to register to vote, the type of voting equipment utilized and to inform voters of their rights and responsibilities at the polling place. Voter education should also help to increase voter interest and participation in the election, help attract poll workers, and decrease the voter error rate.

Voter education programs will address all aspects of the voting public with specific emphasis in reaching senior citizens, young adults, minority voters, and voters with disabilities. It will include both pre-election and election day strategies including how to register to vote, how to locate polling places, how to cast a ballot, and voters rights in the polling place.

Pre-election strategies include public service announcements in television and radio format, electronic forms of voter education, community partnerships with outreach organizations, demonstrations of the voting equipment at venues throughout the election jurisdiction, and programs geared toward use in the classroom. The State Board of Elections has and will continue to seek participation from other state agencies. The State Board of Elections will seek assistance from the Department of Rehabilitation Services, Department of Aging and Department of Human Services in providing educational materials to clients of those departments.

Pre-election day strategies include demonstrations of the voting equipment. Election day strategies include having informational posters available in polling places, and printed information regarding voting equipment usage provided in the polling place. We encourage election authorities to request vendors provide to each registered household in that jurisdiction a guide explaining operation of their particular voting equipment. The State Board of Elections will continue to enhance its voter education material already on its website and we encourage election authorities to do the same.

The State Board of Elections will develop voter education programs in partnership with all stakeholders, including local election authorities, community representatives, and

advocacy organizations. As the Secretary of State, Division of Motor Vehicles, registers many voters, information should be provided at these sites educating voters as they register. Funds will continue to be used for expenses related to training and education of election judges and the public on the voting equipment and the election process.

II. Election Administrator Training

The State Board of Elections has prepared and will continue to update a Guide for Election Authorities to ensure that there is adequate knowledge of the state election laws and the implementation of these laws at the local level.

The State Board of Elections will work in conjunction with both the County Clerks Association and the Association of Election Commission Officials to facilitate an education and training program for their members. This program should include a framework for providing practical learning experiences in the administration of elections. It must also include requirements of HAVA to ensure uniform implementation throughout the state.

III. Poll Worker Training

The State Board of Elections will establish uniform requirements for poll worker training throughout the state and will oversee the implementation of this training. The local election authority should be responsible for conducting most of the training programs to ensure the unique aspects of the election in each jurisdiction are clearly explained to the poll worker. The compensation for attending election day training should be increased to encourage poll workers to attend this important learning program.

Audio-visual aids will be used for the training program. As part of the training, the program will include a portion on sensitivity for voters with disabilities. The State Board of Elections recommends election authorities involve the disabled community and advocates in their poll worker training to achieve a more comprehensive understanding of accessible voting. In establishing a uniform training program for poll workers, the State Board of Elections will serve as the liaison among all election authorities within the state to ensure participation in the training development and coordination of the information. In implementing this training program, the State Board of Elections will provide a training plan to the local election authority and will assist, where necessary, in the execution of the training. Training manuals will include, but not be limited to, information about the nature of various disabilities, the rights of voters, access to and maneuverability within polling places and the use of machines and ballots.

Illinois State Board of Elections
Preliminary State Plan

Section 4. Voting Systems Guidelines and Processes

How the state will adopt voting system guidelines and processes which are consistent with the requirements of section 301.

Illinois adopted procedures in 1978 that allows no voting system to be used in the state unless approved for use by the State Board of Elections in accordance with rules set forth. The requirements for approval are found in the Illinois Election Code, 10 ILCS 5/24A-16, 24B-16, and 24C-16 as well as in State Board of Elections Rules and Regulations, 26 Illinois Administrative Code, Chapter 1, Section 204.10 - 204.180.

Below is a summary of voting systems currently in use in Illinois (all having in-precinct counting)

System	# of Election Jurisdictions	Current # of Precincts
Optech Insight	2	4,869
Accu-vote Optical Scan	63	3,442
Optical Scan M100	42	2,894
E-Slate	4 (1 for early voting only)	369

Accessible Voting System	# of Election Jurisdictions	Current # of Precincts
AVC Edge	2	4,869
Accu-vote TSX	60	3,287
AutoMARK	45	3,049
E-Slate	3	369

Total number of precincts at the February 5, 2008 primary election – 11,574

As required in PA 93-0574 the State Board of Elections, in evaluating the feasibility of any new voting system, will accept public comment from persons in the disabled community.

Section 5. Illinois HAVA Fund

How the state will establish a fund described in subsection (b) for purposes of administering the State's activities under this part, including information on fund management.

With the passage of SB 428 in the spring 2003 legislative session, the Help Illinois Vote Fund to implement HAVA was established. Governor Blagojevich signed the bill on August 21, 2003 providing for a special fund within the State Treasury to receive federal funds under the Help America Vote Act of 2002. It authorized appropriation from the Fund solely to the State Board of Elections for use in accordance with the federal Act. Illinois plans to use interest generated from the Fund to help fund future needs in implementing HAVA.

As part of each year's fiscal appropriation, language will be included to give the State Board of Elections spending authority to use the funds in accordance with the Help America Vote Act of 2002 (as long as federal funds remain available).

The SBE Executive Director and Chief Fiscal Officer will work with the State Comptroller and State Treasurer to follow and enforce all mandated fiscal controls and policies.

Illinois State Board of Elections
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DISBURSEMENTS OF SECTION 101 AND 102 MONIES

	Federal Appropriation To All States	Federal Appropriation To Illinois	Expended In Illinois (as of 2/28/09)
Section 101	$349,182,262	$11,129,030	$10,475,262*
For discretionary use by jurisdictions to provide for: election administration improvements and polling place accessibility			$7,187,482
Computerized statewide voter registration database and related costs (does NOT include costs paid through State 'maintenance of effort' funds)			$1,780,258
Sub-Grants to Secretary of State			$ 869,838
Toll free telephone hotline			$ 2,434
Misc expenses relating to HAVA implementation			$ 635,250
Section 102	$300,317,738	$33,805,617	$33,669,569
Punch card buyout - $3,192.22 per precinct			$33,669,569

*Includes expenditure of interest earned on fund balances

SECTION 251 MONIES

Section 251 - Requirements Payments (federal fiscal years)					
FY 03 Federal Authorized Funds	FY 03 Federal Appropriation Illinois share	FY 04 Federal Authorized Funds	FY 04 Federal Appropriation Illinois share	FY 08 Federal Authorized Funds	FY 08 Federal Appropriation Illinois share
$1.4 billion	$830,000,000 ---------- $35,283,025	$1 billion	$1,489,360,620 ---------- $63,312,227 $63,309,068 --(actual rec'd)--	$115 million	$4,822,248
FY 03 expended funds (as of 2/28/09) $35,283,025		FY 04 expended funds (as of 2/28/09) $58,543,211*		FY 08 expended funds – funds not requested yet	

The State Board of Elections received the required 5% state match in the FY05 budget request to meet the requirement for both federal fiscal year FY03 and FY04. The amount received was $5 million which was spent on accessible voting equipment. Section 251 monies spent to date on upgrading voting equipment to meet error rates under section 3.2.1 of the voting systems standards, accessible voting equipment and to meet Title III Requirements.

A state match for FY 08 appropriated funds has been allocated in the State Board of Elections FY09 budget in the amount of $253,803. These funds will be used to meet the Title III Requirements as well as improving the administration of federal elections.

*Includes expenditure of interest earned on fund balances.

Illinois State Board of Elections
Preliminary State Plan

SECTION 254(A)(7) - DISBURSEMENTS (STATE FUNDS)

FY04, 05, 06, 07 and 08 Appropriated Funds	FY04, 05, 06, 07 and 08 Expended	FY09 Appropriated Funds	FY 09 Expended (as of 2/28/09)
$550,000 each year	$550,000 each year	$550,000	$550,000

SECTION 261 - DISBURSEMENTS

FY06 Federal Appropriated Funds ---------- Illinois Share	FY 07 Federal Appropriated funds ---------- Illinois share	FY08 Federal Appropriated funds ---------- Illinois share
$10,890,000 ---------- $401,375	$10,890,000 ---------- $397,711	$12,154,000 ---------- $457,121
FY06 expended funds (as of 2/28/09) $401, 375	FY07 expended funds (as of 2/28/09) $173,985	FY08 expended funds (as of 2/28/09) $ 0

The State Board of Elections distributes the HHS grant money through an application process. It is allocated using a voting age population formula for each jurisdiction. Illinois received $511,102 in FY 03, $359,062 in FY04, $357,156 in FY 05, and $401,375 in FY 06 – all of these funds have been expended.

Section 7. Maintenance of Effort

How the State, in using the requirements payment, will maintain the expenditures of the state for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000.

In FY00, Illinois had an appropriation of $550,000 for the uniform registration formatting project (now called the statewide voter registration system project). This amount continues to be appropriated in the agency's budget each fiscal year.

We continue to use the money to continue development of the Statewide Voter Registration Database as dictated by the mandates of HAVA.

Illinois State Board of Elections
Preliminary State Plan

Section 8. Performance Goals and Measures

How the state will adopt performance goals and measures that will be used by the State to determine its success and the success of units of local government in the State in carrying out the plan, including timetables for meeting each of the elements of the plan, descriptions of the criteria the State will use to measure performance and the process used to develop such criteria, and a description of which official is to be held responsible for ensuring that each performance goal is met.

A review of applicable State Laws and Administrative Codes will be undertaken to determine any changes necessary to accomplish the goals of the Help America Vote Act and to ensure compliance through reporting by Election Authorities. The State Board of Elections will revise any existing reporting procedures to include measures of performance for requirements under the Act.

Requirement	Completion	Goal	Measures
Punch Card Buyout	Jan 1, 2006 (waiver approved)	Replace systems in 10,590 eligible precincts	SBE maintains a database of voting systems used by each county, which will be expanded to include critical elements.
Accessible voting machine	Jan 1, 2006	Equipment which allows a disabled voter to vote unassisted in each polling place	Criteria for accessibility certification will be developed to track compliance.
Polling place accessibility	Nov 2006	Provide accessible polling places for each precinct	Election Authorities report polling place accessibility to SBE through surveys. A more precise survey will be devised to insure compliance.
Provisional ballot (Procedures provided for by PA 93-0574)	Jan 2004	Develop procedures for voting and processing ballots Develop system to inform voter of outcome	Provisional ballots must be tracked for the purposes of adding to final canvass and reporting to provisional voter.

Requirement	Completion	Goal	Measures
Definition of vote (Complete - SB428)	Jan 2004	Provide standards for recount procedures	A means of reporting election contests will be developed.
State-wide voter registration system	April 2009	Provide means for uploading voter information from counties to state-wide database	Ratio of counties with equipment and procedures in place to upload information
Grievance procedure	Admin. Complaint Procedure in place	Provide a means of receiving, reporting and resolving complaints from voters	Track complaints and resolutions through an annual report.
Education and Training	Jan 2004	Provide voter education and enhanced election judges training.	Report voter education through election authority surveys. Election Authorities currently report the # of Election Judges who have tested for each election.

The State Board of Elections will assist election authorities to develop standard reports and procedures to measure critical areas of each requirement: scope, schedule, and resources. Reporting requirements will assist SBE in collecting data to report on performance.

- SCOPE: Measure size of project (# of precincts, registered voters, polling places, etc)
- SCHEDULE: Target start and stop dates, actual start stop dates, periodic review of progress (% completed)
- RESOURCES: Measure personnel and existing resources committed to each project as well as financial resources needed to complete the project.

Illinois State Board of Elections
Preliminary State Plan

Section 12. Changes to Plan from Previous Fiscal Year

In the case of a State with a State plan in effect under this subtitle during the previous fiscal year, a description of how the plan reflects changes from the State plan for the previous fiscal year and of how the State succeeded in carrying out the State plan for such previous fiscal year.

Illinois' election jurisdictions are using Title II, Section 251 funds, made available to them to meet the requirements of Title III. All jurisdictions used Title II funds to purchase accessible voting equipment. A certification was submitted to the Election Assistance Commission which will allow Illinois to utilize an amount of the funds to improve the administration of federal elections under Section 251(b). Jurisdictions continue to improve the education of voters and election judges on the voting equipment and the voting process. Funds will be used for other purchases related to HAVA, Section 101.

Illinois continues to disperse Health and Human Services funds to the jurisdictions to provide for polling place accessibility improvements. Illinois will continue to provide for voters with disabilities as more HAVA funds become available.

Illinois continues work on the computerized state voter registration system to bring it into full compliance with the Help America Vote Act.

Section 13. State Planning Committee

A description of the committee which participated in the development of the State plan in accordance with section 255 and the procedures followed by the committee under such section and section 256.

The first state plan was developed through a committee of appropriate individuals, including the chief election officials of the two most populous jurisdictions, other election officials, stakeholders (such as representatives of groups of individuals with disabilities) and other citizens, as well as the Chief State Election Official. This year's state plan was updated by SBE staff and distributed to all members of the State Planning Committee.

The draft State plan will be available on the Board's website and published for public comment for 30 days (comments due no later than May 20). Comments from the Committee will be taken into account before the Plan is submitted to the Board for approval on May 18. If additional comments are received in the two days following May 18, they will be considered as well. An amended state plan will be submitted to the Election Assistance Commission for posting in the Federal Register. The full committee may meet again as necessary.

Daniel W. White, Executive Director, Illinois State Board of Elections,

Members of the Updated State Planning Committee are:

Matt Abrahamson, Dept. of Rehabilitation Services
Steve Bean, Macon County Clerk
Tom Benzinger, Access Living
Bill Blessman, Mason County Clerk
Bernice Bloom, Citizen
Kathy Bruns, House Republican Staff
Hollister Bundy, Inclusion Solutions, Inc.
Ray Campbell, Illinois Council of the Blind
Cynthia Canary, Illinois Campaign for Political Reform
Rance Carpenter, Department of Aging
Bruce Clark, Kankakee County Clerk
Laurie Dittman, Chicago Mayor's Office for People with Disabilities
Heather Wier Vaught, Office of the House Speaker Michael Madigan
Krista Erickson, Lake County Center for Independent Living
Alan Gitelson, Professor of Political Science, Loyola University - Chicago
Lance Gough, Chicago Board of Election Commissioners

Illinois State Board of Elections
Preliminary State Plan

Debbie Grant, Springfield Branch NAACP
Barb Gross, Morgan County Clerk
Harvey Grossman, ACLU
Steve Handschu, National Federation of the Blind of Illinois
Sharon Holmes, DeKalb County Clerk
Bill Houlihan, Office of Senator Richard Durbin
Roger Huebner, General Counsel, IL Municipal League
Pat Hughes, Inclusion Solutions, Inc.
Becky Huntley, Ogle County Clerk
John Jackson, Public Policy Institute, Southern Illinois University – Carbondale
Curt Conrad, Illinois Republican Party
Robin Jones, Great Lakes DPTAC
Mike Kasper, Illinois Democratic Party
Jan Kralovec, Office of Cook County Clerk
League of Women Voters
James Lewis, East St. Louis Board of Election Commissioners
Bill Looby, AFL/CIO
Bill Luking, Attorney
Rene Luna, Access Living
Todd Maisch, IL Chamber of Commerce
Peggy Ann Milton, McLean County Clerk
Saul Morse, Illinois State Medical Society
Peg Mosgers, Office of Senate Republican Leader
Zena Naiditch, Equip for Equality, Inc.
Doreen Nelson, DuPage County Election Commission
Sara Nelson, Office of U.S. Senator Richard Durbin
David Orr, Cook County Clerk
Pat Plotner, former SBE employee
Brendt Ramsey, Coalition of Citizens with Disabilities
Kent Redfield, Department of Political Science, University of Illinois - Springfield
Larry Reinhardt, Jackson County Clerk
Randy Reitz, Bond County Clerk
Pete Roberts, IL Network of Centers for Independent Living
Steve Rotello, Office of the Attorney General
Bob Saar, Executive Director, DuPage County Election Commission
Mary Ann Scanlan, Office of the Secretary of State
Kathie Schultz, McHenry County Clerk
Leslie Stanberry, Director, Decatur-Macon County Senior Center
Nancy Strain, Executive Director, Rockford Board of Election Commissioners
Maria Valdez, MALDEF
Mark Von Nida, Madison County Clerk
Karen Ward, Equip for Equality
Carol Wozniewski, Mental Health Association Illinois
Ralph Yaniz, American Association of Retired Persons
Jill Zwick, Office of Secretary of State

[FR Doc. E9–13608 Filed 6–9–09; 8:45 am]
BILLING CODE 6820–KF–C

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, July 8, 2009; 5 p.m.

ADDRESSES: Atomic Testing Museum, 755 East Flamingo Road, Las Vegas, NV 89119.

FOR FURTHER INFORMATION CONTACT: Denise Rupp, Board Administrator, 232 Energy Way, M/S 505, North Las Vegas, Nevada 89030. Phone: (702) 657–9088; Fax: (702) 295–5300 or E-mail: *ntscab@nv.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Presentation: Underground Test Area Sub-Project
2. Presentation: Soils Sub-Project
3. Sub-Committee Reports
   A. Membership Committee
   B. Outreach Committee
   C. Transportation/Waste Committee
   D. Underground Test Area Committee

Public Participation: The EM SSAB, Nevada Test Site, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Denise Rupp at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Denise Rupp at the telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing to Denise Rupp at the address listed above or at the following Web site: *http://www.ntscab.com/MeetingMinutes.htm.*

Issued at Washington, DC on June 4, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–13584 Filed 6–9–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC09–915–001]

Commission Information Collection Activities (FERC–915); Comment Request; Submitted for OMB Review

June 3, 2009.

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission or FERC) has submitted the information collection described below to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to the **Federal Register** notice (74FR 15474, 4/6/2009) and has made this notation in its submission to OMB.

DATES: Comments on the collection of information are due by July 10, 2009.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *oira_submission@omb.eop.gov* and include OMB Control Number 1902–0223 as a point of reference. The Desk Officer may be reached by telephone at 202–395–4638.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission and should refer to Docket No. IC09–915–001. Comments may be filed either electronically or in paper format. Those persons filing electronically do not need to make a paper filing. Documents filed electronically via the Internet must be prepared in an acceptable filing format and in compliance with the Federal Energy Regulatory Commission submission guidelines. Complete filing instructions and acceptable filing formats are available at *http://www.ferc.gov/help/submission-guide/electronic-media.asp*. To file the document electronically, access the Commission's Web site and click on Documents & Filing, E–Filing (*http://www.ferc.gov/docs-filing/efiling.asp*), and then follow the instructions for each screen. First-time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

For paper filings, an original and 2 copies of the comments should be submitted to the Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426, and should refer to Docket No. IC09–915–001.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the ''eLibrary'' link. For user assistance, contact *fercolinesupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by telephone at (202) 502–8663, by fax at (202) 273–0873, and by e-mail at *ellen.brown@ferc.gov.*

SUPPLEMENTARY INFORMATION: FERC is requesting comments on the record retention requirement FERC–915,[1] ''Public Utility Market-Based Rate Authorization Holders—Records Retention Requirement,'' OMB Control No. 1902–0223.

In accordance with the Federal Power Act, the Department of Energy Organization Act (DOE Act), and the Energy Policy Act of 2005 (EPAct 2005), the Commission regulates the transmission and wholesale sales of electricity in interstate commerce, monitors and investigates energy markets, uses civil penalties and other means against energy organizations and individuals who violate FERC rules in the energy markets, and administers accounting and financial reporting regulations and oversees conduct of regulated companies.

The Commission imposes the FERC–915 record retention requirement, in 18 CFR 35.41(d), on applicable sellers to

[1] The FERC–915 requirements (formerly labeled ''FERC–915(516)'') are contained in 18 CFR 35.41(d).

retain, for a period of five years, all data and information upon which they bill the prices charged for ''electric energy or electric energy products it sold pursuant to Seller's market-based rate tariff, and the prices it reported for use in price indices.''

The record retention period of five years is necessary due to the importance of records related to any investigation of possible wrongdoing and related to assuring compliance with the codes of conduct and the integrity of the market. The requirement is necessary to ensure consistency with the rule prohibiting market manipulation (adopted in Order No. 670) and the generally applicable five-year statute of limitations where the Commission seeks civil penalties for violations of the anti-manipulation rules or other rules, regulations, or orders to which the price data may be relevant.

Action: FERC is requesting a three-year extension of the current expiration date for the FERC–915,[1] with no changes to the requirements.

Burden Statement: Public reporting burden for this collection is estimated at:

FERC requirements	Number of respondents annually	Number of responses per respondent	Average burden hours per response	Total annual burden hours
	(1)	(2)	(3)	(1)×(2)×(3)
FERC–915	1,150	1	1	1,150

The estimated total annual cost to respondents includes hours for labor (1,150 hrs. at $17 per hour, for a labor cost of $19,550) and storage costs (using an estimated 65,000 cu. ft of records in off-site storage, for a total storage cost of $419,858). The total annual cost (labor plus off-site storage) is $439,408; the total annual cost per respondent is $382.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–13541 Filed 6–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC09–916–001]

Commission Information Collection Activities (FERC–916); Comment Request; Submitted for OMB Review

June 3, 2009.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 USC 3507, the Federal Energy Regulatory Commission (Commission or FERC) has submitted the information collection described below to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to the **Federal Register** notice (74FR 15471, 4/6/2009) and has made this notation in its submission to OMB.

DATES: Comments on the collection of information are due by July 10, 2009.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *oira__submission@omb.eop.gov* and include OMB Control Number 1902–0224 as a point of reference. The Desk Officer may be reached by telephone at 202–395–4638.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission and should refer to Docket No. IC09–916–001. Comments may be filed either electronically or in paper format. Those persons filing electronically do not need to make a paper filing. Documents filed electronically via the Internet must be prepared in an acceptable filing format and in compliance with the Federal Energy Regulatory Commission submission guidelines. Complete filing instructions and acceptable filing formats are available at *http://www.ferc.gov/help/submission-guide/electronic-media.asp*. To file the document electronically, access the Commission's Web site and click on Documents & Filing, E–Filing (*http://www.ferc.gov/docs-filing/efiling.asp*), and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

For paper filings, an original and 2 copies of the comments should be submitted to the Federal Energy Regulatory Commission, Secretary of the

Commission, 888 First Street, NE., Washington, DC 20426, and should refer to Docket No. IC09–916–001.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the ''eLibrary'' link. For user assistance, contact *fercolinesupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by telephone at (202) 502–8663, by fax at (202) 273–0873, and by e-mail at *ellen.brown@ferc.gov.*

SUPPLEMENTARY INFORMATION: The Commission is requesting comments on the record retention requirements of FERC–916,[1] ''Record Retention Requirements for Pipelines Providing Unbundled Sales Service, and Persons Holding Blanket Marketing Certificates,'' OMB Control No. 1902–0224. The FERC–916 record retention requirements are contained in 18 CFR 284.288(b) and 284.403(b).

The Commission's regulations at 18 CFR 284.288 and 284.403 provide that applicable sellers of natural gas adhere to a code of conduct when making gas sales in order to protect the integrity of the market. The Commission imposes the FERC–916 record retention requirement on applicable sellers to ''retain, for a period of five years, all data and information upon which it billed the prices it charged for natural gas it sold pursuant to its market based sales certificate or the prices it reported for use in price indices.'' FERC uses the FERC–916 records to monitor the jurisdictional transportation activities and unbundled sales activities of interstate natural gas pipelines and blanket marketing certificate holders.

The record retention period of five years is necessary due to the importance of records related to any investigation of possible wrongdoing and related to assuring compliance with the codes of conduct and the integrity of the market. The requirement is necessary to ensure consistency with the rule prohibiting market manipulation (regulations adopted in Order No. 670, implementing the EPAct 2005 anti-manipulation provisions)[2] and the generally applicable five-year statute of limitations where the Commission seeks civil penalties for violations of the anti-manipulation rules or other rules, regulations, or orders to which the price data may be relevant.

Failure to have this information available would mean the Commission is unable to perform its regulatory functions and to monitor and evaluate transactions and operations of interstate pipelines and blanket marketing certificate holders.

Action: The Commission is requesting a three-year extension of the current expiration date for the FERC–916, with no changes to the requirements.

Burden Statement: Public reporting burden for this collection is estimated at:

FERC requirements	Number of respondents annually	Number of responses per respondent	Average burden hours per response	Total annual burden hours
	(1)	(2)	(3)	(1) × (2) × (3)
FERC–916	222	1	1	222

The estimated total annual cost to respondents includes hours for labor (222 hrs. at $17 per hour, for a labor cost of $3,774) and record storage costs (using an estimated 12,548 cu. ft of records in off-site storage, for a total record storage cost of $81,051). The total annual cost (labor plus off-site record storage) is $84,825; the total annual cost per respondent is $382.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden of the proposed collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–13542 Filed 6–9–09; 8:45 am]

BILLING CODE 6717–01–P

[1] FERC–916 was formerly called ''FERC–916(549),'' with the intent of consolidating the FERC–916 into the FERC–549 (OMB Control No. 1902–0086). FERC has decided not to consolidate the FERC–916 into the FERC–549, so this Notice deals only with the FERC–916 requirements.

[2] 18 CFR 1c.1 and 1c.2, 71 FR 4,244 (2006).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC09–914–001]

Commission Information Collection Activities (FERC–914); Comment Request; Submitted for OMB Review

June 3, 2009.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the

Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission or FERC) has submitted the information collection described below to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to the **Federal Register** notice (74FR 15472, 4/6/2009) and has made this notation in its submission to OMB.

DATES: Comments on the collection of information are due by July 10, 2009.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *oira_submission@omb.eop.gov* and include OMB Control Number 1902–0231 as a point of reference. The Desk Officer may be reached by telephone at 202–395–4638.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission and should refer to Docket No. IC09–914–001. Comments may be filed either electronically or in paper format. Those persons filing electronically do not need to make a paper filing. Documents filed electronically via the Internet must be prepared in an acceptable filing format and in compliance with the Federal Energy Regulatory Commission submission guidelines. Complete filing instructions and acceptable filing formats are available at *http://www.ferc.gov/help/submission-guide/electronic-media.asp*. To file the document electronically, access the Commission's Web site and click on Documents & Filing, E–Filing (*http://www.ferc.gov/docs-filing/efiling.asp*), and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

For paper filings, an original and 2 copies of the comments should be submitted to the Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426, and should refer to Docket No. IC09–914–001.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the ''eLibrary'' link. For user assistance, contact *fercolinesupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by telephone at (202)502–8663, by fax at (202)273–0873, and by e-mail at *ellen.brown@ferc.gov*.

SUPPLEMENTARY INFORMATION: FERC is requesting comments on the FERC–914,[1] ''Cogeneration and Small Power Production—Tariff Filings,'' OMB Control No. 1902–0231. The information filed in FERC–914 enables the Commission to exercise its wholesale electric rate and electric power transmission oversight and enforcement responsibilities in accordance with the Federal Power Act, the Department of Energy Organization Act (DOE Act) and EPAct 2005.

In Orders 671 and 671–A,[2] the Commission revised its regulations that govern qualifying small power production and cogeneration facilities. Among other things, the Commission eliminated certain exemptions from rate regulation that were previously available to qualifying facilities (QFs). New qualifying facilities may need to make tariff filings if they do not meet the new exemption requirements of 18 CFR Part 292.

Section 205(c) of the FPA requires that every public utility have all of its jurisdictional rates and tariffs on file with the Commission and make them available for public inspection, within such time and in such form as the Commission may designate. Section 205(d) of the FPA requires that every public utility must provide notice to FERC and the public of any changes to its jurisdictional rates and tariffs, file such changes with FERC, and make them available for public inspection, in such manner as directed by the Commission. In addition, FPA section 206 requires FERC, upon complaint or its own motion, to modify existing rates or services that are found to be unjust, unreasonable, unduly discriminatory or preferential. FPA section 207 further requires the Commission upon complaint by a State commission and a finding of insufficient interstate service, to order the rendering of adequate interstate service by public utilities, the rates for which would be filed in accordance with FPA sections 205 and 206.

FERC implemented the Congressional mandate of EPAct 2005 to establish criteria for new qualifying cogeneration facilities by: (1) Amending the exemptions available to qualifying facilities from the FPA and from PUHCA [resulting in the burden imposed by FERC–914, the subject of this Notice]; (2) ensuring that these facilities are using their thermal output in a productive and beneficial manner; that the electrical, thermal, chemical and mechanical output of new qualifying cogeneration facilities is used fundamentally for industrial, commercial, residential or industrial purposes; and there is a continuing progress in the development of efficient electric energy generating technology; (3) amending the FERC Form 556[3] to reflect the criteria for new qualifying cogeneration facilities; and (4) eliminating ownership limitations for qualifying cogeneration and small power production facilities. FERC satisfied the statutory mandate and its continuing obligation to review its policies encouraging cogeneration and small power production, energy conservation, efficient use of facilities and resources by electric utilities and equitable rates for energy customers.

Action: The Commission is requesting a three-year extension of the current expiration date for the FERC–914,[1] with no changes to the reporting requirements.

Burden Statement: Public reporting burden for this collection is estimated at:

[1] Normally, these requirements and burden would be included in FERC–516, ''Electric Rate Schedule Filings'' (OMB Control No.1902–0096). However, FERC–516 is currently the subject of OMB review, so the Commission will continue to track these requirements (and the related burden hours) separately under FERC–914 [formerly labeled ''FERC–914(516)'']. FERC–914 covers the tariff filing requirements under 18 CFR Part 35 for those qualifying facilities that do not meet the exemption requirements in 18 CFR Part 292. In the future, FERC plans to incorporate the FERC–914 reporting requirements and related burden into the FERC–516.

[2] *Revised Regulations Governing Small Power Production and Cogeneration Facilities,* Order No. 671, 71 FR 7852 (Feb. 15, 2006), FERC Stats. & Regs. ¶ 31,203 (2006); and *Revised Regulations Governing Small Power Production and Cogeneration Facilities,* Order 671–A, 71 FR 30585 (May 30, 2006), in Docket No. RM05–36.

[3] The FERC–556 is cleared separately as OMB Control No. 1902–0075 and is not a subject of this Notice.

FERC Data collection—FERC–914	Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1) × (2) × (3)
FPA Section 205 filings	100	1	183	18,300
Electric quarterly reports (initial)	100	1	230	23,000
Electric quarterly reports (later)	100	3	6	1,800
Change of status	100	1	3	300
Total				43,400

The estimated total annual cost to respondents is $2,676,966.10 [43,400 hours divided by 2,080 hours[4] per year, times $128,297[5] equals $2,676,966.10]. The cost per respondent is $26,769.66. The estimated burden covers the qualifying facilities required to file electric quarterly reports, change of status filings, and tariff filings to comply with section 205 of the Federal Power Act (FPA).

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden of the proposed collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–13540 Filed 6–9–09; 8:45 am]

BILLING CODE 6717–01–P

[4] Number of hours an employee works each year.

[5] Average annual salary per employee.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12717–002]

Northern Illinois Hydropower, LLC; Notice of Application Tendered for Filing with the Commission, Soliciting Additional Study Requests, Establishing Procedural Schedule for Licensing, and Deadline for Submission of Final Amendments

June 3, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original License.

b. *Project No.:* P–12717–002.

c. *Date Filed:* May 27, 2009.

d. *Applicant:* Northern Illinois Hydropower, LLC.

e. *Name of Project:* Brandon Road Hydropower Project.

f. *Location:* U.S. Army Corps of Engineers Brandon Road Lock and Dam on the Illinois River, in the City of Joliet, Will County, Illinois. The project will occupy approximately 1.6 acres of federal land.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Damon Zdunich, Northern Illinois Hydropower, LLC, 801 Oakland Avenue, Joliet, IL 60435, (312) 320–1610.

i. *FERC Contact:* Dr. Nicholas Palso, (202) 502–8854.

j. *Cooperating Agencies:* Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. See, 94 FERC ¶ 61,076 (2001).

k. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days after the application is filed, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* July 27, 2009.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Additional study requests and requests for cooperating agency status 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 at (*http://www.ferc.gov*) under the ''eFiling'' link. For a simpler method of submitting text only comments, click on ''Quick Comment.''

m. This application is not ready for environmental analysis at this time.

n. *Description of Project:* The Brandon Road Project would utilize the Corps of Engineer's existing Brandon Road Dam

and reservoir and would consist of: (1) A new 90-foot by 118-foot concrete powerhouse located between headgate sections 1 through 4 immediately below the existing dam containing two S–Type turbine generator units with a combined installed capacity of 10.2 MW; (2) a new 50-foot by 50-foot switchyard adjacent to the west of the powerhouse; and (3) a new 34.5-kilovolt, 1-mile-long transmission line; and (4) appurtenant facilities. The project would have an average annual generation of about 59,000 megawatt-hours.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the Illinois State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate. The Commission staff proposes to issue one environmental assessment rather than issue a draft and final EA. Comments, terms and conditions, recommendations, prescriptions, and reply comments, if any, will be addressed in an EA. Staff intents to give at least 30 days for entities to comment on the EA, and will take into consideration all comments received on the EA before final action is taken on the license application.

Issue Acceptance or Deficiency Letter–June 2009
Issue Scoping Document for comments–November 2009
Notice of application ready for environmental analysis–April 2010
Notice of the availability of the EA September–2010

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Kimberly D. Bose,
Secretary.

[FR Doc. E9–13536 Filed 6–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI09–9–000]

Alaska Power & Telephone Company; Notice of Declaration of Intention and Soliciting Comments, Protests, and/or Motions To Intervene

June 3, 2009.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No:* DI09–9–000.

c. *Date Filed:* May 18, 2009.

d. *Applicant:* Alaska Power & Telephone Company.

e. *Name of Project:* Connelly Lake Hydroelectric Project.

f. *Location:* The proposed Connelly Lake Hydroelectric Project will be located on an unnamed stream, Connelly Lake, Chilkoot River, and Chilkoot Lake, near the towns of Haines and Skagway, Haines Borough, Alaska, affecting T. 28 S, R. 57 E, secs. 23, 24, 25, 26, 27, 34, and 35, and T. 29 S, R. 58 E, secs. 4, 9, 10, 14, 15, 22, 23, 25, 26, and 36, Copper River Meridian.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Glen D. Martin, Project Manager, 193 Otto Street, P.O. Box 3222, Port Townsend, WA 98368, telephone: (360) 385–1733, x122; Fax: (360) 385–7538; e-mail: *http://www.glen.m@aptalaska.com.*

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton, (202) 502–8768, or E-mail address: *henry.ecton@ferc.gov.*

j. *Deadline for filing comments, protests, and/or motions:* July 6, 2009.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and/or interventions may be filed electronically via the Internet in lieu of paper.

Any questions, please contact the Secretary's Office. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing link.

Please include the docket number (DI09–9–000) on any comments, protests, and/or motions filed.

k. *Description of Project:* The proposed Connelly Lake Hydropower Project will include: (1) A 48-foot-high, 100-foot-wide rock-filled dam; (2) a lake with a storage capacity of 4,700 acre-feet; (3) a 6,188-foot-long, 30-inch-diameter penstock; (4) a 40-foot-wide, 60-foot-long metal powerhouse containing one or two turbines, with an installed capacity of 6,200 kW; (5) a tailrace emptying into the Chilkoot River; (6) a 14-mile-long, 34.5 kV underground and overhead transmission line; and (7) appurtenant facilities. The proposed project will not be connected to an interstate grid, and will not occupy any federal lands.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link, select ''Docket#'' and follow the instructions. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3372, or TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all

protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', AND/OR ''MOTIONS TO INTERVENE'', as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–13546 Filed 6–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12636–001]

Mohawk Hydro Corp.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

June 3, 2009.

On May 1, 2009, Mohawk Hydro Corporation filed an application, pursuant to section 4(f) of the Federal Power Act, for a successive preliminary permit to study the feasibility of the Middle Mohawk Hydroelectric Project, to be located on the Mohawk River, in Schenectady and Montgomery Counties, New York.

The proposed Middle Mohawk Hydroelectric Project would be located at existing facilities that are owned by the New York State Canal Corporation. The proposed run-of-river project would consist of the following eight Developments:

Lock #8 Development

(1) An existing 530-foot-long, 14-foot-high bridge type dam constructed primarily of steel, (2) an existing reservoir having a surface area of 336 acres, with a storage capacity of 3,360 acre-feet and a normal water surface elevation of 224 feet USGS, (3) a proposed intake structure, (4) two proposed powerhouses containing 18 generating units having a total installed capacity of 6 MW, (5) a proposed 1,800-foot-long, 34.5 kV transmission line, and (6) appurtenant facilities.

The development would have an annual generation of 16 gigawatt-hours which would be sold to a local utility.

Lock #9 Development:

(1) An existing 530-foot-long, 15-foot-high bridge type dam constructed primarily of steel, (2) an existing reservoir having a surface area of 428 acres, with a storage capacity of 4,280 acre-feet and a normal water surface elevation of 239 feet USGS, (3) a proposed intake structure, (4) two proposed powerhouses containing 18 generating units having a total installed capacity of 6 MW, (5) a proposed 200-foot-long, 13.2 kV transmission line, and (6) appurtenant facilities.

The development would have an annual generation of 17.6 gigawatt-hours which would be sold to a local utility.

Lock #10 Development

(1) An existing 500-foot-long, 15-foot-high bridge type dam constructed primarily of steel, (2) an existing reservoir having a surface area of 414 acres, with a storage capacity of 4,140 acre-feet and a normal water surface elevation of 254 feet USGS, (3) a proposed intake structure, (4) two proposed powerhouses containing 18 generating units having a total installed capacity of 6 MW, (5) a proposed 1,500-foot-long, 115 kV transmission line, and (6) appurtenant facilities.

The development would have an annual generation of 17.3 gigawatt-hours which would be sold to a local utility.

Lock #11 Development

(1) An existing 588-foot-long, 12-foot-high bridge type dam constructed primarily of steel, (2) an existing reservoir having a surface area of 414 acres, with a storage capacity of 4,140 acre-feet and a normal water surface elevation of 266 feet USGS, (3) a proposed intake structure, (4) two proposed powerhouses containing 18 generating units having a total installed capacity of 6 MW, (5) a proposed 700-foot-long, 34.5 kV transmission line, and (6) appurtenant facilities.

The development would have an annual generation of 16.1 gigawatt-hours which would be sold to a local utility.

Lock #12 Development

(1) An existing 460-foot-long, 11-foot-high bridge type dam constructed primarily of steel, (2) an existing reservoir having a surface area of 737 acres, with a storage capacity of 7,370 acre-feet and a normal water surface elevation of 277 feet USGS, (3) a proposed intake structure, (4) two proposed powerhouses containing 18 generating units having a total installed capacity of 6 MW, (5) a proposed 400-foot-long, 13.2 kV transmission line, and (6) appurtenant facilities.

The development would have an annual generation of 11.7 gigawatt-hours which would be sold to a local utility.

Lock #13 Development

(1) An existing 370-foot-long, 8-foot-high bridge type dam constructed primarily of steel, (2) an existing reservoir having a surface area of 464 acres, with a storage capacity of 4,640 acre-feet and a normal water surface elevation of 285 feet USGS, (3) a proposed intake structure, (4) a proposed powerhouse containing 9 generating units having a total installed capacity of 3 MW, (5) a proposed 200-foot-long, 13.2 kV transmission line, and (6) appurtenant facilities.

The development would have an annual generation of 7.3 gigawatt-hours which would be sold to a local utility.

Lock #14 Development

(1) An existing 430-foot-long, 8-foot-high bridge type dam constructed primarily of steel, (2) an existing reservoir having a surface area of 219 acres, with a storage capacity of 2,190 acre-feet and a normal water surface elevation of 293 feet USGS, (3) a proposed intake structure, (4) a proposed powerhouse containing 9 generating units having a total installed capacity of 3 MW, (5) a proposed 200-foot-long, 13.2 kV transmission line, and (6) appurtenant facilities.

The development would have an annual generation of 5.8 gigawatt-hours which would be sold to a local utility.

Lock #15 Development:

(1) An existing 430-foot-long, 8-foot-high bridge type dam constructed primarily of steel, (2) an existing reservoir having a surface area of 578 acres, with a storage capacity of 5,780 acre-feet and a normal water surface

elevation of 293 feet USGS, (3) a proposed intake structure, (4) two proposed powerhouses containing 18 generating units having a total installed capacity of 6 MW, (5) a proposed 200-foot-long, 13.2 kV transmission line, and (6) appurtenant facilities.

The development would have an annual generation of 5.8 gigawatt-hours which would be sold to a local utility. The total installed capacity for all eight proposed developments is 41 MW and the total annual generation is 97.6 gigawatt-hours.

Applicant Contact: Mr. James A. Besha, P.E., President of Albany Engineering Corporation, Agent for Mohawk Hydro Corp., 5 Washington Square, Albany, NY 12205, (518) 456–7712.

FERC Contact: John Ramer, (202) 502–8969.

Deadline for filing motions to intervene, competing applications (without notice of intent), or notices of intent to file competing applications: 60 days from the issuance date of this notice. Comments, motions to intervene, notices of intent, and competing applications may be electronically filed 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 filed 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/filling-comments.asp.* More information about this project can be viewed or printed on the ''e-library'' link of the Commission's Web site at *http://www.ferc.gov/docs-filings/elibrary.asp.* Enter the docket number (P–12636–001) in the docket number field to access the document. For assistance, call toll free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–13545 Filed 6–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL09–56–000]

Notice of Complaint

June 3, 2009.

People of the State of California, ex rel., Edmund G. Brown, Jr. Attorney General of the State of California, Complainant, v. Powerex Corp. (f/k/a British Columbia Power Exchange Corp.), Sempra Energy Trading, LLC (f/k/a Sempra Energy Trading Corp.), Allegheny Energy Supply Company, LLC, TransAlta Energy Marketing (US), Inc., Public Service Company of New Mexico, MIECO, Inc., Shell Energy North America (U.S.), L.P. (successor by merger to Coral Power LLC), Merrill Lynch Capital Services, TransCanada Energy Ltd. (f/k/a TransCanada Power Corp.), Commerce Energy Corp. (f/k/a Commonwealth Energy Corp.), Nevada Power Company, Tucson Electric Power Company, American Electric Power Service Corp., Comision Federal de Electricidad, Sierra Pacific Power Company, Sierra Pacific Industries, Avista Corp. (f/k/a Washington Water Power Power Company), Avista Energy, Inc., Sempra Energy Solutions LLC, Respondents.

Notice of Complaint

Take notice that on May 22, 2009, pursuant to section 206 of the Rules and Practice and Procedure, 18 CFR 385.206 and sections 205, 206, 306, and 309 of the Federal Power Act, 16 U.S.C. 824(d), 824(e), 825(e), and 825(h), the People of the California, *ex rel.* Edmond G. Brown Jr., Attorney General of the State of California (Complainant) filed a formal complaint against the Respondents alleging that the named Respondents, public utility sellers of short-term bilateral energy to the California Energy Resources Scheduling Division of the California Department of Water Resources (CERS) during the period January 18, 2001 to June 20, 2001, owe refunds to California ratepayers on sales to CERS because those sales were made at unjust and unreasonable prices.

The Attorney General certifies that copies of the complaint were served upon the named Respondents or their authorized representatives via individual e-mails, by e-mails to the Docket EL00–95–000 and Docket EL02–71–000 Listserv, by e-mail to the E-mail service list in Docket EL01–10, and by express delivery service.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 20, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–13537 Filed 6–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR09–8–000]

Chevron Products Company, Complainant, v. SFPP, L.P., Respondent; Notice of Complaint

June 3, 2009.

Take notice that on May 29, 2009, pursuant to Rule 206 of the Rules and Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206, section 343.2 of the Procedural Rules Applicable to Oil Pipeline Proceedings, 18 CFR 385.343.2, sections 1(5), 8, 9, 13, 15, and 16 of the Interstate Commerce Act, 49 U.S.C. App. 1(5), 8, 9, 13, 15, and 16 (1988), and section 1803 of the Energy Policy Act of 1992, Chevron Products Company (Complainant) filed a formal complaint challenging the justness and reasonableness of the index

rate increases placed into effect by the Respondent in its 2008 index rate filing (in Docket IS08–302–000).

The Complainant states that copies of the complaint were served on the Respondent.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on June 18, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–13544 Filed 6–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ09–4–000]

Bonneville Power Administration; Notice of Filing

June 3, 2009.

Take notice that on May 29, 2009, Bonneville Power Administration submitted for filing certain amendments to its Open Access Transmission Tariff (OATT) and petitions the Commission for declaratory order accepting the revisions as satisfying the Federal Energy Regulatory Commission's (Commission) standards for reciprocity approval, pursuant to 18 CFR 35.28(e), 18 CFR 385.207 and Order No. 890, *Preventing Undue Discrimination and Preference in Transmission Service,* 118 FERC ¶ 61, 119 (2007) (Order 890), at P 191.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on June 29, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–13543 Filed 6–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–1207–000]

P.H. Glatfelter Company; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

June 3, 2009.

This is a supplemental notice in the above-referenced proceeding of P.H. Glatfelter Company's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 23, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to any subscribed docket(s). For assistance with any FERC

Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–13539 Filed 6–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–1193–000]

Palmco Power CT, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

June 3, 2009.

This is a supplemental notice in the above-referenced proceeding of Palmco Power CT, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is June 23, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–13538 Filed 6–9–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2008–0287; FRL–8916–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Semiconductor Manufacturing (Renewal), EPA ICR Number 2042.04, OMB Control Number 2060–0519

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before July 10, 2009.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2008–0287, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 30, 2008 (73 FR 31088), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2008–0287, which is available for public viewing online at *http://www.regulations.gov,* in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, 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 Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1927.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper will be made available for public viewing at *http://www.regulations.gov,* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: NESHAP for Semiconductor Manufacturing (Renewal).

ICR Numbers: EPA ICR Number 2042.04, OMB Control Number 2060–0519.

ICR Status: This ICR is schedule to expire on August 31, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Semiconductor Manufacturing were proposed on May 8, 2002, (67 FR 30848), and promulgated on May 22, 2003, (68 FR 87925). These standards apply to each existing, new, or reconstructed effected source for those manufacturing semiconductors. Semiconductor manufacturing process units are used to manufacture p-type and n-type semiconductor and active solid-state devices from a water substrate, including research and development activities integrated into a semiconductor manufacturing process unit.

Owners or operators of the affected facilities would be required to submit one-time only notifications, compliance status report, and initial performance test results. Respondents are required to maintain records of the occurrence and duration of any startup, shutdown, and malfunction (SSM) in the operations of an affected facility, or any period during which the monitoring system is inoperative. Semiannual summary reports are also required.

Any owner or operator subject to the provisions of this subpart must maintain a file of these measurements and retain the file for at least five years following the collection of such measurements, maintenance reports, and records. All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Number for EPA regulations listed in 40 CFR part 9 and 48 CFR chapter 15 are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 18 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose and provide information to or for a Federal agency. This includes the time needed to review instructions, develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information. All existing ways will have to adjust to comply with any previously applicable instructions and requirements that have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Semiconductor manufacturing.

Estimated Number of Respondents: 1.

Frequency of Response: On occasion, initially, and semiannually.

Estimated Total Annual Hour Burden: 37.

Estimated Total Annual Cost: $3,167: including $3,117 for Labor costs, $50 for operation and maintenance (O&M) costs and 0 for capital/startup costs.

Changes in the Estimates: There is no change in the labor hours in this ICR compared to the previous ICR. This is due to two considerations: (1) The regulations have not changed over the past three years, and we are not anticipating any changes over the next three years; and (2) the current growth rate for the industry is very low, negative or nonexistent, so there is no significant change in the overall burden. This standard only regulates existing source, therefore, no new respondent will be subject to the regulation over the next three years.

Since there are no changes in the regulatory requirements and there is no significant industry growth, the labor hours and cost figures in the previous ICR we used in this ICR, and there is no change in burden to industry.

Dated: June 4, 2009.

John Moses,

Director, Collection Strategies Division.

[FR Doc. E9–13587 Filed 6–9–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2008–0868; FRL–8916–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Health and Safety Data Reporting, Submission of Lists and Copies of Health and Safety Studies; EPA ICR No. 0575.12, OMB Control No. 2070–0004

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection Supporting Statement, Health and Safety Data Reporting, Submission of Lists and Copies of Health and Safety Studies. The ICR, which is abstracted below, describes the nature of the information collection activity and its expected burden and costs.

DATES: Additional comments may be submitted on or before July 10, 2009.

ADDRESSES: Submit your comments, referencing docket ID Number EPA–HQ–OPPT–2008–0868 to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *oppt.ncic@epa.gov* or by mail to: Document Control Office (DCO), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Mail Code: 7407T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, Mailcode: 7408–M, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–554–1404; e-mail address: *TSCA–Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On December 24, 2008 (73 FR 79081), EPA sought comments on this renewal

ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OPPT–2008–0868, which is available for online viewing at *http://www.regulations.gov,* or in person inspection at the OPPT Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Pollution Prevention and Toxics Docket is 202–566–0280.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in *http://www.regulations.gov.* The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in *http://www.regulations.gov.* For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Health and Safety Data Reporting, Submission of Lists and Copies of Health and Safety Studies.

ICR Numbers: EPA ICR No. 0575.12, OMB Control No. 2070–0004.

ICR Status: This ICR is currently scheduled to expire on July 31, 2009. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9. *Abstract:* Section 8(d) of the Toxic Substances Control Act (TSCA) and 40 CFR part 716 require manufacturers and processors of chemicals to submit lists and copies of health and safety studies relating to the health and/or environmental effects of certain chemical substances and mixtures. In order to comply with the reporting requirements of section 8(d), respondents must search their records to identify any health and safety studies in their possession, copy and process relevant studies, list studies that are currently in progress, and submit this information to EPA.

EPA uses this information to construct a complete picture of the known effects of the chemicals in question, leading to determinations by EPA of whether additional testing of the chemicals is required. The information enables EPA to base its testing decisions on the most complete information available and to avoid demands for testing that may be duplicative. EPA uses information obtained via this collection to support its investigation of the risks posed by chemicals and, in particular, to support its decisions on whether to require industry to test chemicals under section 4 of TSCA.

Responses to the collection of information are mandatory (see 40 CFR part 716). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average about 11 hours per response. Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this action are companies that manufacture, process, import or distribute in commerce chemical substances or mixtures.

Frequency of Collection: On occasion.

Estimated Average Number of Responses for Each Respondent: 1.2.

Estimated No. of Respondents: 34.

Estimated Total Annual Burden on Respondents: 456 hours.

Estimated Total Annual Costs: $28,030.

Changes in Burden Estimates: There is a decrease of 13,891 hours (from 14,347 hours to 456 hours) in the total estimated respondent burden compared with that currently in the OMB inventory. This decrease reflects the episodic nature of rulemakings that add chemicals to the TSCA section 8(d) list. EPA has added chemicals to the section 8(d) list in only three of the last 13 years, adding an average of 20 chemicals per year over that time period. The most recent ICR anticipated adding an unusually large number of chemicals to the 8(d) list, associated with the high production volume (HPV) chemical program. Because EPA does not anticipate adding such a large number of chemicals during the next three years, EPA has reduced the burden estimate for this ICR. It is now more consistent with the number of chemicals that EPA has historically added to the TSCA section 8(d) list. This change is an adjustment. The Supporting Statement provides additional detail concerning the changes in burden estimates.

Dated: June 4, 2009.

John Moses,

Acting Director, Collection Strategies Division.

[FR Doc. E9–13589 Filed 6–9–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2008–0286; FRL–8916–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Integrated Iron and Steel Manufacturing (Renewal), EPA ICR Number 2003.04, OMB Control Number 2060–0517

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before July 10, 2009.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2008–0286, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 30, 2008 (73 *FR* 31088), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2008–0286, which is available for public viewing online at *http://www.regulations.gov*, in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, 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 Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1927.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper will be made available for public viewing at *http://www.regulations.gov*, as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: NESHAP for Integrated Iron and Steel Manufacturing (Renewal).

ICR Numbers: EPA ICR Number 2003.04, OMB Control Number 2060–0517.

ICR Status: This ICR is scheduled to expire on August 31, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Integrated Iron and Steel Manufacturing were proposed on July 13, 2001 (66 FR 36835), and promulgated on May 20, 2003 (68 FR 27645). The proposed amendments were published August 30, 2005 (70 FR 51306). These standards apply to new and existing sinter plants, blast furnaces, and basic oxygen process furnace (BOPF) shops at integrated iron and steel manufacturing facilities that are major sources of hazardous air pollutants (HAPs), or are collocated at major sources. This information is being collected to assure compliance with 40 CFR part 63, subpart FFFFF.

Owners and operators of affected sources are subject to the monitoring, recordkeeping and reporting requirements of 40 CFR part 63, subpart A, the General Provisions, unless specified otherwise in the regulation. This rule requires sources to submit initial notifications, conduct performance tests if source is using an add-on control device, and submit periodic compliance reports. In addition, sources are required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation if using an add-on control device; any period during which the monitoring system is inoperative; parametric monitoring data; system maintenance and calibration; and work practices to demonstrate initial and ongoing compliance with the regulation.

Any owner or operator subject to the provisions of this subpart must maintain a file of these measurements, and retain the file for at least five years following the collection of such measurements, maintenance reports, and records. All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Number for EPA regulations listed in 40 CFR part 9 and 48 CFR chapter 15, are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information are estimated to average 419 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose and provide information to or for a Federal agency. This includes the time needed to review instructions, develop, acquire, install, and utilize technology and systems for the purposes

of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information. All existing ways will have to adjust to comply with any previously applicable instructions and requirements that have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Integrated iron and steel manufacturing.

Estimated Number of Respondents: 18.

Frequency of Response: On occasion, initially and semiannually.

Estimated Total Annual Hour Burden: 18,421.

Estimated Total Annual Cost: $1,627,196: which is comprised of $1,560,196 in Labor costs, $67,000 in Operation and Maintenance (O&M) costs, and no capital/startup costs.

Changes in the Estimates: There is no change in the labor hours in this ICR as compared to the previous ICR. This is due to two considerations: (1) the regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for the industry is very low, negative or nonexistent, so there is no significant change in the overall burden.

Since there are no changes in the regulatory requirements and there is no significant industry growth, the labor hours and cost figures in the precious ICR are used in this ICR, and there is no change in burden to industry.

Dated: June 4, 2009.

John Moses,

Director, Collection Strategies Division.

[FR Doc. E9–13588 Filed 6–9–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0986; FRL–8420–1]

Amendment to the Allethrins Reregistration Eligibility Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Revised Reregistration Eligibility Decision (RED) for the allethrins series of pesticides. EPA amended the allethrins RED to include an assessment of a registered use for the allethrins (use in commercial animal housing automatic misting systems), which was not considered in the original RED.

FOR FURTHER INFORMATION CONTACT: Molly Clayton, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 603–0522; fax number: (703) 308–8090; e-mail address: *clayton.molly@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0986. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. Background

A. What Action is the Agency Taking?

Section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) directs EPA to reevaluate existing pesticides to ensure that they meet current scientific and regulatory standards. In the **Federal Register** issue of September 26, 2007 (72 FR 54662) (FRL–8144–8), EPA issued a RED for the allethrins under section 4(g)(2)(A) of FIFRA. Due to their uses, risk, and other factors, the allethrins were reviewed through the modified 4–Phase public participation process. Subsequent to publication of the RED, the technical registrant (Valent BioSciences Corporation) identified a product (EPA registration number 21165–62) registered for use in commercial animal housing automatic misting systems, a use not addressed in the RED or in the supporting risk assessments. As a result, the Agency updated the allethrins occupational and residential risk assessment to include an evaluation of this product and use pattern, and revised the RED accordingly. All other risk assessments described in the original RED remain the same.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA, as amended, directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

List of Subjects

Environmental protection, Allethrins, Pesticides and pests.

Dated: June 1, 2009.

Richard P. Keigwin, Jr.,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E9–13460 Filed 6–9–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0298; FRL–8419–9]

Pesticide Experimental Use Permit; Receipt of Application; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of an application 62719–EUP–AE from Dow AgroSciences requesting an experimental use permit (EUP) for sulfuryl fluoride. The Agency has determined that the permit may be of regional and national significance. Therefore, in accordance with 40 CFR

172.11(a), the Agency is soliciting comments on this application.

DATES: Comments must be received on or before July 10, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0298, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington,VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2009–0298. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line 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 information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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 docket index available at *http://www.regulations.gov*. 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Kable Bo Davis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 306–0415; e-mail address: *davis.kable@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to agricultural producers, food manufacturers, pesticide manufacturers, or those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice*. EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide(s) discussed in this document, compared to the general population.

II. What Action is the Agency Taking?

Under section 5 of FIFRA, 7 U.S.C. 136c, EPA can allow manufacturers to field test pesticides under development. Manufacturers are required to obtain an EUP before testing new pesticides or new uses of pesticides if they conduct experimental field tests on 10 acres or more of land or one acre or more of water.

Pursuant to 40 CFR 172.11(a), the Agency has determined that the following EUP application may be of regional and national significance, and therefore is seeking public comment on the EUP application:

Submitter: Dow AgroSciences, (62719–EUP–AE).

Pesticide Chemical: Sulfuryl fluoride.

Summary of Request: Dow AgroSciences is requesting an EUP for sulfuryl fluoride, a pesticide fumigant. The product is intended to be applied as a pre-plant soil fumigant to areas where tomato, pepper, squash, and cucurbits are typically grown. The proposed EUP program would be initiated on August 1, 2009 and finalized on August 1, 2012. The amount of pesticide product proposed for use is 32,500 lbs of the product, which equals 32,435 lbs of the active ingredient. The total proposed acreage is 65 acres. The states in which the proposed program will be conducted include California, Florida, Georgia, and Texas.

A copy of the application and any information submitted is available for public review in the docket established for this EUP application as described under **ADDRESSES**.

Following the review of the application and any comments and data received in response to this solicitation, EPA will decide whether to issue or deny the EUP request, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

List of Subjects

Environmental protection, Experimental use permits.

Dated: May 29, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E9–13475 Filed 6–9–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2008–0553; FRL–8913–6]

Notice of Availability of National Recommended Water Quality Criteria for Acrolein and Phenol

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of updated water quality criteria for acrolein and phenol.

SUMMARY: Pursuant to section 304(a) of the Clean Water Act (CWA), the Environmental Protection Agency (EPA) is announcing the availability of updated national recommended water quality criteria for the protection of human health for acrolein and phenol. These criteria are based on EPA's *Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health* (2000), EPA–822–B–00–004 (2000 Human Health Methodology) and supercede criteria for these chemicals previously published by EPA. EPA's recommended section 304(a) water quality criteria are guidance to States and authorized Tribes in adopting water quality standards for protecting human health and provide guidance to EPA for promulgating Federal regulations under CWA section 303(c), when such action is necessary.

ADDRESSES: Copies of documents specifically referenced in this notice are in Docket ID No. EPA–HQ–OW–2008–0553. Materials in the public docket are available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) 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 Office of Water Docket is (202) 566–2426. A reasonable fee will be charged for copies. An electronic version of the public docket is available through EPA's electronic public docket and comment system at *http://www.regulations.gov.* Once in the system, select ''search,'' then key in the appropriate docket identification number.

FOR FURTHER INFORMATION CONTACT: Heidi L. Bethel, Health and Ecological Criteria Division (4304T), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460; (202) 566–2054; *bethel.heidi@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Interested Entities

Entities potentially interested in today's notice are those that produce, use, or regulate acrolein or phenol. Categories and entities interested in today's notice include:

Category	Examples of interested entities
States, Authorized Tribes and Jurisdictional Governments.	NPDES Authorized States, Tribes and Jurisdictions.
Industry	Industries discharging pollutants to surface waters or to publically-owned treatment works discharging pollutants to surface waters.
Municipalities	Publically-owned treatment works discharging pollutants to surface waters.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be interested in this notice. This table lists the types of entities that EPA is now aware could potentially be interested in this notice. Other types of entities not listed in the table could also be interested.

B. How Can I Get Copies of the National Recommended Water Quality Criteria for the Protection of Human Health and Other Related Information?

1. *Docket.* EPA established an official public docket for this notice under Docket ID No. EPA–HQ–OW–2008–0553. The official public docket consists of the documents specifically referenced in this notice, any public scientific views received, and other information related to this announcement. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) 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 Office of Water Docket

is (202) 566–2426. A reasonable fee will be charged for copies.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''Federal Register'' listings at *http://www.epa.gov/fedrgstr/.* An electronic version of the public docket is available through EPA's electronic public docket and comment system. You may access EPA Dockets at *https://www.regulations.gov* to 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. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section B.1. Once in the system, select ''search,'' then key in the appropriate docket identification number.

II. Background Information

A. What Are Human Health Water Quality Criteria?

Human health water quality criteria are numeric values that describe ambient water concentrations that protect human health from the harmful effects of pollutants in ambient water. These criteria are developed under CWA section 304(a) and are based solely on data and scientific judgments about the relationship between pollutant concentrations and environmental and human health effects. Human health water quality criteria do not reflect consideration of economic impacts or the technological feasibility of meeting the chemical concentrations in ambient water. CWA section 304(a)(1) requires EPA to develop and publish and, from time to time, revise criteria for water quality that accurately reflect the latest scientific knowledge. EPA's recommended section 304(a) water quality criteria provide guidance to States and authorized Tribes in adopting water quality standards for protection of human health. The criteria also provide guidance to EPA when promulgating Federal regulations under CWA section 303(c), when such action is necessary. They do not substitute for the CWA or regulations, nor are they regulations themselves. Thus, EPA's recommended criteria do not impose legally binding requirements. States and authorized Tribes have the discretion to adopt, where appropriate, other scientifically defensible water quality standards that may differ from these recommendations and reflect State-specific circumstances.

B. What Are the Criteria Revisions?

Today, EPA is publishing an update of national recommended water quality criteria (NRWQC) for protecting human health for acrolein and phenol. Information regarding these criteria updates was published in a **Federal Register** (FR) Notice (73 FR 53246; September 15, 2008) announcing the availability of the draft criteria for acrolein and phenol. In that notice, information on how to submit scientific views on the criteria updates was also provided. The FR Notice contained information regarding the criteria revision process; the relationship between the water quality criteria and State or Tribal water quality standards; the status of existing recommended criteria while criteria are under revision; and the location of additional information about water quality criteria and water quality standards.

These criteria are based on EPA's *Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health* (2000), EPA–822–B–00–004 (2000 Human Health Methodology). This methodology describes the Agency's current approach for deriving national recommended water quality criteria to protect human health.

The revision of these criteria represents a partial update of the 304(a) criteria as described in the FR Notice that accompanied the 2000 Human Health Methodology (65 FR 66443; November 3, 2000). EPA believes that updating a limited number of components for which there are available data or improved science (*i.e.,* a partial update) is a reasonable and efficient means of publishing revised 304(a) criteria more frequently. EPA has also previously described its process for publishing revised criteria [*see National Recommended Water Quality Criteria; Notice; Republication* (63 FR 68354; December 10, 1998 or EPA 822–Z–99–001) and *National Recommended Water Quality Criteria; Notice; Republication; Correction* (64 FR 19781; April 22, 1999) or the **Federal Register** Notice for the 2000 Methodology]. EPA indicated that when making minor revisions to existing criteria based on new information pertaining to individual components of the criteria, it would typically publish the recalculated criteria directly as the Agency's national recommended water quality criteria.

The criteria for acrolein and phenol are being updated with reference dose (RfD) values from EPA's Integrated Risk Information System (IRIS) (*http://www.epa.gov/iris*). No other components of the criteria calculation have changed. Because recalculation of these two criteria resulted in significant changes, EPA published them in draft form in the **Federal Register** (73 FR 53246; September 15, 2008) and accepted scientific views for 45 days. However, EPA did not intend to subject this recalculation to additional peer review because the IRIS reference doses being updated in this partial criteria update have been previously peer reviewed. EPA did not receive any scientific views on these revisions. Therefore, these criteria are being published as final and will supersede any criteria previously published for acrolein and phenol by EPA. The criteria being published are listed in the tables below along with the updated IRIS values which are being changed. In the **Federal Register** Notice (73 FR 53246; September 15, 2008) announcing the draft criteria revisions for acrolein and phenol, EPA inadvertently failed to follow the Agency's 2000 Human Health Methodology when rounding two of the criteria values for phenol. The guidance specifies that the number of significant figures at the end of the criterion calculation should be rounded to the number of significant figures in the least precise input parameter for the calculation. The correct values have been included in the tables below:

TABLE 1—FINAL NATIONAL RECOMMENDED WATER QUALITY CRITERIA FOR ACROLEIN

Acrolein	Updated criteria
IRIS RfD	0.0005 mg/(kg-d) (published 6/03) (http://www.epa.gov/ncea/iris/subst/0364.htm)
Water + Organisms.	6 µg/l
Organisms Only	9 µg/l

TABLE 2—FINAL NATIONAL RECOMMENDED WATER QUALITY CRITERIA FOR PHENOL

Phenol	Updated criteria
IRIS RfD	0.30 mg/(kg-d) (published 9/02) (http://www.epa.gov/ncea/iris/subst/0088.htm)
Water + Organisms	10,000 µg/l
Organisms Only	860,000 µg/l

Dated: May 27, 2009.

Ephraim S. King,

Director, Office of Science and Technology.

[FR Doc. E9–13600 Filed 6–9–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R01–OW–2008–0875; FRL–8913–8]

Maine Marine Sanitation Device Standard—Notice of Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of determination.

SUMMARY: The Regional Administrator of the Environmental Protection Agency—New England Region, has determined that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of Kennebunk/Kennebunkport/Wells.

ADDRESSES: *Docket:* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically in *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Ann Rodney, U.S. Environmental Protection Agency—New England Region, One Congress Street, Suite 1100, COP, Boston, MA 02114–2023. Telephone: (617) 918–0538. Fax number: (617) 918–1505. E-mail address: *rodney.ann@epa.gov.*

SUPPLEMENTARY INFORMATION: On December 12, 2008, EPA published a notice that the state of Maine had petitioned the Regional Administrator, Environmental Protection Agency, to determine that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of Kennebunk/Kennebunkport/Wells. Three comments were received on this petition. The response to comments can be obtained utilizing the above contact information.

The petition was filed pursuant to Section 312(f)(3) of Public Law 92–500, as amended by Public Laws 95–217 and 100–4, for the purpose of declaring these waters a No Discharge Area (NDA).

Section 312(f)(3) states: After the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such State require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters, except that no such prohibition shall apply until the Administrator determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such water to which such prohibition would apply.

This Notice of Determination is for the waters of Kennebunk/Kennebunkport/Wells. The NDA boundaries are as follows:

Waterbody/general area	From longitude	From latitude	To longitude	To latitude
From "Moody Point" in Wells north following the shore to a point at the westerly head of navigation of the Webhannet River	70°34′14.98″ W	43°17′12.21″ N	70°34′14.68″ W	43°18′23.76″ N
Northeast following the shore to the head of navigation of the middle fork of the Webhannet River	70°34′14.68″ W	43°18′23.76″ N	70°33′48.9″ W	43°19′19.9″ N
Northeast following the shore to the head of navigation of the eastern fork of the Webhannet River	70°33′48.9″ W	43°19′19.9″ N	70°33′30.69″ W	43°19′28.3″ N
East following the shore to the Route 9 bridge on the Mousam River	70°33′30.69″ W	43°19′28.3″ N	70°31′5.19″ W	43°21′5.24″ N
East following the shore to the Route 9 bridge on the Kennebunk River	70°31′5.19″ W	43°21′5.24″ N	70°28′41.56″ W	43°21′39.93″ N
East following the shore to "Cape Arundel"	70°28′41.56″ W	43°21′39.93″ N	70°27′58.36″ W	43°20′25.42″ N
Southwest in a straight line across the water to Moody Point	70°27′58.36″ W	43°20′25.42″ N	70°34′14.98″ W	43°17′12.21″ N

The proposed NDA includes the municipal waters of Kennebunk/Kennebunkport/Wells.

The information submitted to EPA by the state of Maine certifies that there are five pumpout facilities located within this area. A list of the facilities, with locations, phone numbers, and hours of operation is appended at the end of this determination.

Based on the examination of the petition and its supporting documentation, and meetings with the state and local officials, EPA has determined that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the area covered under this determination.

This determination is made pursuant to Section 312(f)(3) of Public Law 92–500, as amended by Public laws 95–217 and 100–4.

PUMPOUT FACILITIES WITHIN PROPOSED NO DISCHARGE AREA

Kennebunk/Kennebunk/Wells				
Name	Location	Contact info.	Hours	Mean low water depth
Harbormaster	Wells	207–646–3226, VHF 16	7 a.m.–3 p.m., 7 days	10 ft.
Yachtsman	Kennebunk River	207–967–2511, VHF 9	8 a.m.–5 p.m., 7 days	10 ft.
Kennebunkport Marina	Kennebunk River	207–967–3411, VHF 9	8 a.m.–5 p.m., 7 days	10 ft.
Chicks Marina	Kennebunk River	207–967–2782, VHF 9	8 a.m.–5 p.m., 7 days	10 ft.
River Commission pumpout float.	Kennebunk River	207–967–4243	24/7 self service	8 ft.

Dated: May 27, 2009.

Ira W. Leighton,

Acting Regional Administrator, New England Region.

[FR Doc. E9–13598 Filed 6–9–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8915–5]

Science Advisory Board Staff Office; Notification of a Public Teleconference and Meeting of the Science Advisory Board Risk and Technology Review Assessment Methodologies Panel

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces a public teleconference and a face-to-face meeting of the SAB Risk and Technology Review Assessment Methodologies Panel to review the Agency's draft methodologies for performing assessments of residual risk featuring case studies from the Petroleum Refineries and Portland Cement Manufacturing source categories.

DATES: The SAB will hold the public teleconference on June 30, 2009 from 1 p.m. to 4 p.m. (Eastern Time). A face-to-face meeting will be held on July 28, 2009 from 9 a.m. to 5 p.m. (Eastern Time) and will continue on July 29, 2009 from 9 a.m. to 4 p.m. (Eastern Time).

ADDRESSES: The telephone conference will be conducted by phone only. The July 28–29, 2009 face-to-face meeting will be held at the Marriott at Research Triangle Park, 4700 Guardian Drive, Durham, NC 27703.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to obtain general information concerning this public teleconference or meeting should contact Dr. Sue Shallal, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail: (202) 343–9977; fax: (202) 233–0643; or e-mail at *shallal.suhair@epa.gov*. General information concerning the EPA Science Advisory Board can be found on the SAB Web site at *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, 5 U.S.C., App. 2 (FACA), notice is hereby given that the EPA SAB Risk and Technology Review Assessment Methodologies Panel will hold a public teleconference and a face-to-face meeting to prepare for and review the Agency's draft document on methodologies for the assessment of residual risk featuring case studies from the Petroleum Refineries and Portland Cement Manufacturing source categories. The SAB was established pursuant to 42 U.S.C. 4365 to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under FACA. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background: EPA's Office of Air Quality Planning and Standards (OAQPS) has requested that the SAB conduct a review of their methodologies for conducting Risk and Technology Review Assessments in conjunction with assessments of residual risk required by the Clean Air Act. These assessments evaluate the effects of industrial emissions of hazardous air pollutants (HAPs) on public health and the environment. The proposed methodologies are demonstrated through the use of two case studies, (1) petroleum refineries and (2) Portland cement manufacturers. Background on this SAB review and the process for formation of this review panel was provided in a **Federal Register** Notice published on January 31, 2008 (73 FR 5836–5838). The purpose of this upcoming teleconference is for the SAB Review Panel to discuss EPA's charge questions and plan for the face-to-face meeting. The Panel will then discuss and deliberate on the charge questions at the face-to-face meeting.

Availability of Meeting Materials: The meeting agendas and other materials, including a link to access the EPA's document(s) related to the peer review, will be posted on the SAB Web site (*http://www.epa.gov/sab*) in advance of the meeting. For questions and information concerning the Agency's documents, please contact Dave Guinnup at 919–541–5368 or *guinnup.dave@epa.gov*.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the SAB to consider on the topics included in this advisory activity and/or group conducting the activity. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a public SAB teleconference will be limited to three minutes per speaker, with no more than a total of one-half hour for all speakers. At the face-to-face meeting, presentations will be limited to five minutes, with no more than a total of one hour for all speakers. To be placed on the public speaker list, interested parties should contact Dr. Sue Shallal, DFO, in writing (preferably via e-mail), by June 22, 2009 for the teleconference and by July 21, 2009 for the face-to-face meeting, at the contact information noted above. *Written Statements:* Written statements should be received in the SAB Staff Office by June 22, 2009, so that the information may be made available to the SAB for their consideration prior to the teleconference or by July 21, 2009 for their consideration prior to the face-to-face meeting. Written statements should be supplied to the DFO via e-mail to *shallal.suhair@epa.gov* (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format). Submitters are requested to provide two versions of each document submitted with and without signatures, because the SAB Staff Office does not publish documents with signatures on its Web sites.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Sue Shallal at (202) 343–9977 or *shallal.suhair@epa.gov*. To request accommodation of a disability, please contact Dr. Shallal preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: June 3, 2009.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. E9–13597 Filed 6–9–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0045; FRL–8417–7]

Notice of Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Agency's receipt of several initial filings of pesticide petitions proposing the establishment or modification of

regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before July 10, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the pesticide petition number (PP) of interest as shown in the body of this document, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to the docket ID number and the pesticide petition number of interest as shown in the body of this document. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line 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 information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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 docket index available at *http://www.regulations.gov*. 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: A contact person, with telephone number and e-mail address, is listed at the end of each pesticide petition summary. You may also reach each contact person by mail at: Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed at the end of the pesticide petition summary of interest.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice*. EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other

factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What Action is the Agency Taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or modification of regulations in 40 CFR part 174 or part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that the pesticide petitions described in this notice contain the data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this notice, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available on-line at *http://www.regulations.gov*.

As specified in FFDCA section 408(d)(3), (21 U.S.C. 346a(d)(3)), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

New Tolerance

1. *PP 8E7505*. (EPA–HQ–OPP–2009–0307). The Interregional Research Project Number 4 (IR-4), IR-4 Project Headquarters, 500 College Rd. East, Suite 201 W, Princeton, NJ 08540, proposes to establish a tolerance in 40 CFR part 180 for the combined residues of the herbicide, clethodim, ((E)-()-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 5-(2-(ethylthio)propyl]cyclohexen-3-one and the 5-[2-(ethylthio)propyl]-5-hydroxycyclohexen-3-one moieties and their sulfoxides and sulfones, expressed as clethodim, in or on artichoke, globe at 1.3 parts per million (ppm); bushberry subgroup 13-07B at 3.0 ppm; caneberry subgroup 13-07A at 0.30 ppm; and peach at 0.20 ppm. The analytical methods for detecting and measuring levels of clethodim have been developed and validated in/on all appropriate agricultural commodities and respective processing fractions. The limit of quantitation (LOQ) of clethodim in the methods is 0.2 ppm, which allows monitoring of food with residues at the levels proposed for the tolerances. Contact: Sidney Jackson, (703) 305–7610, *jackson.sidney@epa.gov*.

2. *PPs 9E7546 and 9F7547*. (EPA–HQ–OPP–2009–0273). IR-4, IR-4 Project Headquarters, 500 College Rd. East, Suite 201 W, Princeton, NJ 08540, proposes to establish a tolerance in 40 CFR part 180 for residues of the insecticide novaluron, N-[[[3-chloro-4-[1,1,2-trifluoro-2-(trifluoromethoxy)ethoxy] phenyl]amino]carbonyl]-2,6-difluorobenzamide in or on berry, low growing, subgroup 13-07G at 0.50 ppm; Swiss chard at 12 ppm; bean, snap, succulent at 0.60 ppm; bean, dry at 0.20 ppm; vegetable, cucurbit, group 9 at 0.25 ppm; and the following food commodities at 1.1 ppm; cocona; eggplant, African; eggplant, pea; eggplant, scarlet; goji berry; huckleberry, garden; martynia; naranjilla; okra; roselle; sunberry; tomato, bush; tomato, currant; tomato, tree; and vegetable, fruiting, group 8.

In addition, EPA received a pesticide petition, PP 9F7547, from Makhteshim-Agan of North America, Inc., 4515 Falls of Neuse Rd., Raleigh, NC 27609, proposing to establish a tolerance for residues of the insecticide novaluron, N-[[[3-chloro-4-[1,1,2-trifluoro-2-(trifluoromethoxy)ethoxy] phenyl]amino]carbonyl]-2,6-difluorobenzamide in or on sorghum, grain at 3 ppm; sorghum, aspirated grain fractions at 25 ppm; sorghum, forage at 6 ppm, and sorghum, stover at 40 ppm. Makhteshim-Agan of North America, Inc. is the manufacturer and basic registrant of novaluron. Makhteshim-Agan of North America, Inc., prepared and summarized the information in support of the subject pesticide petitions for novaluron.

An adequate analytical method, gas chromatography/electron capture detector (GC/ECD), as published in the **Federal Register** of April 5, 2006 (71 FR 65) (FRL–7756–8), is available for enforcing tolerances of novaluron residues in or on cucurbits, fruiting vegetables, beans (snap and dry), low-growing berries, Swiss chard and grain sorghum. The method verification trial supports a limit of quantitation (LOQ) of 0.05 ppm, and the limit of detection (LOD) is 0.005 ppm for the different matrices. The LOQ = 0.05 ppm was taken as the lowest level validated by this method. Contacts: for PP 9E7546 – Laura Nollen, (703) 305–7390, *nollen.laura@epa.gov*; for PP 9F7547 – Jennifer Gaines, (703) 305–5967, *gaines.jennifer@epa.gov*.

3. *PP 9E7548*. (EPA–HQ–OPP–2009–0302). IR-4, IR-4 Project Headquarters, 500 College Rd. East, Suite 201 W, Princeton, NJ 08540, proposes to establish a tolerance in 40 CFR part 180 for residues of the insecticide diazinon in or on mushrooms at 0.75 ppm. Adequate analytical methodology is available for data collection and enforcing tolerances of diazinon. The enforcement method (AG-550 and its modifications) is a gas chromatography/flame photometric detector (GC/FPD) method that can be used for determination of residues of diazinon, diazoxon and hydroxyl diazinon in plant and animal matrices. There is also a confirmatory method that uses gas chromatography/mass spectrometry (GC/MS). The FDA PESTDATA database dated 1/94 (PAM Vol. 1, Appendix I) indicates diazinon is completely recovered using FDA Multi-residue Protocols D and E (PAM, Vol. 1 Sections 232.4 and 311.1/212.2). Diazoxon and hydroxyl diazinon are also completely recovered using protocol D. Contact: Susan Stanton, (703) 305–5218, *stanton.susan@epa.gov*.

4. *PP 8F7500*. (EPA–HQ–OPP–2009–0139). Bayer CropScience, P. O. Box 12014, 2 T. W. Alexander Dr., Research Triangle Park, NC 27709, proposes to establish a tolerance in 40 CFR part 180 for residues of the insecticide spirodiclofen (3-(2,4-dichlorophenyl)-2-oxo-1-oxaspiro[4,5]dec-3-en-4-yl 2,2-dimethylbutanoate) in or on avocado and the tropical fruit subgroup which can be surrogated with avocado data, i.e. black sapote, canistel, mamey sapote, mango, papaya, sapodilla, and star apple at 1.3 ppm. Adequate analytical methodology using liquid chromatography/mass spectrometry/mass spectrometry (LC/MS/MS) detection is available. Contact: Rita Kumar, (703) 308–8291, *kumar.rita@epa.gov*.

5. *PP 9F7537*. (EPA–HQ–OPP–2009–0263). Bayer CropScience LLC, 2 T. W. Alexander Dr., Research Triangle Park, NC 27709, proposes to establish a tolerance in 40 CFR part 180 for residues of the insecticide spirotetramat (cis-3-(2,5-dimethlyphenyl)-8-methoxy-2-oxo-1-azaspiro[4.5]dec-3-en-4-yl-ethyl carbonate]) and its metabolites BYI 08330-enol (cis-3-(2,5-dimethylphenyl)-4-hydroxy-8-methoxy-1-azaspiro[4.5]dec-3-en-2-one), BYI 08330-ketohydroxy (cis-3-(2,5-

dimethylphenyl)-3-hydroxy-8-methoxy-1-azaspiro[4.5]decane-2,4-dione), BYI08330-enol-Glc (cis-3-(2,5-dimethylphenyl)-8-methoxy-2-oxo-1-azaspiro[4.5]dec-3-en-4-yl beta-D-glucopyranoside), and BYI 08330-mono-hydroxy (cis-3-(2,5-dimethylphenyl)-4-hydroxy-8-methoxy-1-azaspiro[4.5]decan-2-one), calculated as spirotetramat equivalents in or on pistachio at 0.25 ppm; cotton, undelinted seed at 0.4 ppm; acerola, atemoya, avocado, birida, black sapote, canistel, cherimoya, custard apple, feijoa, jaboticaba, guava, ilama, longan, mamey sapote, mango, passionfruit, persimmon, pulasan, rambutan, sapodilla, soursop, spanish lime, star apple, starfruit, sugar apple, wax jambu, and white sapote at 1.5 ppm; okra at 2.5 ppm; soybean at 3 ppm, vegetables, legume, group 06 (except soybean) at 4 ppm; plum, prune, dried at 4.5 ppm; vegetables, foliage of legume, except soybean, subgroup 07A at 5 ppm; cotton, gin byproducts at 7 ppm; soybean, forage at 9 ppm; soybean, aspirated grain fractions at 10 ppm; lychee at 12 ppm; and soybean, hay at 16 ppm. Spirotetramat residues are quantified in raw agricultural commodities by high pressure LC/MS/MS using the stable isotopically labeled analytes as internal standards. The LOQ for each analyte was 0.01 ppm for all commodities. Contact: Rita Kumar, (703) 308–8291, *kumar.rita@epa.gov*.

Amended Tolerance

PP 9F7547. (EPA–HQ–OPP–2009–0273). Makhteshim-Agan of North America, Inc., 4515 Falls of Neuse Rd., Raleigh, NC 27609, proposes to amend the tolerances in 40 CFR 180.598 by requesting to increase the established livestock tolerances for residues of the insecticide novaluron, N-[[[3-chloro-4-[1,1,2-trifluoro-2-(trifluoromethoxy)ethoxy] phenyl]amino]carbonyl]-2,6-difluorobenzamide in or on poultry, fat from 0.40 ppm to 7.0 ppm; poultry, meat from 0.03 ppm to 0.40 ppm; poultry, meat byproducts from 0.04 ppm to 0.80 ppm; hog, fat from 0.05 ppm to 1.5 ppm; hog, meat from 0.01 ppm to 0.07 ppm; hog, meat byproducts from 0.01 ppm to 0.15 ppm; and eggs from 0.05 ppm to 1.5 ppm. Makhteshim-Agan of North America, Inc. is the manufacturer and basic registrant of novaluron. An adequate analytical method, GC/ECD, as published in the **Federal Register** of April 5, 2006 (71 FR 65) (FRL–7756–8), is available for enforcing tolerances of novaluron residues in or on cucurbits, fruiting vegetables, beans (snap and dry), low-growing berries, Swiss chard and grain sorghum. The method verification trial supports a LOQ of 0.05 ppm, and the LOD is 0.005 ppm for the different matrices. The LOQ = 0.05 ppm was taken as the lowest level validated by this method. Contact: Jennifer Gaines, (703) 305–5967, *gaines.jennifer@epa.gov*.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 22, 2009.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E9–13161 Filed 6–9–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0254; FRL–8413–2]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any currently registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Comments must be received on or before July 10, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0254, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2009–0254. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line 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 information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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 docket index available at *http://www.regulations.gov*. 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Marshall Swindell, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection

Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–6341; e-mail address: *swindell.marshall@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

File Symbol: 52484-G. *Applicant*: The Lubrizol Corporation, 29400 Lakeland Blvd., Wickliffe, OH 44092–2298, submitted by Keller and Heckman, LLC, 1001 G St., NW., Washington, DC 20001. *Product Name*: Contram ST-1. *Active Ingredient: N,N,'*–methylenebismorpholine at 98.5%. *Proposal classification/Use:* Materials preservative used to suppress the growth of bacteria in metalworking fluids, cutting, cooling, and lubricating fluid concentrates.

File Symbol: 85808-R. *Applicant*: Schulke and Mayr GmBH, Robert-Koch Str. 2, 22851 Norderstedt, Germany, submitted by Technology Sciences Group Inc., 1150 18th St., NW., Suite 1000, Washington, DC 20036. *Product Name*: Stabicide 71. *Active Ingredient*: *N,N'*–methylenebis (5–methyloxazolidin) 99%. *Proposal classification/Use:* Materials preservative used to suppress the growth of bacteria in metalworking fluids, drilling muds, and fuels.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: May 26, 2009.

Joan Harrigan Farrelly,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. E9–13586 Filed 6–9–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8915–9]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(h)(1), notice is hereby given of a proposed administrative settlement concerning the State Road 144 Ground Water Plume Superfund Site, Levelland, Hockley County, Texas.

The settlement requires the Farmers' Co-Operative Elevator Association of Levelland, Texas settling party to pay a total of $60,000 as payment of response costs to the Hazardous Substances Superfund. The settlement includes a covenant not to sue pursuant to sections 106 and 107(a) of CERCLA, 42, U.S.C. 9606 and 9607(a).

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to this notice and will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733.

DATES: Comments must be submitted on or before July 10, 2009.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733. A copy of the proposed settlement may be obtained from Kenneth Talton, 1445 Ross Avenue, Dallas, Texas 75202–2733 or by calling (214) 665–7475. Comments should reference the State Road 114 Ground Water Superfund Site, Levelland, Hockley County, Texas, and EPA Docket Number 06–12–08, and should be addressed to Kenneth Talton at the address listed above.

FOR FURTHER INFORMATION CONTACT: Joseph E. Compton, III, 1445 Ross

Avenue, Dallas, Texas 75202–2733 or call (214) 665–8506.

Dated: May 28, 2009.

Miguel I. Flores,

Acting Deputy Regional Administrator, Region 6.

[FR Doc. E9–13592 Filed 6–9–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2004–0385; FRL–8420–7]

Permethrin; Second Revision to Reregistration Eligibility Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's decision to modify the 2006 Reregistration Eligibility Decision (RED) for the pesticide permethrin based on the revised occupational and residential (ORE) risk assessment. EPA conducted this reassessment of the permethrin RED in response to new data submitted by the Consumer Specialty Product Association, Permethrin Dermal Absorption Group. Based on the new data received, the Agency has revised the ORE risk assessment and the permethrin RED, appropriately. In addition, the Agency revised the permethrin label table to reflect the updated labeling for permethrin residential, agricultural, and wide area public health use products.

FOR FURTHER INFORMATION CONTACT: Jacqueline Guerry, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (215) 814–2184; fax number: (215) 814–3113; e-mail address: *guerry.jacqueline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2004–0385. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. Background

A. What Action is the Agency Taking?

Section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) directs EPA to reevaluate existing pesticides to ensure that they meet current scientific and regulatory standards. In April 2006, EPA issued a reregistration eligibility decision (RED) for permethrin under section 4(g)(2)(A) of FIFRA. The 2006 permethrin RED was first revised in December 2007 based on public comments and post-RED activities. However, the Agency has completed this most recent RED revision following receipt of a new study, Estimated Dermal Penetration in Humans Based on *In Vitro* and *In Vivo* Data, submitted by the Consumer Specialty Products Association, Permethrin Dermal Absorption Group. The amended permethrin RED reflects changes resulting from Agency consideration of the new data, as well as efforts by the Agency to appropriately mitigate overall risk.

The new data served to revise the dermal absorption factor relied upon in the cancer portion of the occupational and residential exposure (ORE) risk assessment from 15% to 5.7%. The revised RED captures the recent ORE cancer risk assessment, and also modifies the required risk mitigation appropriately. The Agency has also revised the RED document to reflect the current status of Office of Pesticide Program initiatives, such as the cumulative risk assessment and the Endangered Species Program. Further, in addition to the revised risk mitigation, which is captured in the Summary of Labeling Changes for Permethrin (label table), the Agency has incorporated a number of revisions to the label table to reflect updates in labeling on permethrin residential, agricultural, and wide area public health use products.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA, as amended, directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

List of Subjects

Environmental protection, Pesticides and pests, Permethrin.

Dated: June 1, 2009.

Richard P. Keigwin, Jr.

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E9–13474 Filed 6–9–09; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget, Comments Requested

June 4, 2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the

information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before July 10, 2009. If you anticipate that you will be submitting PRA comments but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* and to *Judith-B.Herman@fcc.gov,* Federal Communications Commission, or an e-mail to *PRA@fcc.gov*. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0931.

Title: Sections 0.131 and 80.103, Digital Selective Calling (DSC) Operating Procedures—Maritime Mobile Identity (MMSI).

Form Number: N/A.

Type of Review: Extension of an existing collection.

Respondents: Individuals or households, businesses or other for-profit and Federal Government.

Number of Respondents and Responses: 40,000 respondents; 40,000 responses.

Estimated Time per Response: .25 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation To Respond: Required to obtain or retain benefits. There is no statutory authority for this information collection. The reporting requirement is in international agreements and ITU–R M.541–9.

Total Annual Burden: 10,000 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: Yes.

Nature and Extent of Confidentiality: There is a need for confidentiality with respect to all owners of Marine VHF radios with Digital Selective Calling (DSC) capability in this information collection. Pursuant to section 208(b) of the E-Government Act of 2002, 44 U.S.C. 3501, in conformance with the Privacy Act of 1974, 5 U.S.C. 552(a), the Wireless Telecommunications Bureau instructs licensees to use the FCC Universal Licensing System (ULS), Antenna Structure Registration (ASR), Commission Registration System (CORES) and related systems and subsystems to submit information. CORES is used to receive an FCC Registration Number (FRN) and password, after which one must register all current call signs and ASR numbers associated with a FRN within the bureau's system of records (ULS database). Although ULS stores all information pertaining to the individual license via the FRN, confidential information is accessible only by persons or entities that hold the password for each account, and the bureau's Licensing Division staff. Upon the request of FRN, the individual licensee is consenting to make publicly available, via the ULS database, all information that is not confidential in nature.

Needs and Uses: The Commission will submit this information collection to the OMB for review and approval in order to obtain the full three-year clearance from them. The Commission is requesting approval of an extension (no change in the reporting and/or third party disclosure requirements). There is a significant increase in the estimated burden hours, which is due to an adjusted increase in the number of respondents/responses, which was 2,000 in 2006 and 40,000 at this time of submission to the OMB. Therefore, the hourly burden has increased from 1,000 hours in 2006 to 10,000 hours at this time.

This information collection is necessary to require owners of marine VHF radios with Digital Selective Calling (DSC) capability to register information such as name, address, and type of vessel, with a private entity issuing marine mobile service identities (MMSI). The Commission collects this information and assigns MMSIs through the ship station licensing process; however, those ship stations operating domestically are not required to obtain an individual license and are licensed by rule. The Commission developed procedures to privatize the issuance of MMSIs by providing blocks of MMSI numbers to qualified entities for distribution to ship vessel operators that are not required by law to carry a radio and do not make international voyages or communications.

The Commission has a Memorandum of Understanding (MOU) with the U.S. Coast Guard and the private entities to collect the data that is on Attachment A. The information would be used by search and rescue personnel to identify vessels in distress and to select the proper rescue units and search methods. The requirement to collect this information is not contained in a formal FCC order, but in the agreements the FCC executes with private sector entities that issue MMSIs and 47 CFR 80.103, which requires ship owners using VHF radios with DSC to have an MMSI.

The information is used by private entities to maintain a database used to provide information about the vessel owner in distress using marine VHF radios with DSC capability. If the collection were not conducted, the U.S. Coast Guard would not have access to this information, which would increase the time needed to complete a search and rescue operation.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–13645 Filed 6–9–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

June 3, 2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520.

An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before August 10, 2009. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* and to *Judith-B.Herman@fcc.gov,* Federal Communications Commission, and an e-mail to *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information, contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0810.

Title: Procedures for Designation of Eligible Telecommunications Carriers (ETCs) Pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 100 respondents; 100 responses.

Estimated Time per Response: 2–60 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 9,200 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission is not requesting that respondents submit confidential information to the FCC. However, respondents may request confidential treatment of information they believe to be confidential under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this information collection to the Office of Management and Budget (OMB) after this 60-day comment period in order to obtain the full three-year clearance from them. The Commission is requesting an extension (no change in the on reporting and/or third party disclosure requirements). There is a change in the estimated total annual burden. During the conduct of the Commission's review of this information collection, it was discovered that a typographical error was made in the calculation of the burden hours for the 2005 extension. The total estimated number of burden hours should have been reported as 9,200 hours rather than 6,200 hours reported to OMB. With this submission to the OMB, we are reporting more accurate estimates.

Section 214(e)(6) states that a telecommunications carrier that is not subject to the jurisdiction of a state may request that the Commission determine whether it is eligible to receive universal service support. The Commission must evaluate whether such telecommunications carriers meet the eligibility criteria set forth in the Act. The Commission concluded that petitions for designation filed under Section 214(e)(6) relating to ''near reservation'' areas will not be considered as petitions relating to tribal lands and as a result, petitioners seeking eligible telecommunications carrier (ETC) designation in such areas must follow the procedures outlined in CC Docket No. 96–45, *Twelfth Report and Order and Further Notice of Proposed Rulemaking,* FCC 00–208 (rel. June 8, 2000), (Tribal Lands Order), for non-tribal lands prior to submitting a request for designation to this Commission under Section 214(e)(6).

OMB Control Number: 3060–0824.

Title: Service Provider Identification Number (SPIN) and Contact Form.

Form No.: FCC Form 498.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities and not-for-profit institutions.

Number of Respondents: 5,000 respondents; 5,000 responses.

Estimated Time Per Response: 1.5 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 7,500 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission is not requesting that respondents submit confidential information to the FCC. However, respondents may request confidential treatment of information they believe to be confidential under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this information collection to the Office of Management and Budget (OMB) after this 60-day comment period in order to obtain the full three-year clearance from them. The Commission is requesting a revision of this information collection. There is no change in the estimated burden hours. As detailed in the Supporting Statement that will be submitted to the OMB for review and approval, the Commission proposes changes to certain parts of the FCC Form 498 to improve the efficiency of administering the universal service support mechanism. Specifically, the Commission proposes:

(1) adding two options for service providers to indicate the reason for submitting the FCC Form 498;

(2) clarifying the information for the general contact person, the program specific contact persons, and the officer certifying the form;

(3) requiring the submission of the service provider's Dunn and Bradstreet number;

(4) eliminating the option to receive paper checks and requiring financial institution remittance information in order to make electronic disbursements in accordance with the requirements of the Debt Collection Improvement Act of 1996;

(5) requiring the submission of study area codes for service providers that receive High-Cost and Low-Income support; and

(6) giving service providers the option of choosing more than one business description for their companies.

The information collected on FCC Form 498 is used by the Universal Service Administrative Company (USAC) to disburse federal universal service support consistent with the specifications of carriers and service providers who participate and receive support from any of the four universal service support mechanisms (High-Cost, Low-Income, Rural Health Care and Schools and Libraries). FCC Form 498 submissions also provide USAC with

updated contact information, enabling USAC to contact universal service fund participants when necessary.

OMB Control Number: 3060–0876.

Title: Section 54.703, USAC Board of Directors Nomination Process and Sections 54.719 through 54.725, Review of Administrator's Decision.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities and not-for-profit institutions.

Number of Respondents: 1,312 respondents; 1,312 responses.

Estimated Time Per Response: 20–32 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Voluntary.

Total Annual Burden: 41,840 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission is not requesting that respondents submit confidential information to the FCC. However, respondents may request confidential treatment of information they believe to be confidential under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this information collection to the Office of Management and Budget (OMB) after this 60 day comment period in order to obtain the full three year clearance from them. The Commission is requesting an extension (no change in the on reporting and/or third party disclosure requirements). There is no change in the estimated burden hours.

Section 54.703 states that industry and non-industry groups may submit to the Commission for approval nominations for individuals to be appointed to the Universal Service Administrative Company (USAC) Board of Directors.

Sections 54.719 through 54.725 describes the procedures for Commission review of USAC decisions including the general filing requirements pursuant to which parties must file requests for review. The information is used by the Commission to select USAC's Board of Directors and to ensure that requests for review are filed properly with the Commission.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–13659 Filed 6–9–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

June 2, 2009.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to comment on the following information collection(s). Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before August 10, 2009. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit all PRA comments by email or U.S. post mail. To submit your comments by email, send them to *PRA@fcc.gov.* To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Cathy Williams at (202) 418–2918 or send an email to *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1115.

Title: DTV Consumer Education Initiative; Section 73.674; FCC Form 388.

Form Number: FCC Form 388.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; not-for-profit institutions; State, local or tribal governments.

Number of Respondents and Responses: 200 respondents; 1,800 responses.

Estimated Time per Response: 0.50 hour–85 hours.

Frequency of Response: On occasion reporting requirement; Quarterly reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain benefits. The statutory authority for this collection of information is contained in Sections 4(i), 303(r), 335, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 335, and 336.

Total Annual Burden: 10,940 hours.

Total Annual Cost: None.

Confidentiality: No need for confidentiality required with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: After the nationwide DTV transition date of June 12, 2009, full-power television broadcast stations must transmit only digital signals, and may no longer transmit analog signals, except for limited analog ''nightlight'' service. The DTV Delay Act directs the Commission to take any actions ''necessary or appropriate to implement the provisions, and carry out the purposes'' of the DTV Delay Act, and to do so within 30 days. Congress extended the transition date in order to permit analog service to continue until consumers have had additional time to prepare. But Congress also directed the Commission to provide flexibility for stations wanting to transition prior to the new date. Stations may have made extensive preparations for a February 17 digital transition and some may have difficulty altering their commitments at this time. The Commission's challenge is to provide opportunities for some stations to end analog broadcasting early without sacrificing the goal of giving consumers additional time to prepare.

Therefore, Commission is revising this information collection to eliminate most of the requirements after June 30, 2009; however, broadcasters must continue to comply with the consumer education information collection requirements until they have completed, and are operating, their final, full-authorized post-transition (DTV) facility.

The information collection requirements that will remain in the collection are as follows:

Broadcaster Education and Reporting (47 CFR 73.674)

(a) *On-Air Education.* Broadcasters must provide on-air DTV Transition consumer education information (e.g., via Public Service Announcements (PSAs), information crawls, snipes or tickers) to their viewers. Broadcasters must comply with one of three alternative sets of rules as provided in the Report and Order. Stations must also provide the following additional information: (1) Geographically specific information detailing areas that are covered by the Grade B analog contour but are not predicted to receive digital service; (2) educational information describing areas where analog signal strength is generally sufficient for viewers to rely on an indoor antenna but where it is likely that they will need an outdoor antenna to receive the digital signal; (3) information to consumers about the need to periodically ''rescan'' when using over-the-air digital reception equipment, particularly through the end of the transition; (4) stations that are changing their broadcast frequency from VHF to UHF (or vice versa), information to consumers about the need for additional or different equipment to avoid loss of service. Stations may include this information to satisfy part of their existing PSA requirements. In addition, if applicable, stations must provide specific notice to analog viewers who are likely to lose over-the-air service from the station due to changes in the geographic coverage area or population served by the station during or after the transition. Broadcasters must continue to provide on air education to their viewers until they complete their transition to digital-only operations and are operating their final, full-authorized post-transition (DTV) facility. In most cases, stations will be operating at full-authorized post-transition (DTV) facilities no later than the June 12, 2009 nationwide transition deadline, but, in some cases, stations will not have completed construction of their final, fully-authorized DTV facility by June 12 and, therefore, must continue to provide on-air DTV Transition consumer education information to their viewers.

(b) *DTV Consumer Education Quarterly Activity Report, FCC Form 388.* Broadcasters must electronically file a report about its DTV Transition consumer education efforts to the Commission on a quarterly basis. Broadcasters must begin filing these quarterly reports no later than April 10, 2008. In addition, if the broadcaster has a public Web site, they must post these reports on that Web site. Broadcasters must complete these filings every quarter until they complete their transition to digital-only operations and are operating their final, full-authorized post-transition (DTV) facility.

OMB Control Number: 3060–0386.

Title: Special Temporary Authorization (STA) Requests; Notifications; and Informal Filings; Sections 1.5, 73.1615, 73.1635 and 73.1740; CDBS Informal Forms.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; not-for-profit institutions.

Number of Respondents and Responses: 2,650 respondents; 2,650 responses.

Estimated Time per Response: 0.50 hour–4 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 1, 4(i) and (j), 7, 301, 302, 303, 307, 308, 309, 312, 316, 318, 319, 324, 325, 336, and 337 of the Communications Act of 1934, as amended.

Confidentiality: No need for confidentiality required with this collection of information.

Total Annual Burden: 2,860.

Total Annual Costs: $539,660.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: The Commission is revising this information collection to eliminate the information collection requirements necessitated by the DTV transition. After the June 12, 2009 nationwide transition deadline, there will be no further need for these DTV transition-related collections. In addition, the Commission is revising this collection to update the specific Informal Application filing forms that may be filed electronically through the Commission's Consolidated Database System (''CDBS'').

The following information collection requirements are contained in this collection:

Special Temporary Authority (STA) Requests (47 CFR 73.1635). Broadcast stations (AM, FM, TV, Class A TV or LPTV licensees or permittees) may file a request for STA approval to permit a station to operate a broadcast facility for a limited period at a specified variance from the terms of the station's authorization or requirements of the FCC rules. Stations may file a request for STA approval for a variety of reasons. The request must describe the operating modes and facilities to be used. Types of STA requests include Engineering and Legal STAs.

Change in Official Mailing Address for Broadcast Station (47 CFR 1.5). Broadcast stations may file this form to report any changes in the station's mailing address, but cannot use this form to correct or change the name of the licensee.

Consummation Notice. Broadcast stations may file this form to notify the Commission when an assignment of license or transfer of control is consummated. The form also may be used by the station to request an extension of time to consummate.

Silent Notifications (47 CFR 73.1740). Broadcast stations (AM, FM, TV or Class A TV licensees) may file this form to notify the Commission of the station's suspension of broadcast operations pursuant to 47 CFR 73.1740. Broadcast stations also may use this form to request a silent STA or extension thereof. Types of Silent Notifications include Silent STA, Notification of Suspension, Resumption of Operations, and Extension of Silent STA Request.

Section 73.1615 notifications (47 CFR § 73.1615). Broadcast stations (AM, FM, TV or Class A TV licensees) must file a notification under 47 CFR 73.1615(c) when such a station is in the process of modifying existing facilities as authorized by a construction permit and determines it is necessary to either discontinue operation or to operate with temporary facilities to continue program service for a period not more than 30 days. Licensees or permittees of directional or nondirectional FM, TV or Class A TV or nondirectional AM must file a notification and comply with 47 CFR 73.1615(a). Licensees or permittees of a directional AM station whose modification does not involve a change in operating frequency must file a notification and comply with 47 CFR 73.1615(b). Licensees or permittees of a directional AM station whose modification does involve a change in frequency and determines it is necessary to discontinue operation for a period not more than 30 days must file a notification and comply with 47 CFR 73.1615(d)(2).

Section 73.1615 informal letter requests (47 CFR 73.1615). Broadcast stations (AM, FM, TV or Class A TV licensees or permittees) must file an informal letter request under 47 CFR 73.1615(c)(1) when such a station is in the process of modifying existing facilities pursuant to 47 CFR 73.1615(a) or (b) and determines it is necessary to either discontinue operation or to operate with temporary facilities to continue program service for a period of more than 30 days. Licensees or permittees that filed notifications under 47 CFR 73.1615(d)(2) but which

determine that it is necessary to discontinue operation for a period more than 30 days must file an informal letter request and comply with 47 CFR 73.1615(d)(1) and (2).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–13656 Filed 6–9–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

May 28, 2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments August 10, 2009. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at 202–395–5167, or the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to *Judith-B.Herman@fcc.gov*, Federal Communications Commission (FCC). To submit your comments by e-mail send them to: *PRA@fcc.gov*.

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review'', (3) click the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information, send an e-mail to Judith B. Herman at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0910.

Title: Third Report and Order in CC Docket No. 94–102, To Ensure Compatibility with Enhanced 911 Calling Systems.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents: 4,000 respondents; 4,000 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Mandatory. Statutory authority for these information collections are contained in 47 U.S.C. Sections 1, 4(i), 201, 303, 309 and 332 of the Communications Act of 1934, as amended.

Total Annual Burden: 4,000 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission will submit this information collection to the Office of Management and Budget (OMB) after this 60 day comment period in order to obtain the full three year clearance from them. The Commission is requesting an extension (no change in the reporting requirement) of this information collection. There is no change in the burden estimates.

The *Third Report and Order (R&O)* in CC Docket No. 94–102 adopted rules applicable to wireless carriers to permit the use of network-based solutions, handset-based solutions, or hybrid solutions. The rules require changes both to handsets and wireless networks in providing caller location information as part of Enhanced 911 (E911) services. The Commission adopted the *Third R&O* to encourage the deployment of the best location technology for each area being served, promote competition in E911 location technology, and speed implementation of E911. As part of the rules, the *Third R&O* also adopted a requirement that wireless carriers report their plans for implementing Phase II E911 service to the Commission. Specifically, this report must include the technology they plan to use to provide caller location as well as information to enable public safety organizations, equipment manufacturers, local exchange carriers, and the Commission to plan and support Phase II deployment. The Commission required wireless carriers to file these initial reports in 2000. Carriers are required to update these plans within 30 days of the adoption of any change. The reporting requirements are discussed in detail in 47 CFR 20.18(i).

The information submitted to the Commission will provide public service answering points (PSAPs), providers of location technology, investors, manufacturers, local exchange carriers, and the Commission with valuable information necessary for full Phase II E911 service implementation. These reports will provide helpful, if not essential information for coordinating carrier plans with those manufacturers and PSAPs. The reports will also assist the Commission's efforts to monitor Phase II developments and take action, if necessary, to maintain the Phase II implementation schedule.

OMB Control Number: 3060–1004.

Title: Commission Rules To Ensure Compatibility with Enhanced 911 Calling Systems.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 97 respondents; 283 responses.

Estimated Time per Response: 4—5 hours.

Frequency of Response: Quarterly, semi-annual and one-time reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for these information collections are contained in 47 U.S.C. Sections 1, 4(i), 201, 303, 309 and 332

of the Communications Act of 1934, as amended.

Total Annual Burden: 1,202 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality. However, if applicants want to seek confidential treatment of their documents, they may do so under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this information collection to the Office of Management and Budget (OMB) after this 60 day comment period in order to obtain the full three year clearance from them. The Commission is requesting an extension (no change in the reporting requirements) of this information collection. There is a minor adjustment to the estimated number of respondents and responses. There is no change in the estimated hourly burden.

The Commission's E911 Phase II rules require wireless licensees to provide Public Safety Answering Points (PSAPs) with Automatic Location Identification (ALI) information for 911 calls. Licensees can provide ALI information by deploying location information technology in their networks (a network-based solution), or Global Positioning System (GPS), or other location technology in subscriber's handsets (a handset-based solution). The Commission's rules also establish phased-in schedules for carriers to deploy any necessary network components and begin providing Phase II service. However, before a wireless licensee's obligation to provide E911 service is triggered, a PSAP must make a valid request for E911 service, i.e., the PSAP must be capable of receiving and utilizing the data elements associated with the service and must have a mechanism in place for recovering its costs.

In addition to deploying the network facilities necessary to deliver location information, wireless licensees that elect to employ a handset-based solution must meet the handset deployment benchmark set forth in 47 CFR 20.18(g)(1) of the Commission's rules, independent of any PSAP request for Phase II service. After ensuring that 100 percent of all new digital handsets activated are location-capable, licensees must have achieved 95 percent penetration among their subscribers of location-capable handsets no later than December 31, 2005.

The Commission has recognized that ''special circumstances'' may warrant a waiver of the E911 Phase II requirements. The Commission also noted that small carriers may face ''extraordinary circumstances'' in meeting one or more of the deadlines for Phase II deployment. Pursuant to 47 CFR 1.925(b)(3), the Commission may grant a request for waiver if the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that grant would be in the public interest; or, in view of unique or unusual factual circumstances, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.

Finally, distinct from the Commission's rules and precedent regarding waivers of the E911 requirements, in December 2004, Congress enacted the Ensuring Needed Help Arrives Near Callers Employing 911 Act of 2004, Public Law 108–494 (ENHANCE 911 Act). The ENHANCE 911 Act, *inter alia,* directs the Commission to act on any petition filed by a qualified Tier III carrier requesting a waiver of 47 CFR 20.18(g)(1)(v) within 100 days of receipt, and grant such request for waiver if ''strict enforcement of the requirements of that section would result in consumers having decreased access to emergency services.''

The Commission originally established reporting requirements in an order released in October 2001, which received OMB approval. Nationwide wireless carriers (Tier I) generally must have quarterly reports with the Commission on February 1, May 1, August 1 and November 1 of each year, with the exception of T–Mobile, which is required to file semi-annual reports (as of October 2002). Mid-sized carriers (Tier II) also were required to file quarterly reports under this same time schedule.

The previously approved information collection under this OMB control number was revised (in 2006) to include the information requirements that the quarterly reports, beginning with the August 1, 2003 filing, be submitted in an Excel spreadsheet as an appendix to Tier I and Tier II carrier narrative reports. The existing information collection only required Tier III carriers to file a one-time interim report. Tier III wireless carriers were also not required to submit an Excel spreadsheet with their one-time filings.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–13648 Filed 6–9–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

June 4, 2009.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to comment on the following information collection(s). Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before August 10, 2009. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Submit your comments by e-mail to *PRA@fcc.gov*. Include in the e-mail the OMB control number of the collection or, if there is no OMB control number, the Title shown in the **SUPPLEMENTARY INFORMATION** section below. If you are unable to submit your comments by e-mail contact the person listed below to make alternate arrangements.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) or to obtain a copy of the collection send an e-mail to *PRA@fcc.gov* and include the collection's OMB control number as shown in the ''Supplementary Information'' section below, or contact Nicholas A. Fraser, Office of Management and Budget, via Internet at

Nicholas_A._Fraser@omb.eop.gov or via fax at (202) 395–5167, or Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC or via Internet at *Cathy.Williams@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0010.

Title: Ownership Report for Commercial Broadcast Stations.

Form Number: FCC Form 323.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit entities; Not-for-profit institutions; State, Local or Tribal Governments.

Number of Respondents/Responses: 9,250 respondents; 9,250 responses.

Estimated Time per Response: 1.5 hours to 2.5 hours.

Frequency of Response: Recordkeeping requirement; On occasion reporting requirement; Biennially reporting requirement.

Total Annual Burden: 21,375 hours.

Total Annual Costs: $14,670,000.

Nature of Response: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in Sections 154(i), 303, 310 and 533 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this information collection.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: On December 18, 2007, the Commission adopted a *Report and Order and Third Further Notice of Proposed Rulemaking* (the ''Diversity Order'') in MB Docket Nos. 07–294; 06–121; 02–277; 04–228, MM Docket Nos. 01–235; 01–317; 00–244; FCC 07–217. Consistent with actions taken by the Commission in the Diversity Order, the following changes are made to Form 323: The instructions have been revised to incorporate a definition of ''eligible entity,'' which will apply to the Commission's existing Equity Debt Plus (''EDP'') standard, one of the standards used to determine whether interests are attributable. The instructions have also been revised to update citations to the Commission's media ownership rules.

In addition, on April 8, 2009, the Commission adopted a *Report and Order and Fourth Further Notice of Proposed Rulemaking* (the ''323 Order'') in MB Docket Nos. 07–294, 06–121, 02–277, 01–235, 01–317, 00–244, 04–228; FCC 09–33. Consistent with actions taken by the Commission in the 323 Order, the following changes are made to Form 323: The instructions have been revised to state the Commission's revised Biennial filing requirements adopted in the 323 Order. The instructions and questions in all sections of the form have been significantly revised. Many questions on the form have been reworked or reordered in order to (1) clarify the information sought in the form; (2) simplify completion of the form by giving respondents menu-style or checkbox-style options to select rather than requiring respondents to submit a separate narrative exhibit; and (3) make the data collected on the form more adaptable for use in database programs used to prepare economic and policy studies relating to media ownership.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–13646 Filed 6–9–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR Part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants:

Cala Investments, LLC, 2705 NW 109 Ave., Miami, FL 33172, *Officer:* Pedro L. Salcedo, Manager (Qualifying Individual).

Integrated Global Logistics LLC, 6555 NW 36 Street, #201–E, Virginia Gardens, FL 33166, *Officers:* Vera P. Gazitua, Manager (Qualifying Individual), Monica Alvarez-Tabraue, Manager.

Speedmark Transportation, Inc., 1525 Adrian Rd., Burlingame, CA 94010. *Officer:* Joe Phan, General Manager (Qualifying Individual).

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

APM Global Logistics USA Inc. dba Maersk Logistics, Giralda Farms, Madison Ave., P.O. Box 880, Madison, NJ 07940–0880, *Officer:* Jens F. Wessel, V. Pres., Sales (Qualifying Individual).

Overnight Solutions, Inc., 600 N. Shepherd, #512, Houston, TX 77007, *Officers:* Richard J. Ling, President (Qualifying Individual), Justiniano J. Nunez, Vice President.

Platinum Cargo Logistics Inc., 871 E. Artesia Blvd., Carson, CA 90746, *Officers:* Jefferson Clay, Vice President (Qualifying Individual), Kelli Spiri, President.

EJ Logistic, Inc., 2500 NW 79th Ave., Ste. 200, Miami, FL 33122, *Officer:* Eduardo E. Roman, President (Qualifying Individual).

CK Logistics, Inc., 431 Isom Rd., #107, San Antonio, TX 78216, *Officer:* Christopher S. Kuehler, President (Qualifying Individual).

Argos Express Ltd., 147–27 175th Street, #1B, Jamaica, NY 11434, *Officers:* William Li, Vice President (Qualifying Individual), Chi H. Li, President.

Linsan.Tex Investments L.L.C., 260 South Beltline Rd., #262, Irving, TX 75060, *Officers:* Franklin E. Aigbuza, Secretary (Qualifying Individual), Roseline A. Izedonmwen, CEO.

StarBase Global Logistics, Inc., 6235 Highway 305 North, Ste. 3, Olive Branch, MS 38654, *Officers:* William C. Wells, Jr., Treasurer (Qualifying Individual), Thomas A. Drew, President.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

Star USA, Inc., 250 N. Davis Rd., Ashland, OH 44805, *Officers:* Michael L. Easton, Vice President (Qualifying Individual), Margaret Easton, President.

Platinum Moving Services, Inc., 7610–P Rickenbacker Dr., Gaithersburg, MD 20879, *Officers:* Raquel Fazio, President (Qualifying Individual), Steve D. Fazio, Treasurer.

BDP International, Inc., 510 Walnut Street, Philadelphia, PA 19106, *Officer:* John M. Bolte, Vice President (Qualifying Individual).

USI–USA, Inc., 13030 Fellowship Way, Reno, NV 89511, *Officers:* John Maness, Vice President (Qualifying Individual), Periklis E. Papadopoulos, President.

Dated: June 5, 2009.

Tanga S. FitzGibbon,

Assistant Secretary.

[FR Doc. E9–13636 Filed 6–9–09; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515.

License No.	Name/address	Date reissued
001593F	Robertson Forwarding Co., Inc., 4469 NW 97th Ave., Miami, FL 33178	May 10, 2009.
013172N	Yung Hoon Kim, dba Conex International, 20695 South Western Ave., Suite 136, Torrance, CA 90501.	May 6, 2009.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. E9–13639 Filed 6–9–09; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515, effective on the corresponding date shown below:

License Number: 000692F.
Name: A. R. Savage & Son, Inc.
Address: 701 Harbour Post Dr., Tampa, FL 33602.
Date Revoked: May 27, 2009.
Reason: Failed to maintain a valid bond.

License Number: 017799NF.
Name: Alpha Freight & Transport International, Inc.
Address: 3508 NW 114th Ave., Ste. 205, Doral, FL 33178.
Date Revoked: May 27, 2009.
Reason: Surrendered license voluntarily.

License Number: 018583NF.
Name: Astron Distribution, Inc.
Address: 349 NW 16th Street, Ste. 107, Belle Glade, FL 33430.
Date Revoked: May 27, 2009.
Reason: Failed to maintain valid bonds.

License Number: 018878N.
Name: BTL Group, Inc. Dba E–World Cargo, Inc.
Address: 7910 SO. 3500 E., Ste. B, Salt Lake, UT 84121.
Date Revoked: May 6, 2009.
Reason: Surrendered license voluntarily.

License Number: 021167N.
Name: Cargonline (USA) Inc.
Address: 245 E. Main Street, Ste. 112, Alhambra, CA 91801.
Date Revoked: May 21, 2009.
Reason: Failed to maintain a valid bond.

License Number: 004084F.
Name: Glory Express, Inc.
Address: 17420 S. Avalon Blvd., Ste. 202, Carson, CA 90746.
Date Revoked: May 22, 2009.
Reason: Failed to maintain a valid bond.

License Number: 017911N.
Name: Kasy Logistics Co., Ltd.
Address: 355 S. Lemon Ave., #N, Walnut, CA 91789.
Date Revoked: May 29, 2009.
Reason: Surrendered license voluntarily.

License Number: 016503NF.
Name: Lukini Shipping Inc.
Address: One Cross Island Plaza, Ste. 203d, Rosedale, NY 11422.
Date Revoked: May 27, 2009.
Reason: Failed to maintain valid bonds.

License Number: 002145F.
Name: Henry Juliusburger DBA Nautique-Worldwide.
Address: 55 New Montgomery St., Ste. 514, San Francisco, CA 94105.
Date Revoked: May 22, 2009.
Reason: Failed to maintain a valid bond.

License Number: 013797N.
Name: Kenneth Bola Obatusin DBA Global Freightways (USA), Ltd.
Address: 10630 Riggs Hill Rd., Bldg. R, Jessup, MD 20794.
Date Revoked: May 29, 2009.
Reason: Failed to maintain a valid bond.

License Number: 016484N.
Name: Kenny International USA, Inc. DBA KTL (USA) International.
Address: 145–18 156th Street, Rm. #1, Jamaica, NY 11434.
Date Revoked: April 6, 2009.
Reason: Surrendered license voluntarily.

License Number: 020066N.
Name: Manila Forwarders Corporation.
Address: 8241 Backlick Rd., Ste. B, Lorton, VA 22079.
Date Revoked: May 29, 2009.
Reason: Failed to maintain a valid bond.

License Number: 000334F.
Name: Perryman Mojonier Company.
Address: 9720 S. La Cienega Blvd., Inglewood, CA 90301.
Date Revoked: May 29, 2009.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. E9–13651 Filed 6–9–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health; Decision To Evaluate a Petition To Designate a Class of Employees for the Norton Company in Worcester, MA, To Be Included in the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees for the Norton Company in Worcester, Massachusetts, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

Facility: Norton Company.
Location: Worcester, Massachusetts.
Job Titles and/or Job Duties: All Atomic Weapons Employer employees.
Period of Employment: January 1, 1945 through December 31, 1957.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV*.

Christine M. Branche,

Acting Director, National Institute for Occupational Safety and Health.

[FR Doc. E9–13662 Filed 6–9–09; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; HIT Standards Committee Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the second meeting of the HIT Standards Committee in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App.).

DATES: June 23, 2009, from 9 a.m. to 12 p.m. [Eastern]

ADDRESSES: The Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008, Diplomat Ballroom.

FOR FURTHER INFORMATION CONTACT: *http://healthit.hhs.gov*.

SUPPLEMENTARY INFORMATION:

The meeting will include presentations from the HIT Standards Committee Workgroups. The meeting is a Web-based meeting with teleconference dial-in. If you have special needs for the meeting, please contact (202) 690–7151.

Judith Sparrow,

Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. E9–13630 Filed 6–9–09; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Investigator Registration and Financial Disclosure for Investigational Trials in Cancer Treatment (NCI)

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 Cancer Institute, the National Cancer Institute (NIH) will publish periodic summaries to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Investigator Registration and Financial Disclosure for Investigational Trials in Cancer Treatment (NCI). *Type of Information Collection Request:* Existing Collection in use without an OMB Control Number. *Need and Use of Information Collection:* Food and Drug Administration (FDA) regulations require sponsors to obtain information from the investigator before permitting the investigator to begin participation in investigational studies. The National Cancer Institute (NCI), as a sponsor of investigational drug trials, has the responsibility to assure the FDA that investigators in its clinical trials program are qualified by training and experience as appropriate experts to investigate the drug. In order to fulfill these requirements, a standard Statement of Investigator (FDA Form 1572 modified), Supplemental Investigator Data Form, Financial Disclosure Form and Curriculum vitae (CV) are required. The data obtained from these forms allows the NCI to evaluate the qualifications of the investigator, identify appropriate personnel to receive shipment of investigational agent, ensure supplies are not diverted for inappropriate protocol or patient use and identify financial conflicts of interest. Comparisons are done with the intention of ensuring protocol, patient safety and drug compliance for patient and drug compliance for patient safety and protections.

Frequency of Response: Annually.

Affected Public: Public sector, businesses other for-profit. Federal agencies or employees, non-profit institutions and a very small number of private practice physicians.

Type of Respondents: Health care investigators. The annual reporting burden is limited to those physicians who choose to participate in NCI sponsored investigational trials to identify new medicinal agents to treat and relieve those patients suffering from cancer. It is estimated that the total annual burden will be 8,564 hours, and include 17,128 investigators, for this project (see Table 1).

TABLE 1—ESTIMATES OF ANNUAL BURDEN

Type of respondents	Form	Number of respondents	Frequency of response	Average time per response	Total hour burden
Investigators and Designee	Statement of Investigator	17,128	1	0.25 (15 minutes)	4,282
	Supplemental Investigator	17,128	1	0.167 (10 minutes)	2,855
	Financial Disclosure	17,128	1	0.083 (5 minutes)	1,427
Totals		17,128			8,564

There is no capital, operating or maintenance costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information; including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

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 Charles L. Hall, Jr., Chief, Pharmaceutical Management Branch, Cancer Therapy Evaluation Program, Division of the Cancer Treatment and Diagnosis, and Centers, National Cancer Institute, Executive Plaza North, Room 7148, 9000 Rockville Pike, Bethesda, MD 20892 or call non-toll-free number 301–496–5725 or E-

mail your request, including your address to: *Hallch@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days following the date of this publication.

Dated: June 3, 2009.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. E9–13627 Filed 6–9–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Respirable Dust Control Related to Mining, Program Announcement Number (PA) 07–318, Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 9 a.m.–5 p.m., July 14, 2009 (Closed).

Place: Marriott Waterfront, 700 Aliceanna Street, Baltimore, Maryland 21202; Telephone: (410) 385–3000.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Respirable Dust Control Related to Mining, PA 07–318.''

Contact Person for More Information: George Bockosh, Scientific Review Administrator, Office Of Extramural Programs, National Institute for Occupational Safety and Health, CDC, 1600 Clifton Road, NE., Mailstop P05, Atlanta Georgia 30333; Telephone: (412) 352–5181; *GBockosh@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 3, 2009.

Lorenzo Falgiano,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–13557 Filed 6–9–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Council for the Elimination of Tuberculosis Meeting (ACET)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

Times and Dates:

8:30 a.m.–4:30 p.m., July 14, 2009.
8:30 a.m.–2:30 p.m., July 15, 2009.

Place: Corporate Square, Building 8, 1st Floor Conference Room, Atlanta, Georgia 30333, Telephone (404) 639–8317.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This council advises and makes recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis. Specifically, the Council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and reviews the extent to which progress has been made toward eliminating tuberculosis.

Matters To Be Discussed: Agenda items include issues pertaining to tuberculosis in special populations; Federal agencies and their role in global tuberculosis control and research; and research updates and other related tuberculosis issues. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Margie Scott-Cseh, Coordinating Center for Infectious Diseases, Strategic Business Unit, 1600 Clifton Road, NE., Mailstop E–07, Atlanta, Georgia 30333, Telephone (404) 639–8317.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: June 3, 2009.

Lorenzo Falgiano,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–13558 Filed 6–9–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Member Conflict Review, Program Announcement Number (PA) 07–318, Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 1 p.m.–3 p.m., July 22, 2009 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Member Conflict Review, PA 07–318.''

Contact Person for More Information: Chris Langub, Scientific Review Administrator, Office Of Extramural Programs, National Institute for Occupational Safety and Health, CDC, 1600 Clifton Road, NE., Mailstop E74, Atlanta, Georgia 30333; Telephone: (404) 498–2543.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 3, 2009.

Lorenzo Falgiano,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–13559 Filed 6–9–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Injury Prevention and Control Initial Review Group, (NCIPC IRG)

Times and Dates: 12:30 p.m.–7 p.m. (Closed)

Correction: This notice was published in the **Federal Register** on May 19, 2009, Volume 74, Number 95, Page 23423. The timeframe for the closed

portion of the meeting was published incorrectly.

Contact Person For More Information: Rick Waxweiler, Ph.D., Director, Extramural Research Program Office, NCIPC and Executive Secretary, NCIPC IRG, CDC, 4770 Buford Highway, NE., M/S F–62, Atlanta, Georgia 30341, Telephone (770) 488–4850.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 3, 2009.

Lorenzo Falgiano,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–13554 Filed 6–9–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Injury Prevention and Control Initial Review Group, (NCIPC IRG)

Times and Dates:

12:30 p.m.–7 p.m., June 22, 2009 (Closed).

9 a.m.–5 p.m., June 23, 2009 (Closed).

9 a.m.–5 p.m., June 24, 2009 (Closed).

9 a.m.–5 p.m., June 25, 2009 (Closed).

Correction: This notice was published in the **Federal Register** on May 19, 2009, Volume 74, Number 95, Page 23423. The timeframe for the closed portion of the meeting was published incorrectly.

Contact Person For More Information: Rick Waxweiler, Ph.D., Director, Extramural Research Program Office, NCIPC and Executive Secretary, NCIPC IRG, CDC, 4770 Buford Highway, NE., M/S F–62, Atlanta, Georgia 30341, Telephone (770) 488–4850.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 3, 2009.

Lorenzo Falgiano,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–13556 Filed 6–9–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control

Special Emphasis Panel (SEP): National Center for Construction Safety and Health, Request for Application (RFA) 09–001, Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Times and Dates:

6 p.m.–7 p.m., July 27, 2009 (Closed).
9 a.m.–5 p.m., July 28, 2009 (Closed).
9 a.m.–5 p.m., July 29, 2009 (Closed).

Place: Sheraton Station Square, 300 W. Station Square Drive, Pittsburgh, Pennsylvania 15129, Telephone: (412) 261–2000.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''National Center for Construction Safety and Health, RFA 09–001.''

Contact Person for More Information: George Bockosh, Scientific Review Administrator, Office Of Extramural Programs, National Institute for Occupational Safety and Health, CDC, 1600 Clifton Road, NE., Mailstop P05, Atlanta Georgia 30333; Telephone: (412) 352–5181; *GBockosh@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 3, 2009.

Lorenzo Falgiano,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–13561 Filed 6–9–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Reimbursement Rates for Calendar Year 2009

AGENCY: Indian Health Service, HHS.

ACTION: Notice.

SUMMARY: Notice is given that the Director of Indian Health Service (IHS), under the authority of sections 321(a) and 322(b) of the Public Health Service Act (42 U.S.C. 248 and 249(b)), Public Law 83–568 (42 U.S.C. 2001 (a)), and the Indian Health Care Improvement Act (25 U.S.C. 1601 *et seq.*), has approved the following rates for inpatient and outpatient medical care provided by IHS facilities for Calendar Year 2009 for Medicare and Medicaid beneficiaries and beneficiaries of other Federal programs. The Medicare Part A inpatient rates are excluded from the table below as they are paid based on the prospective payment system. Since the inpatient rates set forth below do not include all physician services and practitioner services, additional payment may be available to the extent that those services meet applicable requirements. Section 1880 of the Social Security Act authorizes Medicare Part B payment to hospitals and ambulatory care clinics operated by IHS or by an Indian Tribe or Tribal organization.

	Calendar Year 2009
Inpatient Hospital Per Diem Rate (Excludes Physician/Practitioner Services)	
Lower 48 States	$1,906
Alaska	2,238
Outpatient Per Visit Rate (Excluding Medicare)	
Lower 48 States	268
Alaska	446
Outpatient Per Visit Rate (Medicare)	
Lower 48 States	230
Alaska	407
Medicare Part B Inpatient Ancillary Per Diem Rate	
Lower 48 States	397
Alaska	705
Outpatient Surgery Rate (Medicare)	
Established Medicare rates for freestanding Ambulatory Surgery Centers.	

	Calendar Year 2009
Effective Date for Calendar Year 2009 Rates	
Consistent with previous annual rate revisions, the Calendar Year 2009 rates will be effective for services provided on/or after January 1, 2009 to the extent consistent with payment authorities including the applicable Medicaid State plan.	

Dated: February 4, 2009.

Robert G. McSwain,

Director, Indian Health Service.

[FR Doc. E9–13644 Filed 6–9–09; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HOMELAND SECURITY

National Protection and Programs Directorate Office of Infrastructure Protection

[Docket No. DHS–2009–0026]

Submission for Chemical Facility Anti-Terrorism Standards Personnel Surety Program Information Collection 1670–NEW

AGENCY: National Protection and Programs Directorate, Office of Infrastructure Protection, Infrastructure Security Compliance Division, DHS.

ACTION: 60-Day Notice and request for comments: New information collection request 1670–NEW.

SUMMARY: The Department of Homeland Security, National Protection and Programs Directorate, Office of Infrastructure Protection, Infrastructure Security Compliance Division (ISCD) will be submitting the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is a new information collection. The purpose of this notice is to solicit comments during a 60-day public comment period prior to the submission of this collection to OMB. The submission describes the nature of the information collection, the categories of respondents, the estimated burden, and cost.

DATES: Comments are encouraged and will be accepted until August 10, 2009. This process is conducted in accordance with 5 CFR 1320.8.

ADDRESSES: Interested persons are invited to submit comments on the proposed information collection through the Federal Rulemaking Portal at *http://www.regulations.gov*. Follow the instructions for submitting comments. Comments must be identified by docket number DHS–2009–0026.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained through the Federal Rulemaking Portal at *http://www.regulations.gov*.

SUPPLEMENTARY INFORMATION:

Program Description

The Chemical Facility Anti-Terrorism Standards (CFATS), 6 CFR Part 27, require high-risk chemical facilities to submit personally identifiable information (PII) from facility personnel and, as appropriate, unescorted visitors with access to restricted areas or critical assets at those facilities. This PII will be screened against the consolidated and integrated terrorist watch list maintained by the Federal Government in the Terrorist Screening Database (TSDB) to identify known or suspected terrorists (i.e., individuals with terrorist ties).

High-risk chemical facilities must also perform other relevant background checks in compliance with CFATS Personnel Surety risk-based performance standard (RBPS) #12. See 6 CFR 27.230(a)(12)(i–iii) (covered facilities must ''perform appropriate background checks … including (i) Measures designed to verify and validate identity; (ii) Measures designed to check criminal history; [and] (iii) Measures designed to verify and validate legal authorization to work''). The CFATS Personnel Surety Program is not intended to halt, hinder, or replace high-risk chemical facilities' performance of background checks currently required for employment or access to secure areas of those facilities.

Background

On October 4, 2006, the President signed the Department of Homeland Security Appropriations Act of 2007 (the Act), Public Law 109–295. Section 550 of the Act provides the Department of Homeland Security (DHS) with the authority to regulate the security of high-risk chemical facilities.

Section 550 requires that DHS's regulations establish risk-based performance standards. RBPS #12 (6 CFR 27.230(a)(12)) requires that regulated chemical facilities implement ''measures designed to identify people with terrorist ties.'' The ability to identify individuals with terrorist ties requires use of information held in Government-maintained databases. Therefore, DHS is implementing the CFATS Personnel Surety Program which will allow chemical facilities to comply with RBPS #12 to implement ''measures designed to identify people with terrorist ties.''

Overview of CFATS Personnel Surety Process

The CFATS Personnel Surety Program identifies individuals with terrorist ties by comparing PII submitted by each high-risk chemical facility to the PII of known or suspected terrorists on the consolidated and integrated terrorist watch list maintained by the Federal Government in the TSDB.

The representative(s) of each high-risk chemical facility with access to the Chemical Security Assessment Tool (CSAT), the online data collection portal for CFATS, will submit PII of affected individuals to the CFATS Personnel Surety Program via CSAT. The PII to be submitted is the data needed by DHS to conduct screening against the consolidated and integrated terrorist watch list in the TSDB. Upon receipt of each affected individual's PII, the CFATS Personnel Surety Program will send a copy of the PII to the Transportation Security Administration (TSA). TSA will compare the PII provided by the CFATS Personnel Surety Program and the PII of known and suspected terrorists on the consolidated and integrated terrorist watch list in the TSDB. TSA will forward the results from all matches to the Terrorist Screening Center (TSC), which will make a final determination of whether an individual is, or is not, a match to an individual in the TSDB.

In the event that there is a positive match, the TSC will notify the appropriate Federal law enforcement agency for coordination, investigative action, and/or response.

For positive matches, the TSC may contact the Federal agency that nominated the individual to be listed on the consolidated and integrated terrorist watch list in the TSDB for further details regarding the reasons for nominating the individual.

DHS will not provide screening results to high-risk chemical facilities nor to the individuals whose PII is submitted by high-risk chemical facilities. As warranted, high-risk chemical facilities may be contacted by Federal law enforcement as a part of appropriate law enforcement investigation activity. (See the FBI System of Records published in the

Federal Register on August 22, 2007, 72 FR 47073.)

The CFATS Personnel Surety Program will send a ''verification of submission'' to the representative(s) of high-risk chemical facilities when: (1) A new individual's PII has been submitted, (2) an individual's information has been updated, and (3) when an individual's information has been removed because he/she no longer has access to the high-risk chemical facility's restricted areas or critical assets. ''Verifications of submission'' will allow for high-risk chemical facilities to demonstrate compliance with their facility Site Security Plans and with RBPS 12.

Affected Population

6 CFR 27.230(a)(12) requires facility personnel and, as appropriate, unescorted visitors with access to restricted areas or critical assets to undergo background checks. This affected population will include (1) facility personnel (e.g., employees and contractors) with access (unescorted or otherwise) to restricted areas or critical assets, and (2) unescorted visitors with access to restricted areas or critical assets.

These background checks do not affect facility personnel that do not have access to facilities' restricted areas or critical assets, nor do they affect escorted visitors.

Request for Exception to the Requirement Under 5 CFR 1320.8(b)(3)

The CFATS Personnel Surety Program intends to request from OMB an exception to the Paperwork Reduction Act requirement, contained in 5 CFR 1320.8(b)(3), that affected individuals whose PII is submitted by high-risk chemical facilities be notified of the reasons for the collection, be notified how the information will be used, be given an estimate of the average burden associated with the collection, and be notified whether responses to the collection are voluntary or mandatory. The CFATS Personnel Surety Program intends to request this exception in the event that these notices are required.

Neither Section 550 of the Act nor CFATS creates a requirement for high-risk chemical facilities to provide notice to affected individuals whose PII is submitted to the CFATS Personnel Surety Program. DHS, however, expects each high-risk facility to adhere to applicable Federal, State, local, and tribal laws, regulations, and policies pertaining to notification to individuals that their PII is being submitted to the Federal Government. The CFATS Personnel Surety Program will require each high-risk chemical facility to certify that it is collecting and submitting this information in compliance with all applicable Federal, State, local, and tribal laws, regulations, and policies.

The CFATS Personnel Surety Program's request for an exception to the requirement under 5 CFR 1320.8(b)(3) would not exempt high-risk chemical facilities from having to adhere to applicable Federal, State, local, or tribal laws, regulations or policies pertaining to the privacy of facility personnel and the privacy of unescorted visitors. In fact, this exception would allow the CFATS Personnel Surety Program to avoid any conflict with such laws, regulations, and policies.

The CFATS Personnel Surety Program intends to take several steps to provide (1) adequate notice to high-risk chemical facilities of their responsibilities, and (2) general notice to affected individuals whose information will be submitted by high-risk chemical facilities to the CFATS Personnel Surety Program through this collection.

As part of Site Security Plans, required by CFATS, the Department will ask each high-risk chemical facility ''Will the facility provide notification to facility personnel and, as appropriate, unescorted visitors with access to the restricted areas or critical assets that personal information about them has been or will be submitted to DHS to determine if they have terrorist ties?'' High-risk chemical facilities that respond positively shall then explain their notification procedures.

- The CFATS Personnel Surety Program will publish a specific Privacy Impact Assessment.
- The CFATS Personnel Surety Program will publish in the **Federal Register** a specific System of Records Notice.
- The CFATS Personnel Surety Program will publish in the **Federal Register** the proposed exemptions for disclosure as required by the Privacy Act.
- The CFATS Personnel Surety Program will publish in the **Federal Register** the final exemptions for disclosure as required by the Privacy Act.

Solicitation of Comments

The Office of Management and Budget Is Particularly Interested in Comments Which

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 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 submissions of responses.

The Department Is Particularly Interested in Comments Which

1. Respond to the Department's interpretation of the population affected by RBPS #12 background checks outlined in 6 CFR 27.230(a)(12);

2. Respond to fact that a Federal law enforcement agency may, if appropriate, contact the high-risk chemical facility as a part of a law enforcement investigation into terrorist ties of facility personnel; and

3. Respond to the Department on its intention to seek an exception to the notice requirement under 5 CFR 1320.8(b)(3).

Analysis

Agency

Department of Homeland Security, Office of the Under Secretary for National Protection and Programs Directorate, Office of Infrastructure Protection, Infrastructure Security Compliance Division.

Title: CFATS Personnel Surety Program

OMB Number: 1670–NEW

Background Check to Identify Terrorist Ties for an Individual at a High-Risk Chemical Facility

Frequency

As required in the schedule and timing in the high-risk chemical facilities Site Security Plan approved by DHS

Affected Public

High-risk chemical facilities as defined in 6 CFR Part 27, High-risk chemical facility personnel, and as appropriate, unescorted visitors with access to restricted areas or critical assets

Number of Respondents

354,400 individuals

Estimated Time Per Respondent

0.59 hours (35.4 minutes)

Total Burden Hours

210,351.7 annual burden hours

Total Burden Cost (capital/startup)

$0.00

Total Burden Cost (operating/maintaining)

$17,669,543

Signed: June 4, 2009.

Philip Reitinger,

Deputy Under Secretary, National Protection and Programs Directorate Department of Homeland Security.

[FR Doc. E9–13618 Filed 6–9–09; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2009–0446]

Merchant Mariner Medical Advisory Committee; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Notice of committee establishment and request for applications.

SUMMARY: The Secretary of Homeland Security is establishing the Merchant Mariner Medical Advisory Committee (MMMAC) under authority of 6 U.S.C. 451 and shall operate under the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C. App.). Individuals interested in serving on this committee are invited to apply for membership.

DATES: Completed application forms for membership should reach the Coast Guard on or before August 3, 2009.

ADDRESSES: You may request a copy of the charter for the Merchant Mariner Medical Advisory Committee or a form to apply for membership by writing to Captain Eric Christensen, Designated Federal Officer (DFO) of the Merchant Mariner Medical Advisory Committee, 2100 SW 2nd St., Washington, DC 20593. Completed applications should be sent to the DFO at this same address. A copy of this notice, the Committee charter, and the application form are available in our online docket, USCG–2009–0446, at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Court Smith, Assistant DFO of the Merchant Mariner Medical Advisory Committee; telephone 1–202–372–1128 or *james.c.smith1@uscg.mil*.

SUPPLEMENTARY INFORMATION: *Establishment of the Merchant Mariner Medical Advisory Committee.* The Federal Advisory Committee Act (FACA), 5 U.S.C. App. (Pub. L. 92–463), governs the establishment of committees by Federal agencies. This committee will be established as a discretionary advisory committee that will operate in accordance with the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C. App.) and pursuant to the provisions of 5 U.S.C. 451. The Committee will advise, consult with, report to, and make recommendations to the Secretary on matters relating to the medical evaluation process and evaluation criteria for medical certification of merchant mariners. This may include but is not limited to:

- Commenting on Physical Qualification Requirements;
- Developing, communicating, and considering expert based and scientific recommendations;
- Examining such other matters, related to those above, that the Secretary may charge the Committee with addressing;
- Conducting studies, inquiries, workshops, and seminars in consultation with individuals and groups in the private sector and/or state and local government jurisdictions;
- Reviewing work from other agencies' medical advisory boards to recommend uniform guidelines for medical/functional fitness for operators of commercial vessels.

The Committee will meet at least once a year. It may also meet for additional purposes. Subcommittees and working groups may also meet to consider specific problems.

Request for Applications

The Committee will be composed of fourteen members. Ten Committee members shall be health-care professionals with particular expertise, knowledge, or experience regarding the medical examinations of merchant mariners or occupational medicine. Four Committee members shall be professional mariners with knowledge and experience in mariners' occupational requirements.

Initial appointments to the MMMAC shall be for terms of office of one, two, or three years. Thereafter, members shall serve terms of three years. Approximately one-third of members' terms of office shall expire each year. A member appointed to fill an unexpired term shall serve the remainder of that term. All members may serve more than one term. In the event the MMMAC terminates, all appointments to the committee shall terminate.

In support of the policy of the Coast Guard on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

All members shall serve as Special Government Employees (SGE), as defined in section 202(a) of title 18, United States Code. As a candidate for appointment as an SGE, applicants are required to complete a Confidential Financial Disclosure Report (OGE Form 450). A completed OGE Form 450 is not releasable to the public except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a). Only the Designated Agency Ethics Official (DAEO) or the DAEO's designate may release a Confidential Financial Disclosure Report.

If you are interested in applying to become a member of the Committee, send a completed application to Captain Eric Christensen, DFO of the MMMAC. Send the application in time for it to be received by the DFO on or before August 3, 2009.

A copy of the application form is available in the docket for this notice. To visit our online docket, go to *http://www.regulations.gov*, enter the docket number for this notice USCG–2009–0446 in the Search box, and click ''Go >>.'' Applicants may also request an application form via fax at 1–202–372–1918.

Dated: June 3, 2009.

J. A. Watson,

Rear Admiral, U.S. Coast Guard, Director, Prevention Policy.

[FR Doc. E9–13634 Filed 6–9–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2008–0022]

Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants; NUREG–0654/FEMA–REP–1/Rev. 1 Supplement 4 and FEMA Radiological Emergency Preparedness Program Manual

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Extension of comment period.

SUMMARY: The Federal Emergency Management Agency (FEMA) is extending the comment period for two documents: The proposed Supplement 4 (Supplement 4) to ''Criteria for Preparation and Evaluation of

Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants,'' NUREG–0654/FEMA–REP–1/Rev. 1 (NUREG–0654), and the proposed Radiological Emergency Preparedness Program Manual (the REPP Manual). The original comment period was scheduled to conclude on August 3, 2009. FEMA is extending the period until October 19, 2009.

DATES: This notice is effective June 3, 2009. Comments must be received by October 19, 2009.

ADDRESSES: The proposed Supplement 4 and the proposed REPP Manual are available online at *http://www.regulations.gov.* You may also view hard copies of these documents at the Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472. You may submit comments on the proposed Supplement 4 and the proposed REPP Manual, identified by Docket ID FEMA–2008–0022, by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

E-mail: FEMA–POLICY@dhs.gov. Include ''Docket ID FEMA–2008–0022'' in the subject line of the message.

Fax: 703–483–2999.

Mail/Hand Delivery/Courier: Regulation & Policy Team, Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472.

Instructions: All submissions received must include the agency name and Docket ID. Also, because FEMA is collecting comments on two documents in this docket, please also identify the document to which your comment applies. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the Privacy and Use Notice link on the Administration Navigation Bar of *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov,* and search for Docket ID ''FEMA–2008–0022.'' Submitted comments may also be inspected at FEMA, Office of Chief Counsel, Room 835, 500 C Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Craig Fiore, Deputy Chief, Radiological Emergency Preparedness Branch, Technological Hazards Division, National Preparedness Directorate, *craig.fiore@dhs.gov,* (703) 605–4218.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) is extending the comment period for two documents: the proposed Supplement 4 (Supplement 4) to ''Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants,'' NUREG–0654/FEMA–REP–1/Rev. 1 (NUREG–0654), and the proposed Radiological Emergency Preparedness Program Manual (the REPP Manual).

NUREG–0654 is a joint document issued by the Nuclear Regulatory Commission (NRC) and FEMA that contains the Evaluation Criteria against which FEMA and the NRC measure the emergency preparedness plans of Nuclear Power Plant owners and operators and the State, local, and Tribal jurisdictions in which they sit. The REPP Manual provides additional implementation guidance for State, local, and Tribal jurisdictions.

Supplement 4 revises and provides additional offsite requirements for emergency preparedness programs at the Nation's nuclear power plants, as well as requirements for backup means for alert and notification, and coordination between licensees and offsite responders. The REPP Manual consolidates all of the FEMA Radiological Emergency Preparedness Program's many operative guidance and policy documents into one location, and provides additional guidance on the proposed changes in Supplement 4.

FEMA published a notice of availability for these two documents on May 18, 2009, at 74 FR 23198. The original comment period was scheduled to conclude on August 3, 2009. In response to public comments, FEMA and the NRC have jointly determined to extend the comment period until October 19, 2009. Since the May 18 publication of the notice of availability, FEMA has received several comments requesting that the period be extended beyond the original 75 day period. These requests have suggested a range of more appropriate comment periods, lasting from 150 to 180 days. Various organizations cited the voluminous material put forth by the agencies for comment. Because the proposed regulatory amendments and guidance documents cover many significant legal, regulatory and policy matters that may require a time consuming review by licensees and their offsite counterparts, FEMA and the NRC have determined that it is in the interest of all parties to extend the comment period.

Authorities: FEMA proposes to issue the new REPP Manual, and FEMA and the NRC propose to issue Supplement 4 to NUREG–0654 under the authority of: Reorganization Plan No. 3 of 1978; Presidential Directive of Dec. 7, 1979; Executive Order 12148 ''Federal Emergency Management''; section 201 of the Disaster Relief Act of 1974, 42 U.S.C. 5131, as amended by the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (Pub. L. 93–288); Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.,* as amended by the Post Katrina Emergency Management Reform Act (Pub. L. 109–295); NRC Authorization Acts of 1980 (Pub. L. 96–295) and 1982–1983 (Pub. L. 97–415); Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.;* Energy Reorganization Act of 1974, 42 U.S.C. 5801 *et seq.;* Energy Policy Act of 2005, 42 U.S.C. 15801 note; Homeland Security Presidential Directive 5: Management of Domestic Incidents; and Homeland Security Presidential Directive 8: National Preparedness; 10 CFR part 50; 10 CFR part 50, Appendix E; 44 CFR part 350.

Dated: June 4, 2009.

W. Craig Fugate,

Administrator.

[FR Doc. E9–13609 Filed 6–9–09; 8:45 am]

BILLING CODE 9110–21–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5281–N–50]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request; 2009 American Housing Survey—New Orleans Metropolitan Sample

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 24, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding

this proposal. Comments must be received within fourteen (14) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Ms. Kimberly P. Nelson, HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20502; e-mail: *Kimberly_P._Nelson@omb.eop.gov;* fax: (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail: *Lillian.L.Deitzer@hud.gov*; telephone (202) 402–8048. This is not a toll-free number. Copies of available documents should be submitted to OMB and may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (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 of 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; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: 2009 American Housing Survey—New Orleans Metropolitan Sample.

Description of Information Collection: This is a new information collection. The Department of Housing and Urban Development is seeking emergency review of the Paperwork Reduction Act Requirements associated with the 2009 American Housing Survey—New Orleans Metropolitan Sample. This document provides notice that this emergency request is necessary at this time because it is essential to provide a periodic measure of the size and composition of the housing inventory for the select New Orleans metropolitan area. In addition, the New Orleans sample will provide information about people who rebuilt or rehabilitated their homes as a result of Hurricane Katrina, or are still in the process of renovating their homes; people who were living in New Orleans pre-Katrina, but who have moved to a different address in the New Orleans metro; and property that existed pre-Katrina, but has not been restored or where a person is living in a trailer on a lot. Title 12, United States Code, Sections 1701Z–1, 1701Z–2(g), and 1710Z–10a mandates the collection of this information. The 2009 American Housing Survey New Orleans Metropolitan sample is similar to previous American Housing Surveys (AHS) in that it collects data on subjects such as the amount and types of changes in the inventory, the physical condition of the inventory, the characteristics of the occupants, the persons eligible for and beneficiaries of assisted housing by race and ethnicity, and the number and characteristics of vacancies. Policy analysts, program managers, budget analysts, and Congressional staff use AHS data to advise executive and legislative branches about housing conditions and the suitability of public policy initiatives. Academic researchers and private organizations also use AHS data in efforts of specific interest and concern to their respective communities. The Department of Housing and Urban Development (HUD) needs the AHS data for two important uses.

1. With the data, policy analysts can monitor the interaction among housing needs, demand and supply, as well as changes in housing conditions and costs, to aid in the development of housing policies and the design of housing programs appropriate for different target groups, such as first-time home buyers and the elderly.

2. With the data, HUD can evaluate, monitor, and design HUD programs to improve efficiency and effectiveness.

OMB Control Number: 2528–Pending.

Agency Form Numbers: Computerized Versions of AHS–2161, AHS–22/62 and AHS–23/63.

Members of the Affected Public: Households.

Estimation of the total numbers of hours needed to prepare the information collection including number of responses, frequency of responses, and hours of responses: The number of respondents is 5,400 and the number of responses is 4,644. The estimated total number of burden hours needed to prepare the information collection is 3,654; the frequency of response is once.

Respondent's Obligation: Voluntary.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 3, 2009.

Lillian Deitzer,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E9–13632 Filed 6–9–09; 8:45 am]

BILLING CODE 4210–67–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–463 and 731–TA–1159 (Preliminary)]

Certain Oil Country Tubular Goods from China; Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 19 U.S.C. 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China of certain oil country tubular goods (OCTG) provided for in subheadings 7304.29, 7305.20 and 7306.29 of the Harmonized Tariff Schedule of the United States. OCTG imported from China are alleged to be subsidized and sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under sections 703(b) and 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) and 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations,

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On April 8, 2009, a petition was filed with the Commission and Commerce by Maverick Tube Corporation, Houston, TX; United States Steel Corporation, Dallas, TX; V&M Star LP, Houston, TX; V&M Tubular Corporation of America, Houston, TX; TMK IPSCO, Camanche, IA; Evraz Rocky Mountain Steel, Pueblo, CO; Wheatland Tube Corp., Wheatland, PA; and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO–CLC, Pittsburgh, PA. Accordingly, effective April 8, 2009, the Commission instituted countervailing duty investigation No. 701–TA–463 and antidumping duty investigations No. 731–TA–1159 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 8, 2009 (74 FR 16009). The conference was held in Washington, DC, on April 29, 2009, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on May 26, 2009. The views of the Commission are contained in USITC Publication 4081 (June 2009), entitled Certain Oil Country Tubular Goods from China: Investigation Nos. 701–TA–463 and 731–TA–1156–1159 (Preliminary).

William R. Bishop,

Acting Secretary.

[FR Doc. E9–13526 Filed 6–9–09; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

United States Parole Commission

Record of Vote of Meeting Closure; (Public Law 94–409) (5 U.S.C. Sec. 552b)

I, Edward F. Reilly, Jr., of the United States Parole Commission, was present at a meeting of said Commission, which started at approximately 11:30 a.m., on Thursday, May 14, 2009, at the U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815. The purpose of the meeting was to decide two petitions for reconsideration pursuant to 28 CFR Section 2.27. Four Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Edward F. Reilly, Jr., Cranston J. Mitchell, Isaac Fulwood, Jr. and Patricia K. Cushwa.

In witness whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: May 14, 2009.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. E9–13398 Filed 6–9–09; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

United States Parole Commission

Record of Vote of Meeting Closure; (Pub. L. 94–409) (5 U.S.C. Sec. 552b)

I, Isaac Fulwood, Chairman of the United States Parole Commission, was present at a meeting of said Commission, which started at approximately 10 a.m., on Thursday, May 21, 2009 at the U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815. The purpose of the meeting was to approve or disapprove the appointment of a hearing examiner. Four Commissioners were present, constituting a quorum, when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Isaac Fulwood, Cranston J. Mitchell, Edward F. Reilly, Jr., and Patricia Cushwa.

In witness whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: June 1, 2009.

Isaac Fulwood,

Chairman, U.S. Parole Commission.

[FR Doc. E9–13399 Filed 6–9–09; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Extension of the Approval of Information Collection Requirements

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning its proposal to extend the Office of Management and Budget (OMB) approval of the Information Collection: *Secretary of Labor's Opportunity Award, Exemplary Voluntary Effort (EVE) Award, and Exemplary Public Interest Contribution (EPIC) Award.* A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before August 10, 2009.

ADDRESSES: Mr. Steven D. Lawrence, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0292, fax (202) 693–1451, Email *Lawrence.Steven@dol.gov.* Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION:

I. Background: The Office of Federal Contract Compliance Programs (OFCCP) is responsible for the administration of the Secretary of Labor's Opportunity Award, Exemplary Voluntary Effort

(EVE) Award, and Exemplary Public Interest Contribution (EPIC) Award. These awards are presented annually to Federal contractors and non-profit organizations whose activities support the mission of the OFCCP. The recognition of Federal contractors who are in compliance with the OFCCP regulations and who work with community and public interest organizations sends a positive message throughout the U.S. Labor Force and business community.

The Secretary of Labor's Opportunity Award and EVE Award recipients must be Federal contractors covered by Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended.

The Secretary of Labor's Opportunity Award is presented to one contractor each year that has established and instituted comprehensive workforce strategies to ensure equal employment opportunity. The EVE Award is given to those contractors who have demonstrated through programs or activities, exemplary and innovative efforts to create an inclusive American workforce. The EPIC Award is presented to public interest organizations that have supported equal employment opportunity and linked their efforts with those of the Federal contractors to enhance employment opportunities for those with the least opportunity to join the workforce. Guidelines for the nomination process can be found in Administrative Notice Number 261 dated February 02, 2004; to view the Notice visit OFCCP web page address at *http://www.dol.gov/esa/ofccp/media/reports/evedr261.htm.* This information collection is currently approved for use through January 31, 2010.

II. Review Focus: The Department of Labor is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions: OFCCP seeks a three-year extension for the approval of the Secretary of Labor's Opportunity Award, Exemplary Voluntary Effort (EVE) Award, and Exemplary Public Interest Contribution (EPIC) Award. There is no change in the substance or method of collection since the last OMB approval. OFCCP revised the burden hour estimates associated with the awards based on the number of nominations received for Calendar Year (CY) 2008. During CY 2008, OFCCP received nominations for three (3) Secretary of Labor's Opportunity Awards, nine (9) EVE Awards, and fourteen (14) EPIC Awards. This information collection recognizes outstanding Federal contractors and non-profit public interest organizations that have created exceptional equal opportunity and nondiscrimination programs that support the OFCCP's mission.

Type of Review: Extension.

Agency: Employment Standards Administration.

OMB Number: 1215–0201

Affected Public: Business or other for-profit, not-for-profit institutions.

Total Respondents: 26.

Total Annual Responses: 26.

Estimated Total Burden Hours: 3,174.

Estimated Time per Response: 122 minutes

Frequency: Annually.

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 will also become a matter of public record.

Dated: June 4, 2009.

Hazel M. Bell,

Acting Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E9–13594 Filed 6–9–09; 8:45 am]

BILLING CODE 4510–CM–P

DEPARTMENT OF LABOR

Employment and Training Administration

Request for Certification of Compliance —Rural Industrialization Loan and Grant Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration is issuing this notice to announce the receipt of a ''Certification of Non-Relocation and Market and Capacity Information Report'' (Form 4279–2) for the following:

Applicant/Location: Barrel O'Fun Snack Foods, Inc./Perham, Minnesota.

Principal Product/Purpose: The loan, guarantee, or grant application is to allow an existing manufacturer to purchase equipment and expand its facility to manufacture pretzels and tortilla chips. The NAICS industry code for this enterprise is: 311919 Other Snack Food Manufacturing.

DATES: All interested parties may submit comments in writing no later than June 24, 2009. Copies of adverse comments received will be forwarded to the applicant noted above.

ADDRESSES: Address all comments concerning this notice to Anthony D. Dais, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Room S–4231, Washington, DC 20210; or e-mail *Dais.Anthony@dol.gov;* or transmit via fax (202) 693–3015 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Anthony D. Dais, at telephone number (202) 693–2784 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 188 of the Consolidated Farm and Rural Development Act of 1972, as established under 29 CFR part 75, authorizes the United States Department of Agriculture to make or guarantee loans or grants to finance industrial and business activities in rural areas. The Secretary of Labor must review the application for financial assistance for the purpose of certifying to the Secretary of Agriculture that the assistance is not calculated, or likely, to result in: (a) A transfer of any employment or business activity from one area to another by the loan applicant's business operation; or, (b) An increase in the production of goods, materials, services, or facilities in an area where there is not sufficient

demand to employ the efficient capacity of existing competitive enterprises unless the financial assistance will not have an adverse impact on existing competitive enterprises in the area. The Employment and Training Administration within the Department of Labor is responsible for the review and certification process. Comments should address the two bases for certification and, if possible, provide data to assist in the analysis of these issues.

Signed at Washington, DC this 4th of June, 2009.

Gay M. Gilbert,

Administrator, Office of Workforce Investment, Employment and Training Administration.

[FR Doc. E9–13548 Filed 6–9–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Susan Harwood Training Grant Program, FY 2009

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Initial announcement of availability of funds and solicitation for grant applications (SGA).

Funding Opportunity No.: SHTG–FY–09–02.

Catalog of Federal Domestic Assistance No.: 17.502.

SUMMARY: The U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) awards funds to nonprofit organizations to provide training and educational programs for employers and workers about safety and health topics selected by OSHA. Nonprofit organizations, including qualifying labor unions and community-based and faith-based organizations that are not an agency of a State or local government are eligible to apply. Additionally, State or local government-supported institutions of higher education are eligible to apply in accordance with 29 CFR part 95. This notice announces grant availability for Susan Harwood Training Program grants. All information and forms needed to apply for this funding opportunity are published as part of this SGA or are available on the Grants.gov site.

DATES: Grant applications must be received electronically by the Grants.gov system no later than 4:30 p.m., E.T., on Friday, July 24, 2009, the application deadline date.

ADDRESSES: Applications for grants submitted under this competition must be submitted electronically using the government-wide Grants.gov Apply site at: *http://www.grants.gov.* If applying online poses a hardship to any applicant, the OSHA Directorate of Training and Education will provide assistance to ensure that applications are submitted online by the closing date. Applicants must contact the OSHA Directorate of Training and Education office listed on the announcement at least one week prior to the application deadline date (or no later than 4:30 p.m., E.T., on July 17, 2009) to speak to a representative who can provide assistance to ensure that applications are submitted online by the closing date. Requests for extensions to this deadline will not be granted. Further information regarding submitting your grant application electronically is listed in Section IV, Item 3, Submission Date, Times, and Addresses.

FOR FURTHER INFORMATION CONTACT: Any questions regarding this SGA should be directed to Cynthia Bencheck, Program Analyst, e-mail address: *bencheck.cindy@dol.gov, tel:* 847–297–4810 (note that this is not a toll-free number), or Jim Barnes, Director, Office of Training and Educational Programs, *e-mail address: barnes.jim@dol.gov, tel:* 847–297–4810 (note that this is not a toll-free number). To obtain further information on the Susan Harwood Training Grant Program of the U.S. Department of Labor, visit the OSHA Web site at: *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

Overview of the Susan Harwood Training Grant Program

The Susan Harwood Training Grant Program provides funds for programs to train workers and employers to recognize, avoid, and prevent safety and health hazards in their workplaces. The program emphasizes four areas:

- Educating workers and employers in small businesses. For purposes of this grant program, a small business is one with 250 or fewer employees.
- Training workers and employers about new OSHA standards.
- Training at-risk worker and employer populations.
- Training workers and employers about high risk activities or hazards identified by OSHA through the Department of Labor's Strategic Plan, or as part of an OSHA special emphasis program.

Grant Category Being Announced

Under this solicitation for grant applications, OSHA will accept applications for the Targeted Topic training grant category. The emphasis for applications submitted for the Target Topic training grant category should be on conducting training for multiple employers and their workers addressing safety and health hazards associated with *one* of the selected training topic areas listed below.

Topics for the Targeted Topic Training Category

Organizations funded for Targeted Topic training category grants are expected to develop and provide occupational safety and health training and/or educational programs addressing one of the topics selected by OSHA; recruit workers and employers for the training; and conduct and evaluate the training. Grantees are also expected to conduct follow-up evaluations with individuals trained by their program to determine what, if any, changes were made to reduce hazards in their workplaces as a result of the training. If your organization plans to train workers or employers in any of the 26 states operating OSHA-approved State Plans, State OSHA requirements for that state must be included in the training.

Twenty-four different training topics were selected for this grant announcement. OSHA may award grants for some or all of the listed Targeted Topic training topics.

Applicants are required to focus their grant application proposal to address only *one* of the training topics from the list of 24 training topics OSHA has selected for this grant solicitation. Applicants wishing to address more than one of the announced grant training topics must submit a separate grant application for each topic. Each application must propose a plan for developing and conducting training programs addressing the recognition and prevention of safety and health hazards that focuses on *one* of the training topics listed below.

Training Topics That Address Construction Industry Hazards

Programs that train workers and employers in the recognition and prevention of safety and health hazards addressing *one* of the following training topic areas.

1. Crane Safety, including but not limited to the following subtopics: safety hazards relating to Derricks, Overhead Hazards, and Tower Cranes
2. Fall Protection, including but not limited to the following subtopics:

Ladders, Roofs, Scaffolds, and Steel Erection
3. Construction Focus Four hazards, integrating all four elements in training programs: Falls, Electrocution, Caught-in and Struck-by
4. Health Hazards in Construction, including but not limited to the following subtopics: Hexavalent Chromium, Lead, Noise, Silica with a special emphasis on training non-English speaking/limited-English-proficient workers
5. Safety Hazards related to Mechanized, Over-the-Road and Heavy Construction Equipment, including but not limited to the following subtopic: Compactor Rollovers
6. Work Zone Safety

Training Topics That Address General Industry Hazards

Programs that train workers and employers in the recognition and prevention of safety and health hazards addressing *one* of the following training topic areas.

7. Combustible Dust, including but not limited to the following subtopics: Controlling Ignition Sources, Controlling Dust Accumulations, Grain Handling Operations
8. Emergency Preparedness and Response, including but not limited to the following subtopics: Pandemic Flu and Continuity of Operations
9. Falls in General Industry
10. Materials Handling, including but not limited to the following subtopics: Cranes, Hazardous Materials, and Slings
11. Health Hazards in General Industry, including but not limited to the following subtopics: Isocyanates, and Metal Working Fluids
12. Landscaping and Tree Service Safety, including but not limited to the following subtopic: Hearing Conservation with a special emphasis on training non-English speaking/limited-English-proficient workers
13. Night time Sanitation, Maintenance and Cleanup Crews working the Third Shift in Food Processing Industries such as red meat, poultry, and fish, including but not limited to the following subtopics: Lockout/Tagout, Confined Spaces, Carbon Monoxide Hazards
14. Powered Industrial Trucks
15. Process Safety Management, including but not limited to the following subtopics: Chemical Plants, Ethanol Plants, Refineries, and Anhydrous Ammonia
16. Safety and Health Management Systems for Small and Medium-Sized Businesses

Training Topics That Address Other Safety and Health Topic Areas

Programs that train workers and employers in the recognition and prevention of safety and health hazards addressing *one* of the following training topic areas.

17. Alternative Energy Industry Hazards, including but not limited to the following subtopics: Biofuels, Elevated Tower Work, Hydrogen Production and Distribution, Solar Farming, and Wind Farming
18. Electrical Safety, including but not limited to the following subtopics: Arc Flash and Personal Protective Equipment (PPE) for Arc Flash, Proper Grounding Techniques, and Electrical Transmission and Distribution
19. Ergonomics, including but not limited to the following subtopics: Nursing Homes, Poultry Processing, Retail Grocery Stores, Masonry Construction, and Solid Waste Removal
20. Heat Stress Exposure, including but not limited to migrant workers
21. Maritime, including but not limited to the following subtopics: Maritime Standards, Longshoring, Marine Terminals, Shipbreaking, Shipyard Safety Hazards including Electrical Hazards and Arc Flash, Ergonomics, Personal Protective Equipment (PPE) including Flotation Devices, and Emergency Procedures
22. Native American Tribal Safety and Health Issues, including but not limited to the following subtopics: Confined Space, Bloodborne Pathogens, Construction Safety, Health and Safety in Waste Water Treatment Facilities, and in the Health Care Industry
23. Oil and Gas, including but not limited to the following subtopics: Exploration, Production, and Well Development
24. OSHA Recordkeeping Process. Develop materials and conduct training to train workers and employers in the recognition and compliance requirements of the Recordkeeping system to accurately record cases and respond to injury or illness information appropriately in the following sections contained under Part 1904: General Recording Criteria (1904.7), Covered Employees (1904.31), Employee Involvement (1904.35), and Prohibition Against Discrimination (1904.36)

II. Award Information

Targeted Topic training grants will be awarded for a 24-month project performance period. The 24-month project period for these grants begins no later than September 30, 2009. There is approximately $6.9 million available for the Targeted Topic grant category in 2009. The average Federal award will be approximately $250,000. Historically, the Harwood Grant Program has been reauthorized from year to year. The Department of Labor expects, but cannot guarantee, that this will be so in the future. If Congress appropriates the necessary funds, the Department of Labor will award second year grants to eligible applicants.

III. Eligibility Information

1. Eligible Applicants

Nonprofit organizations, including qualifying labor unions and community-based and faith-based organizations that are not an agency of a State or local government are eligible to apply. Additionally, State or local government-supported institutions of higher education are eligible to apply in accordance with 29 CFR part 95. Eligible organizations can apply independently for funding or in partnership with other eligible organizations, but in such a case, the lead organization must be identified. Sub-grants are not authorized. Subcontracts, if any, must be awarded in accordance with 29 CFR 95.40–48, including OMB circulars requiring full and open competition for procurement transactions, to the maximum extent practicable.

A 501(c)(4) nonprofit organization, as described in 26 U.S.C. 501(c)(4), that engages in lobbying activities will not be eligible for the receipt of Federal funds constituting an award, grant or loan. *See* 1 U.S.C. 1611.

Applicants other than State or local government supported institutions of higher education will be required to submit evidence of nonprofit status from the Internal Revenue Service (IRS).

2. Cost Sharing or Matching

Applicants are not required to contribute non-Federal resources.

3. Other Eligibility Requirements

Legal rules pertaining to inherently religious activities by organizations that receive Federal financial assistance.

The U. S. Government is generally prohibited from providing ''direct''

financial assistance for inherently religious activities.[1]

The Grantee may be a faith-based organization or work with and partner with religious institutions; however, ''direct'' federal assistance provided under grants with the U.S. Department of Labor may not be used for religious instruction, worship, prayer, proselytizing or other inherently religious practices. 29 CFR Part 2, Subpart D governs the treatment in Department of Labor government programs of religious organizations and religious activities; the Grantee and sub-contractors are expected to be aware of and observe the regulations in this subpart.

IV. Application and Submission Information

1. Application Package

All information and forms needed to apply for this funding opportunity are published as part of this SGA or are available on the Grants.gov site. For informational purposes, the complete **Federal Register** notice is also posted on the OSHA Susan Harwood Training Grant Program Web site at: *http://www.osha.gov/dcsp/ote/sharwood.html.*

2. Content and Form of Application Submission

Each grant application must address only *one* of the 24 announced training topics. Organizations interested in applying for grants for more than one of the announced grant training topics must submit a separate application for each grant training topic.

A. Required Contents

A complete application will contain the following mandatory forms, mandatory document attachments and optional attachments.

(1) Application for Federal Assistance form (SF 424). The individual signing the SF 424 form on behalf of the applicant must be authorized to bind the applicant.

Your organization is required to have a Data Universal Number System (DUNS) number from Dun and Bradstreet to complete this form. Information about ''Obtaining a DUNS Number—A Guide for Federal Grant and Cooperative Agreement Applicants'' is available at: *http://www.whitehouse.gov/omb/grants/duns_num_guide. pdf.*

(2) Survey on Ensuring Equal Opportunity for Applicants (Faith-Based EEO Survey) form OMB No. 1890–0014.

(3) Program Summary (described further in subsection B below). The program summary is a short one-to-two page single-sided abstract that succinctly summarizes the proposed project and provides information about the applicant organization.

(4) Budget Information form (SF 424A).

(5) Detailed Project Budget Backup. The detailed budget backup will provide a detailed breakout of the costs that are listed in Section B of the SF 424A Budget Information form. If applicable, provide a copy of approved indirect cost rate agreement and statement of program income. Indirect costs may only be requested if your organization already has a current approved indirect cost rate agreement.

(6) A description of any voluntary non-federal resource contribution to be provided by the applicant, including source of funds and estimated amount.

(7) Technical Proposal program narrative (described further in subsection B below), not to exceed 30 single-sided pages, double-spaced, 12-point font, containing: Problem Statement/Need for Funds; Administrative and Program Capability; and Work Plan.

(8) Assurances form (SF 424B).

(9) Combined Assurances form (ED 80–0013).

(10) Organizational Chart.

(11) Evidence of Non-Profit status from the Internal Revenue Service (IRS), if applicable. (Does not apply to State and local government-supported institutions of higher education.)

(12) Accounting System Certification, if applicable. Organizations that receive less than $1 million annually in Federal grants must attach a certification signed by your certifying official stating that your organization has a functioning accounting system that meets the criteria below. Your organization may also designate a qualified entity (include the name and address in the documentation) to maintain a functioning accounting system that meets the criteria below. The certification should attest that your organization's accounting system provides for the following:

(a) Accurate, current and complete disclosure of the financial results of each Federally sponsored project.

(b) Records that identify adequately the source and application of funds for Federally sponsored activities.

(c) Effective control over and accountability for all funds, property and other assets.

(d) Comparison of outlays with budget amounts.

(e) Written procedures to minimize the time elapsing between the transfer of funds.

(f) Written procedures for determining the reasonableness, allocability and allowability of costs.

(g) Accounting records, including cost accounting records that are supported by source documentation.

(13) Any attachments such as resumes of key personnel or position descriptions, exhibits, information on prior government grants, and signed letters of commitment to the project. Please limit the number of attachments to essential documents only.

To be considered responsive to this solicitation, the application must consist of the above mentioned separate parts. Major sections and sub-sections of the application should be divided and clearly identified, and all pages shall be numbered. Standard forms, attachments, exhibits and the Program Summary abstract are not counted toward the page limit.

The forms listed above are available through the *www.Grants.gov* site and must be submitted electronically as a part of your grant application. In the Grants.gov system, there is a window containing a menu of ''Mandatory Documents'' which must be completed and submitted online within the system. For all other attachments such as the Program Summary, Detailed Budget Backup, Technical Proposal, etc., please scan these documents into a single Adobe Acrobat file and attach the document in the area for attachments.

B. Budget Information

Applicants must include the following required grant project budget information.

(1) Budget Information form (SF 424A).

(2) A Detailed Project Budget that clearly details the costs of performing all of the requirements presented in this solicitation. The detailed budget will break out the costs that are listed in Section B of the SF 424A Budget Information form. Applicants are asked to plan for a funding level based on funds needed to perform work plan and administrative activities for the grant project performance period.

[1] In this context, the term direct financial assistance means financial assistance that is provided directly by a government entity or an intermediate organization, as opposed to financial assistance that an organization receives as the result of the genuine and independent private choice of a beneficiary. In other contexts, the term ''direct'' financial assistance may be used to refer to financial assistance that an organization receives directly from the Federal government (also known as ''discretionary'' assistance), as opposed to assistance that it receives from a State or Local government (also known as ''indirect'' or ''block'' grant assistance). The term ''direct'' has the former meaning throughout this solicitation for grant applications (SGA).

Applicants are reminded to budget for compliance with the administrative requirements set forth. (Copies of all regulations that are referenced in this solicitation for grant applications (SGA) are available on-line at no cost at: *http://www.osha.gov/dcsp/ote/sharwood.html.*) This includes the costs of performing activities such as travel for two staff members, one program and one financial, to the Washington, DC, area to attend a new grantee orientation meeting; financial audit, if required; project closeout; document preparation (e.g., quarterly progress reports, project documents); and ensuring compliance with procurement and property standards.

The Detailed Project Budget should break out administrative costs separately from programmatic costs for both federal and non-federal funds. Administrative costs include indirect costs from the costs pool and the cost of activities, materials, meeting close-out requirements as described in Section VI, and personnel (e.g., administrative assistants) who support the management and administration of the project but do not provide direct services to project beneficiaries. Indirect cost charges, which are considered administrative costs, must be supported with a copy of a current approved Indirect Cost Rate Agreement form. Administrative costs cannot exceed 25% of the total grant budget. The project budget should clearly demonstrate that the total amount and distribution of funds are sufficient to cover the cost of all major project activities identified by the applicant in its proposal, and must comply with Federal cost principles (which can be found in the applicable OMB Circulars).

(3) A description of any voluntary non-federal resource contribution to be provided by the applicant, including source of funds and estimated amount.

C. Program Summary and Technical Proposal

The Program Summary and the Technical Proposal will contain the narrative segments of the application. The Program Summary abstract is not to exceed two single-sided, 12-point font, typed pages. The Technical Proposal program narrative section is not to exceed 30 single-sided (8½″ × 11″ or A4), double-spaced, 12-point font, typed pages, consisting of the Problem Statement/Need for Funds, Administrative and Program Capability, and Work Plan. Reviewers will only consider Technical Proposal information up to the 30-page limit. The Technical Proposal must demonstrate the capability to successfully administer the grant and to meet the objectives of this solicitation. The Technical Proposal will be rated in accordance with the selection criteria specified in Section V.

The Program Summary and Technical Proposal must include the following sections.

(1) Program Summary. An abstract of the application, not to exceed two single-sided pages, that must include the following information.

- Applicant organization's full legal name.
- Project Director's name, title, street address for overnight delivery service, and mailing address if it is different from the street address, telephone and fax numbers, and e-mail address. The Project Director is the person who will be responsible for the day-to-day operation and administration of the program. The Project Director's name should also be the same name you list on the Application for Federal Assistance form (SF–424) in section f. Name and contact information of person to be contacted on matters involving this application.
- Authorized Representative/Certifying Representative's name, title, street address for overnight delivery service, and mailing address if it is different from the street address, telephone and fax numbers, and e-mail address. The Authorized Representative/Certifying Representative is the official in your organization who is authorized to enter into grant agreements. The Authorized Representative/Certifying Representative's name should also be same name you list on the Application for Federal Assistance form (SF–424) in section 21 for Authorized Representative.
- If someone other than the Authorized Representative/Certifying Representative described above will be authorized by your organization to submit and sign off on quarterly financial reports (SF 269 forms) for OSHA, provide their name, title, street address for overnight delivery service, and mailing address if it is different from the street address, telephone and fax numbers, and e-mail address.
- Funding Amount. List the amount of Federal funding you are requesting to perform work plan and administrative activities for the grant project performance period. If your organization is contributing non-Federal resources, also list the amount of non-Federal resources and the source of those funds.
- Grant Topic. List the *one* grant training topic and industry your organization has selected to target in its application.
- Summary of the Proposed Project. Write a brief program summary of your proposed grant project.
- Applicant Background. Describe your applicant organization, including its mission, identify the type of non-profit organization it is, and provide a description of your membership, if any. Your description should indicate how many full-time and part-time employees your organization employs.

(2) The Technical Proposal program narrative segment, which is not to exceed 30 single-sided, double-spaced, 12-point font pages in length, must address each section listed below.

- Problem Statement/Need for Funds. Describe the hazards that will be addressed in your program, the target population(s) that will benefit from your training and educational program, and the barriers that have prevented this population from receiving adequate training. When you discuss target populations, include geographic location(s) to be served, and the number of workers and employers to be reached.
- Administrative and Program Capability. Briefly describe your organization's functions and activities. Relate this description of functions to your organizational chart that you will include in the application. If your organization is conducting, or has conducted within the last five years, any other government (Federal, State, or local) grant programs, the application must include an attachment (which will not count towards the page limit) providing information regarding previous grants including a) the organization for which the work was done, and b) the dollar value of the grant. If your organization has not had previous grant experience, you may partner with an organization that has grant experience to manage the grant. If you use this approach, the management organization must be identified and its grant program experience discussed.
- Program Experience. Describe your organization's experience conducting the type of program that you are proposing. Include program specifics such as program titles, numbers trained and duration of training. Experience includes safety and health experience, training experience with adults, and programs operated specifically for the selected target population(s). Nonprofit organizations, including community-based and faith-based organizations, that do not have prior experience in safety and health may partner with an established safety and health organization to acquire safety and health expertise.
- Staff Experience. Describe the qualifications of the professional staff

you will assign to the program. Include resumes of staff already on board. If some positions are vacant, include position descriptions/minimum hiring qualifications instead of resumes. Qualified staff is generally defined as persons with safety and health experience and a) training experience with adults or b) experience working with the target population.

• Work Plan. Develop a 24-month work plan that is broken out by calendar year quarters. An outline of specific items required in your work plan follows.

• Each educational institution that receives Federal funds for a fiscal year shall hold an educational program on the United States Constitution on September 17 of such year for the students served by the educational institution. Per Section 111 of Division J of Public Law 108–447, the ''Consolidated Appropriations Act, 2005,'' December 8, 2004; 118 Stat. 2809, 3344–45, requires ''educational institutions'' that receive Federal funds to hold an educational program on the United States Constitution on September 17 (''Constitution Day and Citizenship Day'') of each year. The Office of Personnel Management has placed relevant materials on its Web site at the following address: *http://opm.gov/constitution_initiative.* Also, the U.S. Department of Education's Federal Register Notice of the Implementation of Constitution Day and Citizenship Day on September 17 of Each Year, published on May 24, 2005, can be found at: *http://edocket.access.gpo.gov/2005/05-10355.htm.* Please note that this site primarily addresses educational institutions that receive funds from the U.S. Department of Education. However, it also discusses other materials that may be helpful to your organization.

• Work Plan Overview. Describe your plan for grant activities and the anticipated outcomes. The overall plan will describe such things as the development of training materials or the plan to use existing training materials, the training content, recruiting of trainees, where or how training will take place, and the anticipated benefits to workers and employers receiving the training.

• Work Plan Activities. Break your overall plan down into activities or tasks. For each activity, explain what will be done, who will do it, when it will be done, and the results of the activity. When you discuss training, include the subjects to be taught, the length of the training sessions, and training location (classroom, worksites). Describe how you will recruit trainees for the training. If your organization is an educational institution, also describe the educational activities your organization will conduct on Constitution Day, September 17.

• Work Plan Quarterly Projections. For training and other quantifiable activities, estimate how many (e.g., number of advisory committee meetings, classes to be conducted, workers and employers to be trained, etc.) you will accomplish each quarter of the grant (grant quarters match calendar quarters, i.e., January to March, April to June) and provide the training number totals for the grant. Substantiate the methodology used to develop your projections. Grantees are accountable for accomplishing the activities listed in their work plans and meeting quarterly projections. Quarterly projections are used to measure your actual performance against your plans. If you plan to conduct a train-the-trainer program, estimate the number of individuals you expect to be trained during the grant period by those who received the train-the-trainer training. These second tier training numbers should only be included if your organization is planning to formally follow up with the trainers to obtain this data during the grant project performance period.

• Materials. Describe each training material you will produce under the grant, if not treated as a separate activity under *Activities* above. Provide a timetable for developing and producing the material. OSHA must review and approve training materials for technical accuracy and suitability of content before the materials may be used in your grant program. Therefore, your timetable must include provisions for an OSHA review of draft and camera-ready products. Acceptable formats for training materials include Microsoft Office 2003 or 2007 and Adobe Reader version 9.0, 8.1.3 and 8.1.2. Any previously developed training materials you are proposing to utilize in your grant training must also go through an OSHA review before being used.

• Evaluations. There are three types of evaluations that should be conducted. First, describe plans to evaluate the training sessions. Second, describe your plans to evaluate your progress in accomplishing the grant work activities listed in your application. This includes comparing planned vs. actual accomplishments. Discuss who is responsible for taking corrective action if plans are not being met. Third, describe your plans to assess the effectiveness of the training your organization is conducting. This will involve following-up, by survey or on-site review, if feasible, with individuals who attended the training to find out what changes were made to abate hazards in their workplaces. Include timetables for follow-up and for submitting a summary of the assessment results to OSHA.

(3) An organizational chart of the staff that will be working on this grant and their location within the applicant organization.

Attachments: Summaries of other relevant organizational experiences; information on prior government grants; résumés of key personnel and/or position descriptions; and signed letters of commitment to the project. Please limit the number of attachments to essential documents only.

Acceptable formats for document attachments submitted as a part of a Grants.gov grant application include Microsoft Office 2003 or 2007 and Adobe Reader version 9.0, 8.1.3 and 8.1.2.

3. Submission Date, Times, and Addresses

Date: The deadline date for receipt of applications is Friday, July 24, 2009. Applications must be received by 4:30 p.m., E.T., on the closing date at: *http://www.grants.gov.* Any application received after the deadline will not be accepted.

Electronic Submission of Applications: Applications for Susan Harwood grants under this competition must be submitted electronically using the government-wide Grants.gov Apply site at: *http://www.grants.gov.* Through this site you will be able to download a copy of the application package, complete it offline, and then upload and submit your full application. Acceptable formats for document attachments submitted as a part of a Grants.gov grant application include Microsoft Office 2003 or 2007 and Adobe Reader version 9.0, 8.1.3 and 8.1.2. In the Grants.gov system, there is a window containing a menu of ''Mandatory Documents'' which must be completed and submitted online within the system. For all other attachments such as the Program Summary, Detailed Budget Backup, Technical Proposal, etc., please scan these documents into a single Adobe Acrobat file and attach the document in the area for attachments. Applications sent by mail or other delivery services, e-mail, telegram, or facsimile (FAX) will not be accepted. Applications that do not meet the conditions set forth in this notice will not be honored.

For applicants using Grants.gov for the first time, it is strongly recommended that they immediately

initiate and complete the ''Get Registered'' steps to register with Grants.gov at: *http://www.grants.gov/applicants/get_registered.jsp.* These steps will probably take multiple days to complete, which should be factored into an applicant's plans for electronic application submission in order to avoid unexpected delays that could result in the rejection of the application.

If your organization is already registered with Grants.gov and there have been any changes to your organization users, such as the E-Business Point of Contact or Authorized Organization Representatives, please be sure that the necessary updates are made with Grants.gov to prevent delay in submission of the electronic application. Please note that registered organizations must also renew their Central Contractor Registration (CCR) registration once a year. This process takes five days to complete, so it should be factored into an applicant's plans for electronic application submission in order to avoid unexpected delays that could result in the rejection of the application.

If you have questions regarding the process for updating your organization users or submitting your application through Grants.gov, or are experiencing problems with electronic submissions, you may contact the Grants Program Management Office via one of the methods below:

- *E-mail at: support@grants.gov.*
- Telephone the Grants.gov Contact Center Phone: 1–800–518–4726. The Contact Center hours of operation are Monday–Friday, 7 a.m. to 9 p.m., Eastern Time; closed on Federal holidays.
- When contacting the Grants Program Management Office, the following information will help expedite your inquiry.
  - Funding Opportunity Number (FON).
  - Name of Agency You Are Applying To.
  - Specific Area of Concern.

If applying online poses a hardship to any applicant, the OSHA Directorate of Training and Education will provide assistance to ensure that applications are submitted online by the closing date. Applicants must contact the OSHA Directorate of Training and Education office listed on the announcement at least one week prior to the application deadline date (or not later than 4:30 p.m., E.T., on July 17, 2009) to speak to a representative who can provide assistance to ensure that applications are submitted online by the closing date. Requests for extensions to this application deadline will not be granted.

4. Intergovernmental Review

The Harwood Training Grant Program is not subject to Executive Order 12372 Intergovernmental Review of Federal Programs.

5. Funding Restrictions

Grant funds may be spent on the following.

(a) Conducting training.

(b) Conducting other activities that reach and inform workers and employers about workplace occupational safety and health hazards and hazard abatement.

(c) Conducting outreach and recruiting activities to increase the number of workers and employers participating in the program.

(d) Developing and/or purchasing training materials for use in training.

Grant funds may not be used for the following activities under the terms of the grant program.

(a) Any activity that is inconsistent with the goals and objectives of the Occupational Safety and Health Act of 1970.

(b) Training individuals not covered by the Occupational Safety and Health Act.

(c) Training workers or employers from workplaces not covered by the Occupational Safety and Health Act. Examples include: State and local government employees in non-State Plan States, and employees referenced in section 4 (b)(1) of the Act.

(d) Training on topics that do not cover the recognition, avoidance, and prevention of unsafe or unhealthy working conditions. Examples of unallowable topics include: workers' compensation, first aid, and publication of materials prejudicial to labor or management.

(e) Assisting workers in arbitration cases or other actions against employers, or assisting employers and workers in the prosecution of claims against Federal, State or local governments.

(f) Duplicating services offered by OSHA, a State under an OSHA-approved State Plan, or consultation programs provided by State designated agencies under section 21(d) of the Occupational Safety and Health Act.

Grant applicants cannot propose to conduct 10-hour and 30-hour OSHA Construction Outreach Program courses or 10-hour and 30-hour OSHA General Industry Outreach courses as a part of their grant activities. Applicants also cannot propose to conduct the courses presented by the OSHA Training Institute or its OSHA Training Institute Education Centers.

(g) Generating membership in the grantee's organization. This includes activities to acquaint nonmembers with the benefits of membership, inclusion of membership appeals in materials produced with grant funds, and membership drives.

(h) The cost of lost-time wages paid by you or other organizations to students while attending grant-funded training.

(i) Administrative costs cannot exceed 25% of the total grant budget.

While the activities described above may be part of an organization's regular programs, the costs of these activities cannot be paid for by grant funds, whether the funds are from non-Federal matching resources or from the Federally funded portion of the grant.

Determinations of allowable costs will be made in accordance with the applicable Federal cost principles, e.g., Nonprofit Organizations—2 CFR Part 230, formerly OMB Circular A–122; Educational Institutions—2 CFR Part 220, formerly OMB Circular A–21. Disallowed costs are those charges to a grant that the grantor agency or its representative determines to not be allowed in accordance with the applicable Federal cost principles or other conditions contained in the grant.

No applicant at any time will be entitled to reimbursement of pre-award costs.

V. Application Review Information

Grant applications will be reviewed by technical panels comprised of OSHA staff. The results of the grant reviews will be presented to the Assistant Secretary of OSHA, who will make the selection of organizations to be awarded grants. OSHA may award grants for some or all of the listed topic areas. It is anticipated that the grant awards will be announced no later than September 2009.

1. Evaluation Criteria

The technical panels will review grant applications against the criteria listed below on the basis of 100 maximum points. Targeted Topic training grant category applications will be reviewed and rated as follows.

A. Technical Approach, Program Design—50 points total

Program Design

(1) The proposed training and educational program must address the recognition and prevention of safety and health hazards for one of the Targeted Topic subject areas identified in Section I of this SGA. (1 point)

(2) The proposal plans to train workers and/or employers, clearly

estimates the numbers to be trained, and clearly identifies the types of workers and employers to be trained. The training will reach workers and employers from multiple employers who are covered by the OSH Act. Substantiate the methodology used to develop your projections. Grantees are accountable for accomplishing the activities listed in their work plans and meeting quarterly projections. (4 points)

(3) If the proposal contains a train-the-trainer program, the following information must be provided. (4 points)

- What ongoing support the grantee will provide to new trainers;
- The number of individuals to be trained as trainers during the grant period;
- The estimated number of courses to be conducted by the new trainers during the grant period;
- The estimated number of students to be trained by these new trainers during the grant period; and
- A description of how the grantee will obtain data via a reporting system from the new trainers to document their classes and student numbers.

(4) There is a well-developed work plan, and activities and training are adequately described. The planned activities and training are appropriately tailored to the needs and levels of the workers and employers to be trained. The target audience to be served through the grant program is described. (20 points)

(5) The training materials and training programs are tailored to the training needs of one or more of the following target audiences; and the need for training is established: small businesses; new businesses; non-English speaking/limited English proficient, non-literate and low literacy workers; youth; immigrant and minority workers, and other hard-to-reach workers; and workers in high-hazard industries and industries with high fatality rates.

Grant proposals which include training programs and training materials for hard-to-reach and non-English speaking/limited English proficient workers will receive special consideration.

Organizations proposing to develop Spanish-language training materials must utilize the OSHA Dictionaries (English-to-Spanish and Spanish-to-English) for terminology. The dictionaries are available on the OSHA Web site at: *http://www.osha.gov/dcsp/compliance_assistance/spanish_dictionaries.html.* Organizations proposing to develop materials in languages other than English will also be required to provide an English version of the materials. (10 points)

(6) There is a sound plan to recruit trainees for the program. (4 points)

(7) If the proposal includes developing training materials for use in the training program, there is a plan for OSHA to review the training materials for technical accuracy and suitability of content during development. If previously-developed training products will be used for the Targeted Topic training program, applicants have a plan for OSHA to review the materials before using the products in their grant program. (1 point)

(8) There are plans for three different types of evaluation. The plans include evaluating your organization's progress in accomplishing the grant work activities and accomplishments, evaluating your training sessions, and evaluating the program's effectiveness and impact to determine if the safety and health training and services provided resulted in workplace change. This includes a description of the evaluation plan to follow up with trainees to determine the impact the program has had in abating hazards and reducing worker injuries. (5 points)

(9) The application is complete, including forms, budget detail, narrative and work plan, and required attachments. (1 point)

B. Budget—20 points total

(1) The budgeted costs are reasonable. No more than 25% of the total budget is for administration. (12 points)

(2) The budget complies with federal cost principles (which can be found in the applicable OMB Circulars) and with OSHA budget requirements contained in the grant application instructions. (3 points)

(3) The cost per trainee is less than $500 and the cost per training hour is reasonable. (5 points)

C. Experience of Organization—15 points total

(1) The organization applying for the grant demonstrates experience with occupational safety and health. Applicants that do not have prior experience in providing safety and health training to workers or employers may partner with an established safety and health organization to acquire safety and health expertise. (4 points)

(2) The organization applying for the grant demonstrates experience training adults in work-related subjects or in recruiting, training and working with the target audience for this grant. (4 points)

(3) The application organization demonstrates that the applicant has strong financial management and internal control systems. (4 points)

(4) The applicant organization has administered, or will work with an organization that has administered, a number of different Federal and/or State grants over the past five years. (3 points)

D. Experience and Qualification of Personnel—15 points total

(1) The staff to be assigned to the project has experience in occupational safety and health, the specific topic chosen, and in training adults. (10 points)

(2) Project staff has experience in recruiting, training, and working with the target population your organization proposes to serve under the grant. (5 points)

2. Review and Selection Process

OSHA will screen all applications to determine whether all required proposal elements are present and clearly identifiable. Incomplete applications may be deemed non-responsive and may not be evaluated. A technical panel will objectively rate each complete application against the criteria described in this announcement. The panel recommendations to the Assistant Secretary are advisory in nature. The Assistant Secretary may establish a minimally acceptable rating range for the purpose of selecting qualified applicants. The Assistant Secretary will make a final selection determination based on what is most advantageous to the government, considering factors such as panel findings, geographic presence of the applicants, Agency priorities, the best value to the government, cost, and other factors. The Assistant Secretary's determination for award under this solicitation for grant applications (SGA) is final.

3. Anticipated Announcement and Award Dates

Announcement of these awards is expected to occur no later than September 30, 2009.

The grant agreements will be awarded by no later than September 2009.

VI. Award Administration Information

1. Award Process

Organizations selected as grant recipients will be notified by a representative of the Assistant Secretary. An applicant whose proposal is not selected will be notified in writing.

Notice that an organization has been selected as a grant recipient does not constitute approval of the grant application as submitted. Before the actual grant award, OSHA will enter

into negotiations concerning such items as program components, staffing and funding levels, and administrative systems. If the negotiations do not result in an acceptable submittal, the Assistant Secretary reserves the right to terminate the negotiation and decline to fund the proposal.

Note: Except as specifically provided, OSHA's acceptance of a proposal and an award of Federal funds to sponsor any program(s) does not provide a waiver of any grant requirement or procedures. For example, if an application identifies a specific sub-contractor to provide services, the USDOL OSHA award does not provide the justification or basis to sole-source the procurement, i.e., to avoid competition.

2. Administrative and National Policy Requirements

All grantees, including faith-based organizations, will be subject to applicable federal laws and regulations (including provisions of appropriations law) and the applicable Office of Management and Budget (OMB) Circulars. The grant award(s) awarded under this SGA will be subject to the following administrative standards and provisions, as applicable to the particular grantee:

29 CFR Part 2, Subpart D, new equal treatment regulations.

29 CFR Parts 31, 32, 35 and 36 as applicable.

29 CFR Part 93, new restrictions on lobbying.

29 CFR Part 95, which covers grant requirements for nonprofit organizations, including universities and hospitals. These are the Department of Labor regulations implementing 2 CFR Part 215, formerly OMB Circular A–110.

29 CFR Part 98, government-wide debarment and suspension (nonprocurement) and government-wide requirements for drug-free workplace (grants).

2 CFR Part 220, formerly OMB Circular A–21, which describes allowable and unallowable costs for educational institutions.

2 CFR Part 230, formerly OMB circular A–122, which describes allowable and unallowable costs for other nonprofit organizations.

OMB Circular A–133, 29 CFR parts 96 and 99, which provide information about audit requirements.

Certifications. All applicants are required to certify to a drug-free workplace in accordance with 29 CFR part 98, to comply with the New Restrictions on Lobbying published at 29 CFR part 93, to make a certification regarding the debarment rules at 29 CFR part 98, and to complete a special lobbying certification.

Training Audience. Grant-funded training programs must serve multiple employers and their workers. Grant-funded training programs must serve individuals covered by the Occupational Safety and Health Act of 1970. Grant-funded training and services cannot serve employees of other federal agencies or OSHA employees. As a part of the grant close-out process, grantees must self-certify that their grant-funded programs and materials were not provided to ineligible audiences.

Other. In keeping with the policies outlined in Executive Orders 13256, 12928, 13230, and 13021 as amended, the grantee is strongly encouraged to provide subcontracting opportunities to Historically Black Colleges and Universities, Hispanic Serving Institutions, and Tribal Colleges and Universities.

Freedom of Information Act (FOIA). Submission of the grant application information is required in order for the applicant to be considered for a grant award. Information submitted in the respondent's application is not considered confidential. Awarded grant application packages are releasable under the Freedom of Information Act. However, information protected from disclosure under the Privacy Act will be withheld.

3. Special Program Requirements

OSHA review of training materials. OSHA will review all educational materials produced by the grantee for technical accuracy and suitability of content during development and before final publication. OSHA will also review previously-developed training curricula and purchased training materials for technical accuracy and suitability of content before the materials are used. Grantees developing training materials must follow all copyright laws and provide written certification that their materials are free from copyright infringements.

When grant recipients produce training materials, they must provide copies of completed final-product materials to OSHA before the end of the grant period. OSHA has a lending program that circulates grant-produced audiovisual materials. Audiovisual materials produced by the grantee as a part of its grant program may be included in this lending program. In addition, all materials produced by grantees must be provided to OSHA in hard copy as well as in a digital format (CD Rom/DVD) for possible publication on the Internet by OSHA. Two copies of the materials must be provided to OSHA. Acceptable formats for training materials include Microsoft Office 2003 or 2007 and Adobe Reader version 9.0, 8.1.3 and 8.1.2.

As stated in 29 CFR 95.36, the Department of Labor reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use for federal purposes any work produced under a grant, and to authorize others to do so. Applicants should note that grantees must agree to provide the Department of Labor a paid-up, nonexclusive and irrevocable license to reproduce, publish, or otherwise use for federal purposes all products developed, or for which ownership was purchased, under an award including, but not limited to, curricula, training models, technical assistance products, and any related materials, and to authorize the Department of Labor to do so. Such uses include, but are not limited to, the right to modify and distribute such products worldwide by any means, electronic or otherwise.

Acknowledgment of USDOL Funding. In all circumstances, all approved grant-funded materials developed by a grantee shall contain the following disclaimer:

This material was produced under grant number ____ from the Occupational Safety and Health Administration, U.S. Department of Labor. It does not necessarily reflect the views or policies of the U.S. Department of Labor, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government.

Public reference to grant: When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with federal money, all grantees receiving federal funds must clearly state:

- The percentage of the total costs of the program or project that will be financed with federal money;
- The dollar amount of federal financial assistance for the project or program; and
- The percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

Use of U.S. Department of Labor (USDOL) OSHA Logo: The USDOL–OSHA logo may not be applied to any grant products developed with grant funds.

4. Reporting

Grantees are required by Departmental regulations to submit program and financial reports each

calendar quarter. All reports are due no later than 30 days after the end of the fiscal quarter. Program reports shall be submitted to the appropriate OSHA Regional Office. Financial reports shall be submitted via the DOL E–Grants system. The Grantee(s) shall submit financial reports on a quarterly basis. The first reporting period shall end on the last day of the fiscal quarter (December 31, March 31, June 30, or September 30) during which the grant was signed. Financial reports are due within 30 days of the end of the reporting period (i.e., by January 30, April 30, July 30, and October 30).

The Grantee(s) shall use Standard Form (SF) 269, Financial Status Report, to report the status of funds, at the project level, during the grant period. A final SF269 shall be submitted no later than 90 days following completion of the grant period. The SF269 reports will be submitted electronically through the Department of Labor (DOL) E–Grants system. It is expected that the Federal Financial Report (FFR) will replace the SF269 by October 1, 2009, as mandated by the Office of Management and Budget. When available, the FFR will replace the SF269 in DOL E–Grants. The quarterly and final reporting requirements will not change.

Technical Progress Reports: After signing the agreement, the Grantee(s) shall submit technical progress reports to USDOL/OSHA Regional Offices at the end of each fiscal quarter. Technical progress reports provide both quantitative and qualitative information and a narrative assessment of performance for the preceding three-month period. OSHA Form 171 shall be used for reporting training numbers. In addition, a narrative report shall be provided that details grant activities conducted during the quarter, provides an assessment of how the project is progressing in achieving its stated objectives, and notes any problems or delays along with corrective actions proposed. The first reporting period shall end on the last day of the fiscal quarter (December 31, March 31, June 30, or September 30) during which the grant was signed. Quarterly progress reports are due within 30 days of the end of the report period (i.e., by January 30, April 30, July 30, and October 30.) Between reporting dates, the Grantees(s) shall also immediately inform USDOL/OSHA of significant developments and/or problems affecting the organization's ability to accomplish planned grant activities.

Authority: The Occupational Safety and Health Act of 1970, (29 U.S.C. 670), Public Law 111–8, and the Omnibus Appropriations Act, 2009.

Signed at Washington, DC, this 4th day of *June,* 2009.

Jordan Barab,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

Application Document Checklist

Application for Federal Assistance (SF 424 form)
Budget Information (SF 424A form)
Assurances (SF 424B form)
Combined Assurances for (ED 80–0013 form)
Survey on Ensuring Equal Opportunity for Applicants (Faith-Based EEO Survey), (OMB No. 1890–0014 form)
Attachments (Please attach in the following order):
Program Summary (not to exceed two single-sided pages)
Detailed Project Budget Backup
If applicable: provide a copy of approved indirect cost rate agreement, statement of program income, and a description of any voluntary non-federal resource contribution to be provided by the applicant, including source of funds and estimated amount.

Technical Proposal, program narrative, not to exceed 30 single-sided pages, double-spaced, 12-point font, containing: Problem Statement/Need for Funds; Administrative and Program Capability; and Work plan.

Organizational Chart Evidence of Nonprofit status, (letter from the IRS), if applicable Accounting System Certification, if applicable; Other Attachments such as: Resumes of key personnel or position descriptions, exhibits, information on prior government grants, and signed letters of commitment to the project.

Note: In the Grants.gov system, there is a window containing a menu of ''Mandatory Documents'' which must be completed and submitted online within the system. For all other attachments such as the Program Summary, Detailed Budget Backup, Technical Proposal, etc., please scan these documents into a single Adobe Acrobat file and attach the document in the area for attachments.

[FR Doc. E9–13516 Filed 6–9–09; 8:45 am]
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NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; National Council on the Arts 167th Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on June 25–26, 2009 in Rooms 527 and M–09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting, from 2 p.m.–5 p.m. on June 25th, will be closed for National Medal of Arts review and recommendations. The remainder of the meeting, from 9 a.m. to 12 p.m. on June 26th (ending time is approximate), will be open to the public on a space available basis. After opening remarks and announcements, there will be a presentation by 2009 *Poetry Out Loud* national champion Will Farley. This will be followed by Congressional/White House updates. There also will be presentations from the Baltimore Museum of Art (the Cone Collection) and the Meserve-Kunhardt Foundation (Gordon Parks photographs) as well as a performance/presentation by Signature Theatre. The Council will then review and vote on applications and guidelines, and the meeting will conclude with a general discussion.

The closed portions of meetings are for the purpose of review, discussion, evaluation, and recommendations on awards under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 28, 2008, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

If, in the course of the open session discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b. Additionally, discussion concerning purely personal information about individuals, submitted with grant applications, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, Council discussions and reviews that are open to the public. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY–TDD 202/682–5429, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from the Office of Communications, National

Endowment for the Arts, Washington, DC 20506, at 202/682–5570.

Dated: June 4, 2009.

Kathy Plowitz-Worden,

Panel Coordinator, Office of Guidelines and Panel Operations.

[FR Doc. E9–13512 Filed 6–9–09; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces its intent to hold proposal review meetings throughout the year. The purpose of these meetings is to provide advice and recommendations concerning proposals submitted to the NSF for financial support. The agenda for each of these meetings is to review and evaluate proposals as part of the selection process for awards. The review and evaluation may also include assessment of the progress of awarded proposals. The majority of these meetings will take place at NSF, 4201 Wilson Blvd., Arlington, Virginia 22230.

These meetings will be closed to the public. The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act. NSF will continue to review the agenda and merits of each meeting for overall compliance of the Federal Advisory Committee Act.

These closed proposal review meetings will not be announced on an individual basis in the **Federal Register**. NSF intends to publish a notice similar to this on a quarterly basis. For an advance listing of the closed proposal review meetings that include the names of the proposal review panel and the time, date, place, and any information on changes, corrections, or cancellations, please visit the NSF Web site: *http://www.nsf.gov/events/advisory.jsp*. This information may also be requested by telephoning 703/292–8180.

Dated: June 5, 2009.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E9–13560 Filed 6–9–09; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[DOCKET NO. 72–25; NRC–2009–0076]

Department of Energy, Idaho Operations Office, Idaho Spent Fuel Facility; Issuance of Environmental Assessment and Finding of No Significant Impact Regarding the Proposed Exemption From Certain Regulatory Requirements of 10 CFR Part 20

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of an Environmental Assessment and Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: Shana Helton, Senior Project Manager, Licensing Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards (NMSS), U.S. Nuclear Regulatory Commission (NRC), Rockville, MD 20852. Telephone: (301) 492–3284; fax number: (301) 492–3348; e-mail: *shana.helton@nrc.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 10 CFR 20.2301, the U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption to the United States Department of Energy, Idaho Operations Office (DOE or applicant), from the requirements of 10 CFR 20.1501(c). Section 20.1501(c) requires that dosimeter processors hold current personnel dosimetry accreditation from the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Institute of Standards and Technology. Exemption from this requirement of 10 CFR 20.1501(c) would allow DOE to use the DOE Laboratory Accreditation Program (DOELAP) process for personnel dosimetry at Idaho Spent Fuel (ISF) facility independent spent fuel storage installation (ISFSI), located at the Idaho National Engineering and Environmental Laboratory in Butte County, Idaho.

Pursuant to 10 CFR part 72, DOE submitted an application, including a Safety Analysis Report (SAR), by letter dated May 30, 2008, as supplemented, seeking NRC approval of the direct transfer of Special Nuclear Materials License No. 2512 (SNM–2512) for the ISF facility, currently held by Foster Wheeler Environmental Corporation (FWENC). The applicant is also seeking NRC approval of a conforming license amendment, which would reflect the proposed transfer. NRC staff is currently performing a review of the requested license transfer and conforming amendment.

Environmental Assessment (EA)

Identification of Proposed Action: As part of its request for a transfer of SNM–2512, DOE, on June 9, 2008, requested an exemption from the requirements of 10 CFR 20.1501(c)(1), which states in part that ''All personnel dosimeters * * * that require processing * * * must be processed and evaluated by a dosimetry processor * * * (1) Holding current personnel dosimetry accreditation from the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Institute of Standards and Technology.'' Specifically, the applicant proposes allowing the DOELAP as an approved alternative. The NRC's authority to grant an exemption to its 10 CFR Part 20 radiation protection requirements is set forth in 10 CFR 20.2301.

Need for the Proposed Action: The applicant will receive control of SNM–2512 from FWENC, as described in its application and SAR, subject to approval of the pending license transfer application. The applicant is implementing programs and procedures necessary to operate the as-yet-to-be-constructed ISFSI and seeks to have those programs make efficient use of resources. One of the programs developed by DOE is the capability to monitor personnel occupational radioactive dose for routine and non-routine activities at the ISF facility. Personnel dosimetry requires processing by a qualified processing facility. DOE's preferred processing organization, which is accredited by DOELAP, currently processes dosimetry for the Fort St. Vrain ISFSI (docket no. 72–9) and the Three Mile Island ISFSI (docket no. 72–20), also under license to DOE. According to DOE's exemption request, DOELAP is deemed equivalent to NVLAP accreditation for the purpose of demonstrating compliance with 10 CFR 20.1501(c). Use of the NVLAP process at the ISF facility would place a burden upon DOE without any attendant health or safety benefit.

Environmental Impacts of the Proposed Action: The staff has examined both the NVLAP and DOELAP processing and standards. Both the NVLAP and DOELAP have similar requirements in that they incorporate similar test categories (type of radiation and energy levels), tolerance levels, bias, and performance criteria. The NRC staff concludes that the DOELAP process is an acceptable alternative to the NVLAP process required by 10 CFR 20.1501(c) for the ISF facility.

NUREG–1773, ''Environmental Impact Statement for the Proposed Idaho Spent Fuel Facility at the Idaho National Engineering and Environmental Laboratory in Butte County, Idaho'' (January 2004), considered the potential environmental impacts of licensing (including construction, operation, and decommissioning) this facility. The proposed exemption, substituting the DOELAP accreditation process for the NVLAP accreditation process, would not change the potential environmental effects assessed in the Final Environmental Impact Statement (FEIS) described in NUREG–1773. Use of the DOELAP accreditation process by DOE at the ISF facility is an action that is administrative and procedural in nature. The NRC concludes that there are no environmental impacts associated with the approval of the proposed action. Furthermore, in accordance with 10 CFR 20.2301, the NRC staff concludes that the use of the DOELAP accreditation process at the ISF facility would not result in any undue hazard to life or property.

Alternative to the Proposed Action: Since there are no significant environmental impacts associated with the proposed action, any alternatives with equal or greater environmental impacts are not evaluated. The alternative to the proposed action would be to deny approval of the 10 CFR 20.1501(c) exemption and, therefore, not allow use of the DOELAP. This alternative would have no significant environmental impact as well.

Agencies and Persons Consulted: The staff discussed this exemption request with Ms. Susan Burke, Idaho National Laboratory (INL) Coordinator for the State of Idaho, INL Oversight Program, on May 19, 2009. The State official had no comments regarding the environmental impact of the proposed action. NRC staff has determined that the proposed action will not affect listed species or critical habitat. Therefore, no consultation is required under Section 7 of the Endangered Species Act. Likewise, NRC staff has determined that the proposed action is not the type of activity that has potential to cause effects on historic properties. Therefore, no consultation is required under Section 106 of the National Historic Preservation Act.

Conclusion: The staff has reviewed the exemption request submitted by DOE. Allowing the use of DOELAP as an alternative to NVLAP would have no significant impact on the environment.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR Part 51. Based upon the foregoing EA, the NRC finds that the proposed action of granting an exemption from 10 CFR 20.1501(c) so that DOE may use the DOELAP, rather than the NVLAP, as required by existing regulations, will not significantly impact the quality of the human environment. The NRC has determined not to prepare an environmental impact statement for the proposed exemption. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

For further details with respect to the application, see the application dated May 30, 2008, and the request for the exemption dated June 9, 2008, available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records are accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* The ADAMS Accession numbers for the application and exemption request are ML081630246 and ML081750395, respectively. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland this 2nd day of June 2009.

For the Nuclear Regulatory Commission.

Shana Helton,

Senior Project Manager, Licensing Branch, Division of Spent Fuel Storage and Transport, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E9–13577 Filed 6–9–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–012–COL and 52–013–COL; ASLBP No. 09–885–08–COL–BD01]

Atomic Safety and Licensing Board Panel; In the Matter of South Texas Project Nuclear Operating Company (South Texas Project Units 3 and 4); Notice and Order (Regarding Oral Argument)

June 04, 2009.

Before the Licensing Board: Michael M. Gibson, Chairman; Gary S. Arnold; Randall J. Charbeneau.

Oral argument will be heard on standing and contention admissibility issues presented with regard to a hearing request received in this proceeding, which involves the application of South Texas Project Nuclear Operating Company for a combined operating license of its planned construction and operation of two Advanced Boiling Water Reactors it has designated as Units 3 and 4.

The participants are advised of the following information regarding the schedule for the initial prehearing conference in this proceeding:

Date: Tuesday, June 23—Wednesday, June 24, 2009.

Starting Time: 9 a.m. Central Time (CT).

Location: Bay City Civic Center, Main Hall Room 100, 201 7th St., Bay City, TX 77414.

Currently, the Board anticipates that this conference should last no more than two days. The Board will issue a separate order in the near future providing more information on issues it wishes the participants to address during the conference as well as details on a site visit.

It is so ordered.

Rockville, Maryland. June 04, 2009.

For the Atomic Safety and Licensing Board.

Michael M. Gibson,

Chairman.

[FR Doc. E9–13574 Filed 6–9–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0142]

State of New Jersey: NRC Staff Assessment of a Proposed Agreement Between the Nuclear Regulatory Commission and the State of New Jersey

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of a proposed Agreement with the State of New Jersey.

SUMMARY: By letter dated October 16, 2008, Governor Jon S. Corzine of New Jersey requested that the U.S. Nuclear Regulatory Commission (NRC or Commission) enter into an Agreement with the State of New Jersey (State or New Jersey) as authorized by Section 274 of the Atomic Energy Act of 1954, as amended (Act).

Under the proposed Agreement, the Commission would relinquish, and the State would assume, portions of the Commission's regulatory authority exercised within the State. As required by the Act, the NRC is publishing the proposed Agreement for public comment. The NRC is also publishing the summary of an assessment by the NRC staff of the State's regulatory program. Comments are requested on the proposed Agreement, especially its effect on public health and safety. Comments are also requested on the NRC staff assessment, the adequacy of the State's program, and the State's program staff, as discussed in this notice.

The proposed Agreement would exempt persons who possess or use certain radioactive materials in the State from portions of the Commission's regulatory authority. The Act requires that the NRC publish those exemptions. Notice is hereby given that the pertinent exemptions have been previously published in the **Federal Register** and are codified in the Commission's regulations as 10 CFR part 150.

DATES: The comment period ends June 26, 2009. Comments received after this date will be considered if it is practical to do so, but the Commission cannot assure consideration of comments received after the comment period ends.

ADDRESSES: Written comments may be submitted to Mr. Michael T. Lesar, Chief, Rulemaking and Directives Branch, MS TWB–05–B01M, Division of Administrative Services, Office of Administration, Washington, DC 20555–0001. Members of the public are invited and encouraged to submit comments electronically to *http://www.regulations.gov.* Search on Docket ID: [NRC–2009–0142] and follow the instructions for submitting comments.

The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) reference staff at (800) 397–4209, or (301) 415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Copies of comments received by NRC may be examined at the NRC Public Document Room, 11555 Rockville Pike, Public File Area O–1–F21, Rockville, Maryland. Copies of the request for an Agreement by the Governor of New Jersey including all information and documentation submitted in support of the request, and copies of the full text of the NRC Draft Staff Assessment are also available for public inspection in the NRC's Public Document Room—ADAMS Accession Numbers: ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, ML090770116, and ML091400097.

FOR FURTHER INFORMATION CONTACT: Torre Taylor, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone (301) 415–7900 or e-mail to *torre.taylor@nrc.gov.*

SUPPLEMENTARY INFORMATION: Since Section 274 of the Act was added in 1959, the Commission has entered into Agreements with 36 States. The Agreement States currently regulate approximately 19,000 Agreement material licenses, while the NRC regulates approximately 3,400 licenses. Under the proposed Agreement, approximately 500 NRC licenses will transfer to the State. The NRC periodically reviews the performance of the Agreement States to assure compliance with the provisions of Section 274.

Section 274e requires that the terms of the proposed Agreement be published in the **Federal Register** for public comment once each week for four consecutive weeks. This notice is being published in fulfillment of that requirement.

I. Background

(a) Section 274b of the Act provides the mechanism for a State to assume regulatory authority from the NRC over certain radioactive materials and activities that involve use of the materials. The radioactive materials, sometimes referred to as ''Agreement materials,'' are: (a) Byproduct materials as defined in Section 11e.(1) of the Act; (b) byproduct materials as defined in Section 11e.(2) of the Act; (c) byproduct materials as defined in Section 11e.(3) of the Act; (d) byproduct materials as defined in Section 11e.(4) of the Act; (e) source materials; and (f) special nuclear materials, restricted to quantities not sufficient to form a critical mass.

In a letter dated October 16, 2008, Governor Corzine certified that the State of New Jersey has a program for the control of radiation hazards that is adequate to protect public health and safety within New Jersey for the materials and activities specified in the proposed Agreement, and that the State desires to assume regulatory responsibility for these materials and activities. Included with the letter was the text of the proposed Agreement, which is shown in Appendix A to this notice.

The radioactive materials and activities (which together are usually referred to as the ''categories of materials'') that the State requests authority over are:

(1) The possession and use of byproduct materials as defined in section 11e.(1) of the Act;

(2) The possession and use of byproduct materials as defined in section 11e.(3) of the Act;

(3) The possession and use of byproduct materials as defined in section 11e.(4) of the Act;

(4) The possession and use of source materials;

(5) The possession and use of special nuclear materials in quantities not sufficient to form a critical mass; and

(6) The regulation of the land disposal of byproduct, source, or special nuclear waste materials received from other persons.

(b) The proposed Agreement contains articles that:

(i) Specify the materials and activities over which authority is transferred;

(ii) Specify the activities over which the Commission will retain regulatory authority;

(iii) Continue the authority of the Commission to safeguard nuclear materials and restricted data;

(iv) Commit the State and NRC to exchange information as necessary to maintain coordinated and compatible programs;

(v) Provide for the reciprocal recognition of licenses;

(vi) Provide for the suspension or termination of the Agreement; and

(vii) Specify the effective date of the proposed Agreement.

The Commission reserves the option to modify the terms of the proposed Agreement in response to comments, to correct errors, and to make editorial changes. The final text of the Agreement, with the effective date, will be published after the Agreement is approved by the Commission and signed by the NRC Chairman and the Governor of New Jersey.

(c) The regulatory program is authorized by law under the New Jersey Statute N.J.S.A. 26:2D–1, the Radiation Protection Act, which provides the Governor with the authority to enter into an Agreement with the Commission. New Jersey law contains provisions for the orderly transfer of regulatory authority over affected licensees from the NRC to the State. After the effective date of the Agreement, licenses issued by NRC would continue in effect as State licenses until the licenses expire or are replaced by State-issued licenses.

The State currently regulates the users of naturally-occurring and accelerator-produced radioactive materials (NARM). The Energy Policy Act of 2005 (EPAct) expanded the Commission's regulatory authority over byproduct materials as defined in Sections 11e.(3) and 11e.(4) of the Act, to include certain naturally-occurring and accelerator-produced radioactive materials. On August 31, 2005, the Commission issued a time-limited waiver (70 FR 51581) of the EPAct requirements, which is effective through August 7, 2009. A plan to facilitate an orderly transition of regulatory authority with respect to byproduct material as defined in Sections 11e.(3) and 11e.(4) was noticed in the **Federal Register** on October 19, 2007 (72 FR 59158). Under the proposed Agreement, the State would assume regulatory authority for these radioactive materials. The State has proposed an effective date for the Agreement of no later than September 30, 2009. If the proposed Agreement is approved before August 7, 2009, the Commission would terminate the time-limited waiver in the State coincident with the effective date of the Agreement. However, if the Agreement is not approved prior to this date, NRC would have jurisdictional authority over all uses of byproduct material within the State. These licensees would have to meet NRC regulatory requirements and would have 6 months to apply for any necessary amendments to an NRC license they already possess, or 12 months to apply for a new NRC license, if needed.

With the effective date of the New Jersey Agreement having the potential to occur after the expiration of the time-limited waiver, staff is working to ensure an efficient transition of NARM licensees in New Jersey within the legal requirements. The staff's objective is to minimize the impact to NARM licensees in New Jersey during the transition to NRC and then back to New Jersey's regulatory authority, within a short timeframe (*i.e.,* about 7 weeks).

(d) The NRC draft staff assessment finds that the New Jersey Department of Environmental Protection (NJDEP), Bureau of Environmental Radiation (BER), is adequate to protect public health and safety and is compatible with the NRC program for the regulation of Agreement materials.

II. Summary of the NRC Staff Assessment of the State's Program for the Control of Agreement Materials

The NRC staff has examined the State's request for an Agreement with respect to the ability of the radiation control program to regulate Agreement materials. The examination was based on the Commission's policy statement ''Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement,'' (46 FR 7540; January 23, 1981, as amended by Policy Statements published at 46 FR 36969; July 16, 1981 and at 48 FR 33376; July 21, 1983), and the Office of Federal and State Materials and Environmental Management Programs (FSME) Procedure SA–700, ''Processing an Agreement'' (available at *http://nrc-stp.ornl.gov/procedures/sa700.pdf* and *http://nrc-stp.ornl.gov/procedures/sa700_hb.pdf*).

(a) Organization and Personnel. The Agreement materials program will be located within the existing BER of the NJDEP. The BER will be responsible for all regulatory activities related to the proposed Agreement.

The educational requirements for the BER staff members are specified in the State's personnel position descriptions, and meet the NRC criteria with respect to formal education or combined education and experience requirements. All current staff members hold a bachelor of science degree in physical or life sciences, with many staff holding a master of science degree in radiation science. All have had training and work experience in radiation protection. Supervisory level staff has at least 5 years of working experience in radiation protection, with most having greater than 10 years of experience.

The State performed an analysis of the expected workload under the proposed Agreement. Based on the NRC staff review of the State's staff analysis, the State has an adequate number of staff to regulate radioactive materials under the terms of the Agreement. The State will employ a staff with the equivalent of 13.25 full-time professional/technical and administrative employees for the Agreement materials program.

The State has indicated that the BER has an adequate number of trained and qualified staff in place. The State has developed qualification procedures for license reviewers and inspectors which are similar to the NRC's procedures. The technical staff is accompanying NRC staff on inspections of NRC licensees in New Jersey. BER staff is also actively supplementing their experience through direct meetings, discussions, and facility visits with NRC licensees in the State, and through self-study, in-house training, and formal training.

Overall, the NRC staff concluded that the BER technical staff identified by the State to participate in the Agreement materials program has sufficient knowledge and experience in radiation protection, the use of radioactive materials, the standards for the evaluation of applications for licensing, and the techniques of inspecting licensed users of Agreement materials.

(b) Legislation and Regulations. In conjunction with the rulemaking authority vested in the New Jersey Commission on Radiation Protection (N.J.S.A. 26:2D–7), the BER has the requisite authority to promulgate regulations for protection against radiation. The law provides BER the authority to issue licenses and orders, conduct inspections, and to enforce compliance with regulations, license conditions, and orders. Licensees are required to provide access to inspectors.

The NRC staff verified that the State adopted the relevant NRC regulations in 10 CFR parts 19, 20, 30, 31, 32, 33, 34, 35, 36, 39, 40, 61, 70, 71, and 150 into New Jersey Administrative Code, Title 7, Chapter 28. The NRC staff also approved two license conditions to implement Increased Controls and Fingerprinting and Criminal History Records Check requirements for risk-significant radioactive materials for certain State licensees under the proposed Agreement. These license conditions will replace the Orders that NRC issued (EA–05–090 and EA–07–305) to these licensees that will transfer to the State. Therefore, on the proposed effective date of the Agreement, the State will have adopted an adequate and compatible set of radiation protection regulations that apply to byproduct, source, and special nuclear materials in quantities not sufficient to form a critical mass. The NRC staff also verified that the State will not attempt to enforce regulatory matters reserved to the Commission.

(c) Storage and Disposal. The State has adopted NRC compatible requirements for the handling and storage of radioactive material. The State is requesting authority to regulate the land disposal of byproduct, source, and special nuclear waste materials received from other persons. The State

waste disposal requirements cover the preparation, classification, and manifesting of radioactive waste generated by State licensees for transfer for disposal to an authorized waste disposal site or broker. The State has adopted the regulations for a land disposal site but does not expect to need to implement them in the near future since the State is a member of the Atlantic Compact and has access to the waste disposal site, EnergySolutions Barnwell Operations, located in Barnwell, South Carolina.

(d) Transportation of Radioactive Material. The State has adopted compatible regulations to the NRC regulations in 10 CFR part 71. Part 71 contains the requirements licensees must follow when preparing packages containing radioactive material for transport. Part 71 also contains requirements related to the licensing of packaging for use in transporting radioactive materials. The State will not attempt to enforce portions of the regulations related to activities, such as approving packaging designs, which are reserved to NRC.

(e) Recordkeeping and Incident Reporting. The State has adopted compatible regulations to the sections of the NRC regulations which specify requirements for licensees to keep records, and to report incidents or accidents involving Agreement materials.

(f) Evaluation of License Applications. The State has adopted compatible regulations to the NRC regulations that specify the requirements a person must meet to get a license to possess or use radioactive materials. The State has also developed a licensing procedure manual, along with accompanying regulatory guides, which are adapted from similar NRC documents and contain guidance for the program staff when evaluating license applications.

(g) Inspections and Enforcement. The State has adopted a schedule providing for the inspection of licensees as frequently as, or more frequently than, the inspection schedule used by the NRC. The BER has adopted procedures for the conduct of inspections, reporting of inspection findings, and reporting inspection results to the licensees. The State has also adopted procedures for the enforcement of regulatory requirements.

(h) Regulatory Administration. The State is bound by requirements specified in State law for rulemaking, issuing licenses, and taking enforcement actions. The State has also adopted administrative procedures to assure fair and impartial treatment of license applicants. State law prescribes standards of ethical conduct for State employees.

(i) Cooperation with Other Agencies. State laws provide for the recognition of existing NRC and Agreement State licenses. New Jersey has a process in place for the transition of active NRC licenses. Upon completion of the Agreement, all active NRC licenses issued to facilities in New Jersey will be recognized as NJDEP licenses. New Jersey will issue a brief licensing document that will include licensee specific information, as well as an expiration date, with a license condition that authorizes receipt, acquisition, possession, and transfer of byproduct, source, and/or special nuclear material; the authorized use(s); purposes; and the places of use as designated on the NRC license. The license condition will also commit the licensee to conduct its program in accordance with the NRC license and commitments. The NJDEP rules will govern unless the statements, representations and procedures in the licensee's application and correspondence are more restrictive than the NJDEP rules. NJDEP will then issue full NJDEP licenses, over approximately 13 months.

The State also provides for ''timely renewal.'' This provision affords the continuance of licenses for which an application for renewal has been filed more than 30 days prior to the date of expiration of the license. NRC licenses transferred while in timely renewal are included under the continuation provision. New Jersey regulations, in N.J.A.C. 28:51.1, provide exemptions from the State's requirements for licensing of sources of radiation for NRC and U.S. Department of Energy contractors or subcontractors. The proposed Agreement commits the State to use its best efforts to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation, and to assure that the State's program will continue to be compatible with the Commission's program for the regulation of Agreement materials. The proposed Agreement stipulates the desirability of reciprocal recognition of licenses, and commits the Commission and the State to use their best efforts to accord such reciprocity.

III. Staff Conclusion

Section 274d of the Act provides that the Commission shall enter into an Agreement under Section 274b with any State if:

(a) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect public health and safety with respect to the Agreement materials within the State, and that the State desires to assume regulatory responsibility for the Agreement materials; and

(b) The Commission finds that the State program is in accordance with the requirements of Subsection 274o, and in all other respects compatible with the Commission's program for the regulation of materials, and that the State program is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

The NRC staff has reviewed the proposed Agreement, the certification by the State of New Jersey in the application for an Agreement submitted by Governor Corzine on October 16, 2008, and the supporting information provided by NJDEP, BER, and concludes that the State of New Jersey satisfies the criteria in the Commission's policy statement ''Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement,'' and meets the requirements of Section 274 of the Act.

Therefore, the proposed State of New Jersey program to regulate Agreement materials, as comprised of statutes, regulations, procedures, and staffing is compatible with the program of the Commission and is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

Dated at Rockville, Maryland, this 27th day of May 2009.

For the Nuclear Regulatory Commission.

Terrence Reis,

Deputy Director, National Materials Program Directorate, Division of Materials Safety and State Agreements, Office of Federal and State Materials and Environmental Management Programs.

APPENDIX A

An Agreement Between the United States Nuclear Regulatory Commission and the State of New Jersey for the Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended

Whereas, The United States Nuclear Regulatory Commission (the Commission) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.* (hereinafter referred to as the Act), to enter into Agreements with the Governor of any State/Commonwealth providing for discontinuance of the regulatory authority of the Commission within the State/Commonwealth under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct materials as

defined in Sections 11e.(1), (2), (3), and (4) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

Whereas, The Governor of the State of New Jersey is authorized under The Radiation Protection Act, N.J.S.A. 26:2D–1, to enter into this Agreement with the Commission; and,

Whereas, The Governor of the State of New Jersey certified on October 16, 2008, that the State of New Jersey (the State) has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the State covered by this Agreement and that the State desires to assume regulatory responsibility for such materials; and,

Whereas, The Commission found on [date] that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and,

Whereas, The State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

Whereas, The Commission and the State recognize the desirability of the reciprocal recognition of licenses, and of the granting of limited exemptions from licensing of those materials subject to this Agreement; and,

Whereas, This Agreement is entered into pursuant to the provisions of the Act;

Now, therefore, It is hereby agreed between the Commission and the Governor of the State acting on behalf of the State as follows:

Article I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following materials:

1. Byproduct materials as defined in Section 11e.(1) of the Act;
2. Byproduct materials as defined in Section 11e.(3) of the Act;
3. Byproduct materials as defined in Section 11e.(4) of the Act;
4. Source materials;
5. Special nuclear materials in quantities not sufficient to form a critical mass;
6. The regulation of the land disposal of byproduct, source, or special nuclear waste materials received from other persons.

Article II

This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to:

1. The regulation of the construction and operation of any production or utilization facility or any uranium enrichment facility;
2. The regulation of the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;
3. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear materials waste as defined in the regulations or orders of the Commission;
4. The regulation of the disposal of such other byproduct, source, or special nuclear materials waste as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be disposed without a license from the Commission;
5. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission;
6. The regulation of byproduct material as defined in Section 11e.(2) of the Act.

Article III

With the exception of those activities identified in Article II, paragraphs 1 through 4, this Agreement may be amended, upon application by the State and approval by the Commission, to include one or more of the additional activities specified in Article II, whereby the State may then exert regulatory authority and responsibility with respect to those activities.

Article IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

Article V

This Agreement shall not affect the authority of the Commission under Subsection 161b or 161i of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data, or to guard against the loss or diversion of special nuclear material.

Article VI

The Commission will cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that Commission and State programs for protection against hazards of radiation will be coordinated and compatible.

The State agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of materials covered by this Agreement.

The State and the Commission agree to keep each other informed of proposed changes in their respective rules and regulations, and to provide each other the opportunity for early and substantive contribution to the proposed changes.

The State and the Commission agree to keep each other informed of events, accidents, and licensee performance that may have generic implication or otherwise be of regulatory interest.

Article VII

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other Agreement State.

Accordingly, the Commission and the State agree to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

Article VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of the State, may terminate or suspend all or part of this Agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect public health and safety, or (2) the State has not complied with one or more of the requirements of Section 274 of the Act.

The Commission may also, pursuant to Section 274j of the Act, temporarily suspend all or part of this Agreement if, in the judgment of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review actions taken by the State under this Agreement to ensure compliance with Section 274 of the Act which requires a State program to be adequate to protect public health and safety with respect to the materials covered by this Agreement and to be compatible with the Commission's program.

Article IX

This Agreement shall become effective on [date], and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at Rockville, Maryland this [date] day of [month], [year].

For the United States Nuclear Regulatory Commission.

Gregory B. Jaczko,
Chairman.

Done at Trenton, New Jersey this [date] day of [month], [year].

For the State of New Jersey.

Jon S. Corzine,
Governor.

[FR Doc. E9–13580 Filed 6–9–09; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60040; File No. SR–BATS–2009–014]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Amend BATS Rule 11.13, Entitled ''Order Execution''

June 3, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 22, 2009, BATS Exchange, Inc. (''BATS'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by BATS. On May 29, 2009, BATS filed Amendment No. 1 to the proposed rule change. BATS has designated the proposed rule change, as amended, as constituting a rule change under Rule 19b-4(f)(6) under the Act,[3] which renders the proposal, as amended, effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend BATS Rule 11.13, entitled ''Order Execution,'' to add a new order type (a ''BATS Only BOLT Order'') and a pre-routing processing method (''BOLT Routing'') that will each include an optional display period through which a marketable order will be displayed to Exchange Users (and market data recipients) for a brief period of time designated by the Exchange prior to being routed, cancelled, or posted to the BATS Book.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.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 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to provide Users of the Exchange with another order type, as well as another option with respect to the order processing methods offered by the Exchange in connection with routing away from the Exchange. Specifically, both the order type and the pre-routing processing method will, after first seeking to execute against the BATS Book, display a marketable order at the NBB for a sell order or the NBO for a buy order to Exchange Users and market data recipients for a brief, variable amount of time (not to exceed 500 milliseconds) for potential execution. BATS notes that pre-routing display functionality has already been approved by the Commission for use by the CBOE Stock Exchange and that such functionality can be expected to provide System Users with greater control over their trading. Except for the addition of a variation of the BATS Only order type and changes to the routing functionality for market and marketable limit orders described herein, nothing in the proposal will modify or alter any existing rule or process related to order priority, order execution, trade-through protection or locked or crossed markets. The Exchange will implement the proposed changes such that marketable BATS Only BOLT Orders and routable orders will be distinguishable from the Exchange's protected bid and protected offer while displayed by the Exchange for potential execution during the variable time period described in this filing.

(i) Proposed BATS Only BOLT Order

The proposed order type, a BATS Only BOLT Order, will first seek to execute against the BATS Book. If such order would lock or cross a Protected Quotation when entered it will be displayed at the NBB for a sell order or the NBO for a buy order to Exchange Users (and market data recipients) for potential execution for a variable time period not to exceed 500 milliseconds, such time period to be designated by the Exchange. Any unfilled balance of the order remaining after this variable period of time will be cancelled back to the User if such balance would continue to lock or cross a Protected Quotation. If, however, after the variable period of time the unfilled balance would not lock or cross a Protected Quotation, then such unfilled balance will remain posted in the BATS Book.

(ii) Proposed BOLT Routing

The proposed order processing method, set forth in BATS Rule 11.13, will apply when an unfilled balance of a routable market or limit order that is marketable against the existing NBBO remains after the Exchange has attempted to execute the order against the BATS Book. Specifically, the Exchange proposes to offer a method of processing that can be used in conjunction with, or instead of, routing options offered by the Exchange, through which such order will be briefly displayed to Users of the Exchange (and to Exchange market data recipients) for potential execution at a price equal to the NBB for a sell order or the NBO for a buy order.

The Exchange currently allows Users to submit various types of orders to the Exchange that are processed pursuant to Rules 11.13(a)(1) and 11.13(a)(2). Rule 11.13(a)(1) describes the process by which an incoming order would execute against the BATS Book.[4] To the extent an order has not been executed in its entirety against the BATS Book, Rule 11.13(a)(2)(A) and (B) then describe the process of routing orders [5] to one or more Trading Centers. The Exchange proposes to offer the display process to Users as an additional option for processing the unfilled balance of an order that remains after an initial attempt to execute against the BATS Book.

Under the proposal, after first executing a market or marketable limit order against the BATS Book, any remaining shares will be displayed at the NBB for a sell order or the NBO for a buy order to Users of the Exchange and Exchange market data recipients for potential execution for a variable time period not to exceed 500 milliseconds,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] As defined in BATS Rule 1.5(d).

[5] Market orders are routed away pursuant to Rule 11.13(a)(2)(A) and marketable limit orders are routed away pursuant to Rule 11.13(a)(2)(B).

such time period to be designated by the Exchange. The BOLT routing display process will be the default processing preference, and thus, Users that do not wish to have their orders displayed pursuant to this process prior to routing will be required to opt-out of the BOLT routing display period.

2. Statutory Basis

The rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[6] Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,[7] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest, by allowing Users to select another method of processing for routable and non-routable marketable orders that may result in the efficient execution of such orders. Specifically, the Exchange believes that Users may receive more efficient order executions by briefly displaying their marketable orders to BATS Users for potential execution. BATS notes that similar brief marketable order display functionality has already been found to be consistent with the Act by the Commission.[8]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any 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.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] Securities Exchange Act Release No. 54422 (September 11, 2006), 71 FR 54537 (September 15, 2006) (SR–CBOE–2004–21); Securities Exchange Act Release No. 59359 (February 4, 2009), 74 FR 6927 (February 11, 2009) (SR–CBOE–2008–123). NASDAQ also recently adopted a similar rule pursuant to an immediately effective rule filing. *See* Securities Exchange Act Release No. 59875 (May 6, 2009), 74 FR 22794 (May 14, 2009) (SR–NASDAQ–2009–043) (notice of filing and immediate effectiveness of NASDAQ proposal to incorporate an optional pre-routing display period for all orders using NASDAQ routing strategies).

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[9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[11] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)[12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. BATS requests that the Commission waive the 30-day operative delay because the Exchange expects to have technologies in place to support the proposed rule change, as amended, on or about June 5, 2009, and believes that the expected benefits to Exchange Users from the proposed rule change, as amended, should not be delayed. The Commission believes that waiving the 30-day operative delay[13] is consistent with the protection of investors and the public interest and designates the proposal operative on June 5, 2009.

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.[14]

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–BATS–2009–014 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–BATS–2009–014. 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–BATS–2009–014 and should be submitted on or before July 1, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–13552 Filed 6–9–09; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. BATS has satisfied this requirement.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6).

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on May 29, 2009, the date on which BATS submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60034; File No. SR–FINRA–2009–037]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NASD IM–2110–2 (Trading Ahead of Customer Limit Order) To Clarify the Scope of the Minimum Price Improvement Obligations

June 3, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 29, 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 NASD IM–2110–2 (Trading Ahead of Customer Limit Order) to clarify the scope of the minimum price improvement obligations.

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

In 1994, the SEC approved Interpretive Material (IM) 2110–2 (Trading Ahead of Customer Limit Order), which generally prohibits a member from trading for its own account in a security at a price that is equal to or better than an unexecuted customer limit order in that security, unless the member immediately, in the event it trades ahead, executes the customer limit order at the price at which it traded for its own account or better.[4]

IM–2110–2 also prescribes a minimum level of ''price improvement'' necessary for a member to execute an order on a proprietary basis when holding an unexecuted limit order. In other words, IM–2110–2 sets forth price-improvement standards that impose a minimum amount by which a firm must trade, in addition to the price of the customer buy limit order (or less than the price of a customer sell order), to not trigger the protections under the rule. This requirement is intended to prevent a practice of firms trading ahead of their customers' limit orders by trivial amounts and, thereby, circumventing the rule.

The language in IM–2110–2 provides the minimum amount of price improvement necessary for a member to execute an incoming order on a proprietary basis when holding an unexecuted limit order in that same security. Recently, a firm inquired about the scope of the application of the rule due to the term ''incoming;'' specifically, whether the minimum price improvement standards apply only when a member is trading proprietarily in response to an ''incoming'' order. FINRA advised the firm that such a narrow application of IM–2110–2 is inconsistent with the fundamental intent of the rule and the purpose of the prescribed minimum price improvement requirements. FINRA has never distinguished the application of the minimum price improvement requirements based on what circumstances prompted the proprietary trade. Therefore, FINRA is amending IM–2110–2 to delete the word ''incoming'' to make clear that the minimum price improvement requirements apply to any proprietary trading by a member in a security for which the member holds an unexecuted customer limit order, whether or not in response to an incoming order, unless a specific exception applies.

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,[5] 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 believes that the proposed rule change makes clear the application of the minimum price improvement standards under IM–2110–2, which provide an important safeguard for investors by ensuring that firms do not circumvent the protections provided by the Rule by trading ahead of customer limit orders by economically insignificant amounts.

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[6] and Rule 19b–4(f)(6) thereunder.[7]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 34279 (June 29, 1994), 59 FR 34883 (July 7, 1994) (order approving File No. SR–NASD–93–58).

[5] 15 U.S.C. 78*o*–3(b)(6).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its

Continued

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–2009–037 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–2009–037. 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–2009–037 and should be submitted on or before July 1, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–13568 Filed 6–9–09; 8:45 am]

BILLING CODE 8010–01–P

intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has met this requirement.

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60038; File No. SR–CBOE–2009–032]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Modifying the CBOE Stock Exchange Rule Regarding Processing of Round-Lot Orders

June 3, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 21, 2009, Chicago Board Options Exchange, Incorporated (''CBOE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On June 2, 2009, CBOE filed Amendment No. 1 to the proposed rule change. The Exchange has designated the proposed rule change as constituting a rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal, as amended, effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to reduce the allowable timeframe for marketable order exposure pursuant to CBOE Stock Exchange (''CBSX'') Rule 52.6 (Processing of Round-Lot Orders) to 500 milliseconds. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), at the Exchange's Office of the Secretary and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule filing is to amend CBSX Rule 52.6. Pursuant to that Rule, when CBSX receives a marketable order when CBSX is not the NBBO and execution of the order would result in an impermissible trade-through, CBSX flashes the order to CBSX participants to ascertain if any participants are willing to execute the order at the NBBO price (i.e. provide price improvement) before CBSX attempts to access the NBBO on other markets on behalf of the marketable order. Rule 52.6 currently provides that the flash period shall not exceed 3 seconds, however these flashes have never exceeded one second. The filing proposes to reduce the maximum allowable flash time to 500 milliseconds (half a second). The filing also eliminates obsolete references to the Intermarket Trading System Plan (ITS Plan) and uses the term ''flash'' in the Rule instead of ''display''. Lastly, the filing adds an interpretation and policy that makes clear that CBSX will provide an electronic method for CBSX traders to distinguish flashed orders from the CBSX disseminated best bid/offer during the flash period.

2. Statutory Basis

CBOE believes the proposed rule change is consistent with the Act[4] and the rules and regulations under the Act

[4] 15 U.S.C. 78a *et seq.*

applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition 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 neither solicited nor received comments on the proposal.

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[7] and Rule 19b–4(f)(6) thereunder.[8]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[9] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)[10] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. CBOE requests that the Commission waive the 30-day operative delay because the acceleration of the operative date is consistent with the protection of investors and the public interest. The Commission believes that waiving the 30-day operative delay[11] is consistent with the protection of investors and the public interest and designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2009–032 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2009–032. 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–CBOE–2009–032 and should be submitted on or before July 1, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–13569 Filed 6–9–09; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78(f)(b).

[6] 15 U.S.C. 78(f)(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has determined to waive the five-day pre-filing period in this case.

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6).

[11] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on June 2, 2009, the date on which CBOE submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60041; File No. SR–BATS–2009–017]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

June 3, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 28, 2009, BATS Exchange, Inc. (''BATS'' 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 BATS. BATS has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify its fee schedule applicable to use of the Exchange. While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on June 1, 2009.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.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 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify its fee schedule applicable to use of the Exchange effective June 1, 2009, in order to (i) implement pricing for its recently introduced BATS Optional Liquidity Technology (''BOLT'') program; and (ii) increase the fee charged by the Exchange for Destination Specific Orders for Tape A and C securities routed to NYSE Arca from $0.0027 per share to $0.0030 per share. Each of these proposals is discussed in further detail below.

(i) BOLT Pricing

On May 22, 2009, the Exchange adopted changes to BATS Rules 11.9 and 11.13 pursuant to an immediately effective rule filing that will permit the Exchange to offer both a ''BATS Only BOLT Order'' and a pre-routing processing method (''BOLT Routing'') that will each include an optional display period through which a marketable order will be displayed to Exchange Users (and market data recipients) for a brief period of time designated by the Exchange (the ''variable BOLT display period'') for potential execution.[5] As explained in more detail below, with the exception of orders subject to BOLT Routing that are executed on the Exchange during the variable BOLT display period, BATS Only BOLT Orders and orders subject to BOLT Routing will be charged fees and will receive rebates consistent with all other orders executed on the Exchange or routed from the Exchange to away trading centers.

BATS Only BOLT Orders in securities priced at any limit price will be treated in the same manner as other such orders submitted to the Exchange. Thus, to the extent a BATS Only BOLT Order removes liquidity from the BATS Book in securities priced $1.00 or above it will be charged the Exchange's standard fee for removing liquidity from the BATS Book ($0.0025 per share); to the extent a BATS Only BOLT Order adds liquidity to the BATS Book in securities priced $1.00 or above it will receive the Exchange's standard $0.0024 per share rebate for adding liquidity.

Similarly, BATS Only BOLT Orders in securities priced below $1.00 will be treated in the same manner as all other such orders priced below $1.00 submitted to the Exchange. Specifically, for executions on the Exchange, the Exchange does not propose to provide any rebates for BATS Only BOLT Orders that add liquidity to the BATS Book in securities priced below $1.00 nor does the Exchange propose to charge a fee for BATS Only BOLT Orders that remove liquidity in securities priced below $1.00.

Orders subject to BOLT Routing in securities priced below $1.00 will also be treated in the same manner as all other such orders priced below $1.00 submitted to the Exchange (*i.e.,* no rebate and no charge). With respect to orders subject to BOLT Routing in securities priced below $1.00 that are routed and executed at an away trading center, such orders will be charged fees applicable to all other routed orders in securities priced below $1.00 (*e.g.,* $0.0020 charge per share for shares executed at a dark liquidity venue, or ''DART'' routing; 0.25% charge of the total dollar value for executions occurring through CYCLE or RECYCLE routing). Thus, as set forth above, the Exchange has not proposed any changes to its fee schedule related to BATS Only BOLT Orders priced at any limit price, or orders subject to BOLT Routing in securities priced below $1.00.

To the extent an order subject to BOLT Routing removes liquidity from the BATS Book prior to entering the variable BOLT display period in securities priced $1.00, such order will be charged the Exchange's standard fee for removing liquidity from the BATS Book ($0.0025 per share). In addition, orders subject to BOLT Routing in securities priced $1.00 or above that are routed and executed at an away trading center after the variable BOLT display period will be charged the Exchange's standard routing fees. Thus, the Exchange has not proposed any changes to its fee schedule for orders subject to BOLT Routing that remove liquidity from the BATS Book or that execute after routing to an away trading center. However, with respect to orders subject to BOLT Routing that execute on the Exchange during the pre-routing variable BOLT display period, the Exchange proposes to pay Members a $0.0015 per share rebate. The Exchange proposes to reflect this new rebate on the revised fee schedule.

As explained in the Exchange's rule filing, the Exchange expects to have technological changes in place to support the proposed rule change on or about June 5, 2009. Accordingly, although the changes to the fee schedule proposed in this filing will become operative on June 1, 2009, the fees and rebates applicable to BOLT will not be charged or paid to Members until BOLT is implemented by the Exchange.

(ii) BATS + NYSE ARCA Destination Specific Orders

The Exchange currently charges a consistent, discounted fee for Destination Specific Orders routed to certain of the largest market centers measured by volume (NYSE, NYSE Arca and NASDAQ), which, in each instance is $0.0001 less per share for orders routed to such market centers by the Exchange than such market centers currently charge for removing liquidity (referred to by the Exchange as ''One Under'' pricing). NYSE Arca recently announced an increase to its liquidity removal fee from $0.0028 per share to $0.0030 per share in Tape A and Tape C securities.[6] In order to maintain its One Under pricing with respect to Destination Specific Orders routed to NYSE Arca, BATS proposes to charge $0.0029 per share for BATS + NYSE ARCA Destination Specific Orders executed at NYSE Arca in Tape A or Tape C securities. The Exchange's ''One Under'' pricing does not apply to

[5] *See* SR–BATS–2009–014 (May 22, 2009), available at *http://www.batstrading.com/regulation/rule_filings/.*

[6] *See* NYSE Arca Client Notice (May 19, 2009), available at *http://www.nyse.com/pdfs/NYSEArca_Fee_Notice_6109.pdf.*

securities priced below $1.00 nor does it apply to odd lot orders routed to NYSE Arca; such order types will continue to be priced as set forth on the Exchange's fee schedule. In addition, the Exchange will maintain the pricing currently charged by the Exchange for BATS + NYSE ARCA Destination Specific Orders for Tape B securities and for all other Destination Specific Orders.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[7] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[8] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. Finally, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes 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 solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[9] and Rule 19b–4(f)(2) thereunder,[10] because it establishes or changes a due, fee or other charge imposed on members by the Exchange. Accordingly, the proposal is effective upon filing with the Commission.

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–BATS–2009–017 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–BATS–2009–017. 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–BATS–2009–017 and should be submitted on or before July 1, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–13553 Filed 6–9–09; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Application for Special Permits

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

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before July 10, 2009.

ADDRESSES: *Address Comments to:* Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue, Southeast, Washington DC or at *http://fdms.gov.*

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

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

Delmer F. Billings,

Director, Office of Hazardous Materials, Special Permits and Approvals.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
		New Special Permits		
14853–N		E.I. DuPont de Nemours & Company, Inc., Wilmington, DE.	49 CFR	To authorize the one-time, one-way transportation in commerce of a damaged DOT Specification 51 portable tank containing the residue of a non-flammable liquefied gas for repair.
14854–N		Airgas, Inc., Radnor, PA.	49 CFR 180.209	To authorize the transportation in commerce of certain DOT 3AL cylinders manufactured from aluminum alloy 6061–T6 that are requalified every ten years rather than every five years using 100% ultrasonic examination and are not required to be hammer tested prior to each refill. (modes 1,2,3,4)
14855–N		Portersville Sales and Testing, Inc., Portersville, PA.	49 CFR 180.209(a) and (b)	To authorize the transportation in commerce of DOT 3A, 3AA, 3AX, 3AAX and 3T cylinders in MEGC's tube trailers, and independantly packaged cylinders mounted on transportable framework to be periodically requalified every ten years using test methods authorized under DOT–SP 12629 or 14453. (modes 1, 2, 3, 4)
14856–N		BKC Industries, Inc., Creedmoor, NC.	49 CFR 180.209(a) and (b)	To authorize the transportation in commerce of DOT 3A, 3AA, 3AX, 3AAX and 3T cylinders in MEGC's tube trailers, and independantly packaged cylinders mounted on transportable framework to be periodically requalified every ten years using test methods authorized under DOT–SP 12629 or 14453. (modes 1,2,3,4)
14857–N		Western Sales & Testing, Amarillo, TX.	49 CFR 180.209(a) and (b)	To authorize the transportation in commerce of DOT 3A, 3AA, 3AX, 3AAX and 3T cylinders in MEGC's tube trailers, and independantly packaged cylinders mounted on transportable framework to be periodically requalified every ten years using test methods authorized under DOT–SP 12629 or 14453. (modes 1,2,3,4)
14858–N		ECI Fuel Systems, Mira Loma, CA.	49 CFR 177.834(h) and 178.700 to 178.819.	To authorize the manufacture, mark and to sale of refueling tanks of less than 119 gallon capacity as intermediate bulk containers for use in transporting various Class 3 hazardous materials. (mode 1)
14859–N		Minuteman Aviation Inc. (MAI), Missoula, MT.	49 CFR 172.101 HMT Column (9B), 172.200, 172.300, 172.400.	To authorize the transportation of certain forbidden explosives and other hazardous materials by helicopter in remote areas of the US for seismic exploration without being subject to hazard communication requirements and quantity limitations. (mode 4)
14860–N		Alaska Airlines, Seattle, WA.	49 CFR 173.302(f)	To authorize the transportation in commerce of cylinders of compressed oxygen and oxidizing gases without rigid outer packaging when no other means of transportation exist. (mode 4)
14861–N		Gliko Aviation Inc., Belt, MT.	49 CFR 172.101 HMT Column (9B), 172.200, 172.300, 172.400.	To authorize the transportation of certain forbidden explosives and other hazardous materials by helicopter in remote areas of the US for seismic exploration without being subject to hazard communication requirements and quantity limitations. (mode 4)
14862–N		U.S. Custom Harvesters, Inc., Hutchinson, KS.	49 CFR 172.504	To authorize the transportation in commerce of 1,000 gallons of diesel fuel without placarding the motor vehicle. (mode 1)

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
14864–N		Balchem Corporation, New Hampton, NY.	49 CFR 173.24(b)(1), 174.3 and 177.834(h).	To authorize the transportation in commerce of ethylene and allows for the controlled release of the hazardous material for the purposes of ripening fruits or vegetables. (modes 1, 2)
14865–N		Alaska Railroad Corporation, Anchorage, AK.	49 CFR 172.101 Column (9A).	To authorize the transportation in commerce of liquefied petroleum gas in a specially designed vault when transported by railroad in Alaska. (mode 2)
14866–N		Fluorochemika Laboratories, LLC, Wilmington, DE.	49 CFR 173.301(f)(1)	To authorize the transportation in commerce of sulfuryl fluoride in certain DOT specification cylinders that are not equipped with a pressure relief device. (modes 1, 2, 3)
14867–N		GTM Technologies, Inc., Amarillo, TX.	49 CFR 173.302a, 173.304a.	To authorize the manufacture, marking, sale and use of non-DOT specification fiber reinforced hoop wrapped cylinders with water capacities of up to 120 cubic feet for use in transporting certain Class 2 gases. (modes 1, 2, 3, 4, 5)
14868–N		Wal-Mart Stores, Inc., Bentonville, AR.	49 CFR 172.102(c) Special provision 130, 172.200(a) and 173.185(d).	To authorize the transportation in commerce of certain batteries intended for recycling, disposal or liquidation in an alternative packaging configuration transported under refrigeration. (mode 1)
14869–N		Airgas, Inc., Cheyenne, WY.	49 CFR 178.337–17	To authorize the transportation in commerce of two non-DOT specification cargo tank motor vehicles that have missing ASME identification plates. (mode 1)

[FR Doc. E9–13426 Filed 6–9–09; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Intent To Prepare an Environmental Impact Statement USH 41, Brown County, WI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for transportation improvements in the USH 41 corridor in Brown County, Wisconsin. The EIS is being prepared in conformance with 40 CFR 1500 and FHWA regulations.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration (FHWA), in cooperation with the Wisconsin Department of Transportation (WisDOT), will prepare an Environmental Impact Statement (EIS) on improvements needed to safely accommodate local and regional traffic and to preserve the traffic carrying capacity on an approximate 3.5-mile portion of USH 41 between Memorial Drive and CTH M (Lineville Road) including the reconstruction of the interchange at USH 41 and Interstate 43 in the City of Green Bay, the Village of Howard and the Village of Suamico, Brown County, Wisconsin. The EIS will evaluate no build and build alternatives for this portion of the USH 41 corridor.

Participation by the public, local officials, State and Federal regulatory agencies, American Indian Tribes and other interests will be solicited through public information meetings, agency coordination meetings, and a public hearing. Opportunities to be participating and/or cooperating agencies and to provide input on the project's coordination plan and impact assessment methodology will also be provided under section 6002 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU).

This study shall comply with Title VI of the Civil Rights Act and of Executive Order 12898, which prohibits discrimination on the basis of race, color, age, sex, or country of national origin in the implementation of this action. To ensure that the full range of issues related to this proposed action is addressed, and all substantive issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action should be directed to FHWA or WisDOT at the addresses provided below (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction.)

FOR FURTHER INFORMATION CONTACT: David Platz, Field Operations Engineer, Federal Highway Administration, 525 Junction Road, Suite 8000, Madison, WI 53717–2157; Telephone: (608) 829–7509. You may also contact Eugene Johnson, Director, Bureau of Equity and Environmental Services, Wisconsin Department of Transportation, P.O. Box 7916, Madison, Wisconsin 53707–7916: Telephone: (608) 267–9527.

An electronic copy of this document may be downloaded from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661 by using a computer modem and suitable communications software. Internet users may reach the Office of Federal Register's home page at: *http://www.archives.gov/* and the Government Printing Office's database at: *http://www.gpoaccess.gov/nara/index.html.*

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on June 4, 2009.

Tracey McKenney,

Program Operations Engineer, Federal Highway Administration, Madison, Wisconsin.

[FR Doc. E9–13565 Filed 6–9–09; 8:45 am]
BILLING CODE P

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of period during which individuals may apply to be appointed to the membership of the Victims Advisory Group; request for applications.

SUMMARY: The Victims Advisory Group of the United States Sentencing Commission is a standing advisory group of the United States Sentencing Commission pursuant to 28 U.S.C. 995 and Rule 5.4 of the Commission's Rules of Practice and Procedure. Under the charter for the Victims Advisory Group, the purpose of the advisory group is (1) to assist the Commission in carrying out its statutory responsibilities under 28 U.S.C. 994(o); (2) to provide to the Commission its views on the Commission's activities and work, including proposed priorities and amendments, as they relate to victims of crime; (3) to disseminate information regarding sentencing issues to organizations represented by the Victims Advisory Group and to other victims of crime and victims advocacy groups, as appropriate; and (4) to perform any other functions related to victims of crime as the Commission requests. Under the charter, the advisory group consists of not more than nine members, each of whom may serve not more than two consecutive three-year terms. Each member is appointed by the Commission. In view of vacancies in the membership of the advisory group, the Commission hereby invites any individual who has knowledge, expertise, and/or experience in the area of federal crime victimization to apply to be appointed to the membership of the Victims Advisory Group. Applications should be received by the Commission not later than August 10, 2009. Applications may be sent to Michael Courlander at the address listed below.

DATES: Applications for membership of the Victims Advisory Group should be received not later than August 10, 2009.

ADDRESSES: Send applications to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2–500, South Lobby, Washington, DC 20002–8002, Attention: Public Affairs.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4597.

SUPPLEMENTARY INFORMATION: Section 995(a)(1) of title 28, United States Code, authorizes the United States Sentencing Commission to establish general policies and promulgate rules and regulations as necessary for the Commission to carry out the purposes of the Sentencing Reform Act of 1984. The Victims Advisory Group is a standing advisory group of the Commission. The Commission invites any individual who has knowledge, expertise, and/or experience in the area of federal crime victimization to apply to be appointed to the membership of the Victims Advisory Group.

Authority: 28 U.S.C. 994(a), (o), (p), 995; USSC Rules of Practice and Procedure 5.2, 5.4.

Ricardo H. Hinojosa,

Acting Chair.

[FR Doc. E9–13622 Filed 6–9–09; 8:45 am]

BILLING CODE 2211–01–P

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Request for public comment.

SUMMARY: On May 1, 2009, the Commission submitted to the Congress amendments to the sentencing guidelines and official commentary, which become effective on November 1, 2009, unless Congress acts to the contrary. Such amendments and the reasons for amendment subsequently were published in the **Federal Register**. 74 FR 21750 (May 8, 2009). One of the amendments, specifically Amendment 7 pertaining to the undue influence enhancement at subsection (b)(2)(B)(ii) of § 2A3.2 (Criminal Sexual Abuse of a Minor Under the Age of Sixteen Years (Statutory Rape) or Attempt to Commit Such Acts) and at subsection (b)(2)(B) of § 2G1.3 (Promoting a Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Transportation of Minors to Engage in a Commercial Sex Act or Prohibited Sexual Conduct; Travel to Engage in Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Sex Trafficking of Children; Use of Interstate Facilities to Transport Information about a Minor), has the effect of lowering guideline ranges. The Commission requests comment regarding whether that amendment should be included in subsection (c) of § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)) as an amendment that may be applied retroactively to previously sentenced defendants.

DATES: Public comment should be received on or before August 10, 2009.

ADDRESSES: Send comments to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2–500, South Lobby, Washington, DC 20002–8002, Attention: Public Affairs-Retroactivity Public Comment.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4590.

SUPPLEMENTARY INFORMATION: Section 3582(c)(2) of title 18, United States Code, provides that ''in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.''

The Commission lists in § 1B1.10(c) the specific guideline amendments that the court may apply retroactively under 18 U.S.C. 3582(c)(2). The background commentary to § 1B1.10 lists the purpose of the amendment, the magnitude of the change in the guideline range made by the amendment, and the difficulty of applying the amendment retroactively to determine an amended guideline range under § 1B1.10(b) as among the factors the Commission considers in selecting the amendments included in § 1B1.10(c). To the extent practicable, public comment should address each of these factors.

The text of the amendments referenced in this notice also may be accessed through the Commission's Web site at *www.ussc.gov.*

Authority: 28 U.S.C. 994(a), (o), (u); USSC Rules of Practice and Procedure 4.1, 4.3.

Ricardo H. Hinojosa,

Acting Chair.

[FR Doc. E9–13624 Filed 6–9–09; 8:45 am]

BILLING CODE P

Federal Register

Wednesday,
June 10, 2009

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Revised Critical Habitat for Navarretia fossalis (Spreading Navarretia); Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2009–0038; 92210–1117–0000–B4]

RIN 1018–AW22

Endangered and Threatened Wildlife and Plants; Proposed Revised Critical Habitat for Navarretia fossalis (Spreading Navarretia)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to revise designated critical habitat for *Navarretia fossalis* (spreading navarretia). Approximately 6,872 acres (ac) (2,781 hectares (ha)) of habitat fall within the boundaries of the proposed revised critical habitat designation. This proposed revised designation of critical habitat is located in Los Angeles, Riverside, and San Diego Counties in southern California.

DATES: We will accept comments from all interested parties until August 10, 2009. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by July 27, 2009.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments to Docket No. FWS–R8–ES–2009–0039.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R8–ES–2009–0038; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203. We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, 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. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend any final action resulting from this proposal to be as accurate and as effective as possible. Therefore, we request comments or suggestions on this proposed rule. We particularly seek comments concerning:

(1) The reasons we should or should not revise the designation of habitat as ''critical habitat'' under section 4 of the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*), including whether the benefit of designation would outweigh any threats to the species caused by the designation, such that the designation of critical habitat is prudent.

(2) Specific information on:

- Areas that provide habitat for *Navarretia fossalis* that we did not discuss in this proposed critical habitat rule,
- Areas containing the features essential to the conservation of *N. fossalis* that we should include in the designation and why,
- Areas not containing features essential for the conservation of the species and why, and
- Areas not occupied at the time of listing that are essential to the conservation of the species and why.

(3) Land-use designations and current or planned activities in the areas proposed as critical habitat, as well as their possible effects on proposed critical habitat.

(4) Comments or information that may assist us in identifying or clarifying the primary constituent elements.

(5) How the proposed revised critical habitat boundaries could be refined to more closely circumscribe the landscapes identified as containing the features essential to the species' conservation.

(6) Any probable economic, national-security, or other impacts of designating particular areas as critical habitat, and, in particular, any impacts on small entities (e.g., small businesses or small governments), and the benefits of including or excluding areas that exhibit these impacts.

(7) Whether any specific subunits being proposed as critical habitat should be excluded under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any particular area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(8) The potential exclusion of the portion of the subunit (Unit 2) being proposed as critical habitat within the jurisdiction of the City of Carlsbad Habitat Management Plan, a subarea plan under the San Diego Multiple Habitat Conservation Plan under section 4(b)(2) of the Act, and whether the benefits of exclusion of this area outweigh the benefits of including this area as critical habitat, and why.

(9) Specific reasons whether we should exclude, under section 4(b)(2) of the Act, the subunit proposed as critical habitat within the unincorporated community of Ramona in San Diego County (Subunit 4E), an area where the County of San Diego is working on a Habitat Conservation Plan (HCP) called the ''North County Plan'' with the Service that is currently available for public review (The North County Plan is available on the Internet at: *http://www.sdcounty.ca.gov/dplu/mscp/nc.html*), and whether the benefits of exclusion of this area outweigh the benefits of including this area as critical habitat, and why.

(10) The potential exclusion of the subunits being proposed as critical habitat within the jurisdiction of the County of San Diego Subarea Plan (Subunit 3A and portions of Subunits 5B, 5F, and 5I) under the San Diego Multiple Species Conservation Plan under section 4(b)(2) of the Act, and whether the benefits of exclusion of this area outweigh the benefits of including this area as critical habitat, and why.

(11) The potential exclusion of the subunits being proposed as critical habitat within the jurisdiction of the Western Riverside County Multiple Species Habitat Conservation Plan (Subunits 6A, 6B, 6C, 6D, and 6E) under section 4(b)(2) of the Act, and whether the benefits of exclusion of this area would outweigh the benefits of including this area as critical habitat, and why.

(12) Information on any quantifiable economic costs or benefits of the proposed revised designation of critical habitat.

(13) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

Our final determination concerning critical habitat for *Navarretia fossalis* will take into consideration all written comments and any additional information we receive during the comment period. These comments are included in the public record for this rulemaking and we will fully consider them in the preparation of our final determination. On the basis of public comments, we may, during the development of our final determination, find that areas within the proposed designation do not meet the definition

of critical habitat, that some modifications to the described boundaries are appropriate, or that areas may or may not be appropriate for exclusion under section 4(b)(2) of the Act.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not consider comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov.*

Background

It is our intent to discuss only those topics directly relevant to the proposed revised designation of critical habitat in this proposed rule. No new information pertaining to the species description, life history, ecology, or habitat of *Navarretia fossalis* was received following the 2005 final critical habitat designation for this species; summary information relevant to this species' critical habitat is provided below. This rule incorporates new information on the distribution of *N. fossalis* that was not available when we completed our 2005 final critical habitat designation for this species. For more information on *N. fossalis,* refer to the final listing rule published in the **Federal Register** on October 13, 1998 (63 FR 54975), and the designation of critical habitat for *N. fossalis* published in the **Federal Register** on October 18, 2005 (70 FR 60658). Additionally, more information on this species can be found in the Recovery Plan for the Vernal Pools of Southern California (Recovery Plan) finalized on September 3, 1998 (Service 1998a).

Species Description

Navarretia fossalis is a low, mostly spreading or ascending, annual herb, 4 to 6 inches (in.) (10 to 15 centimeters (cm)) tall. The lower portions of the stems are mostly glabrous (bare). The leaves are soft and finely divided, 0.4 to 2 in. (1 to 5 cm) long, and spine-tipped when dry. The corolla (i.e., flower tube and petals) are white to lavender-white with linear petals and are arranged in flat-topped, compact, leafy heads. The fruit is an ovoid, 2-chambered capsule (Moran 1977, pp. 155–156; Day 1993, p. 847). The fruit of this species consists of indehiscent (i.e., not opening spontaneously at maturity to release seeds) capsules 0.08 to 0.12 in. (2 to 3 millimeters (mm)) long containing 5 to 25 seeds (Moran 1977, p. 156; Day 1993, p. 847). The seeds develop a sticky, slimy coating when wet, which may retain moisture and aid in germination (Moran 1977, p. 156).

Habitat

Navarretia fossalis grows in natural vernal pool habitat, seasonally flooded alkali vernal plain habitat (a habitat that includes alkali playa, alkali scrub, alkali vernal pool, and alkali annual grassland), and man-made irrigation ditches and detention basins (Bramlet 1993a, pp. 10, 14, 21–23; Ferren and Fiedler 1993, pp. 126–127; Spencer 1997, pp. 8, 13). A common feature of the *N. fossalis* habitat is its ephemerally wet, flooded, or ponded nature (i.e., habitat is wet for a portion the year and dry the remainder of the year), and in this rule, we use the term ''ephemerally wet habitats'' to refer to *N. fossalis* habitat. These habitats are periodically wet or ponded from October to May, and dry from June to September. The period of time during which these habitats pond is referred to as the ''period of inundation.'' This time period varies from year to year depending on the timing and amount of precipitation. Despite the ephemeral nature of the wetland habitat where *N. fossalis* occurs its habitat occurs and relies on ''fixed landscape features'' that include (1) mounds of soil that are interspersed with depressed areas (basins) that harbor appropriate clay soils that provide ponding opportunities during winter and spring months; or (2) flood plain areas with alkali soils that drain slowly following winter and spring rains. The ponding that *N. fossalis* requires for its growth and reproduction would not be present without this underlying topography, which is a fixed and permanent feature of the landscape. So even though the wetland habitat is ephemeral, the habitat where *N. fossalis* occurs is geographically fixed and there are only a limited number of locations that can support this species.

Life History

The life cycle of *Navarretia fossalis* begins with the germination of seeds when the habitat is in the wetland phase (i.e., flooded or ponded) during winter and spring months. In contrast to most species of Navarretia, which are unable to grow in vernal pool habitat, *N. fossalis* and other vernal pool Navarretias have indehiscent fruit/capsules. This means that the capsules that hold the seeds do not break apart when the seeds mature, and instead the seeds are held on the plant until the capsules absorb water and expand to break open the fruit after a substantial rain (Crampton 1954, pp. 233–234; Spencer and Rieseberg 1998, p. 82). After the seeds are released from the capsules, they come in contact with the wet soil and are able to germinate. This enables the seeds to germinate under favorable conditions when the habitat is inundated with the winter and spring rains. After germination, plants grow and flower in May and June as the habitat dries (Glenn Lukos Associates, Inc. 2000, p. 17). Subsequently, the plant produces fruit and senesces in the hot, dry summer months. The cycle begins again each year when the fall and spring rains begin.

In addition to the general life history for *Navarretia fossalis,* there are two important evolutionary traits that contribute to this species survival: (1) Its relatively limited seed dispersal capability; and (2) the presence of a persistent seed bank.

Navarretia fossalis has ''limited dispersal capabilities,'' which is one cause of this species' narrow distribution, and also demonstrates this species' ability to persist in occupied habitat. The seeds of *N. fossalis* are not dispersed far from the parent plant, because the seed capsules are indehiscent and do not shatter when the plants dry in the summer heat (Crampton 1954, pp. 233–234; Spencer 1997, p. 17). Instead, the seeds remain on the dried plant until heavy winter rains break up the dry plants and cause the seed capsules to open (Spencer 1997, p. 17). In a local context, the limited dispersal for *N. fossalis* is advantageous because the seeds stay in suitable habitat rather than being transported into areas that do not provide suitable habitat (Zedler 1990, pp. 130–134). As a result, the bulk of the seeds produced by *N. fossalis* stay close to the parent plants and contribute to the persistence of the species within the local area. Conversely, the limited dispersal of this species results in a decreased ability for this species to colonize new habitats. In relation to the conservation of this species, conserving occupied localities will help to conserve this species because *N. fossalis* has traits that allow it to be successful in the same habitat year after year. Additionally, putting resources towards the conservation will help prevent local extinctions, which in the case of a species with limited dispersal

capabilities, could be detrimental to the species (Spencer 1997, p. 17).

Navarretia fossalis has a persistent seed bank that makes occupied sites more valuable for conservation than potential, but unoccupied, habitat. Elam (1998, p. 182) indicates that many plants restricted to vernal pool habitat are thought to have a persistent seed bank. At one site where *N. fossalis* was salvaged, both standing plants and soil that contained plants encased in silt were collected. In germination tests, both the current crop of seeds (standing plants) and the seeds encased in silt (presumably from previous years) were viable (Wall 2004, pp. 2–3). Additional studies should be conducted to better quantify the seed bank that exists for *N. fossalis,* but we believe the currently available information demonstrates that *N. fossalis* has a persistent seed bank in occupied areas. Therefore, the preservation of the seed bank is important to the conservation of this species, primarily with native occurrences where the seed bank has built up over several years. Native occurrences contrast with translocated occurrences (where seed or plants are moved from one location to another) because in most translocations, only seed from a single year is moved and used to establish a new occurrence. In a native occurrence, seed has been deposited in the local area year after year. Therefore, native occurrences have a more varied seed bank and will more likely persist into the future.

Geographic Range and Status

Navarretia fossalis is distributed from northwestern Los Angeles County and western Riverside County, south through coastal San Diego County, California, to northwestern Baja California, Mexico (Moran 1977, p. 156; Oberbauer 1992, p. 7). It is found at elevations between sea level and 4,250 feet (ft) (1,300 meters (m)) in vernal pool and seasonally flooded alkali vernal plain habitats (Day 1993, pp. 847–848; Tibor 2001, p. 229; California Natural Diversity Database (CNDDB) 2008, pp. 1–44).

In the United States, *Navarretia fossalis* is limited to Los Angeles, Riverside, and San Diego Counties in southern California. At the time of listing (1998), *N. fossalis* was known from approximately 30 occurrences, with 60 percent of the known plants concentrated in three areas: Otay Mesa in southern San Diego County, along the San Jacinto River in western Riverside County, and near Hemet in Riverside County (referred to as the Salt Creek Seasonally Flooded Alkali Plain in the current proposed revised critical habitat rule) (October 13, 1998, 63 FR 54975). In the final listing rule (October 13, 1998, 63 FR 54975), we estimated that less than 300 ac (121 ha) of habitat in the United States was occupied by this species in approximately 30 occurrences. This habitat estimate only quantified the areas where *N. fossalis* was physically found (i.e., ponded areas of ephemeral wetlands) and did not include the intermixed upland areas and local watersheds necessary to support the conservation of this species. For this reason, we have identified a much larger area as proposed critical habitat for *N. fossalis* in this rule than the 300 ac (121 ha) of occupied habitat discussed in the final listing rule for this species. Each area that we propose as critical habitat contains a current occurrence of *N. fossalis;* however, *N. fossalis* does not physically occur throughout the entirety of each area. The 6,872 ac (2,781 ha) proposed as critical habitat contains occurrences of *N. fossalis* and surrounding upland areas that contain the primary constituent elements essential to support *N. fossalis* where it physically occurs within the proposed critical habitat. For information about how this proposed critical habitat rule compares to the final critical habitat designated for this species in 2005, see the ''Summary of Changes From Previously Designated Critical Habitat'' section below.

In Mexico, *Navarretia fossalis* is limited to northwestern Baja California. At the time of listing (1998), *N. fossalis* was known from approximately nine occurrences concentrated in three areas: Along the international border, on the plateaus south of the Rio Guadalupe and north of Ensenada, and on the San Quintin coastal plain (Moran 1977, p. 156).

In this proposed rule, we use the word ''occurrence'' to refer to a specific area where *Navarretia fossalis* has been positively identified. An occurrence of *N. fossalis* is not necessarily synonymous with a population of *N. fossalis.* One occurrence may refer to several localized areas where *N. fossalis* has been found in habitat that is continuous and connected, such as the several mile stretch along the San Jacinto River in Riverside, California, where *N. fossalis* occurs intermittently (although the habitat is essentially continuous). One occurrence may also refer to only one localized area where *N. fossalis* has been found, in habitat that is isolated, such as the vernal pools at the Poinsettia Lane Commuter Station in Carlsbad, California, where the next closest occurrence is several miles (kilometers) away. The occurrences that we defined in this rule are not the same as the element occurrences described by the California Natural Diversity Database (CNDDB).

As part of this proposed revised critical habitat, we reviewed the available data on *Navarretia fossalis.* We determined that a total of 51 documented occurrences exist from the United States and that 49 of these occurrences are extant (i.e., currently supporting an occurrence of *N. fossalis*). Since this species was listed in 1998, 17 additional occurrences have been documented from survey reports and herbarium collections. We believe that the recently documented occurrences were extant at the time of listing because this species has limited dispersal capabilities, and the species can only occur in specific habitat types with fixed landscape features. (Limited dispersal is defined and discussed in detail in paragraph 3 of the ''Life History'' section. ''Fixed landscape features'' we further defined the first time we used this terminology (paragraph 1 of the ''Habitat'' section.) It is unlikely that any new occurrences were established during the relatively short, ten-year time period following the listing of this species. Instead, we believe the areas discovered to contain *N. fossalis* in the years since the listing were occupied for many years prior to listing of the species and were only recently documented due to increased number of surveys for this species. Additionally, all recently documented occurrences of *N. fossalis* are within the historical geographical range of the species. Therefore, throughout this rule we refer to all occurrences as ''occupied at the time of listing'' whether the areas were documented before or after the species was listed.

As part of our review of data on this species, we were able to get a more complete list of the past herbarium collections for *Navarretia fossalis* in Baja California, Mexico; all of which were made prior to the listing of this species. Our current list of collections from Mexico indicates that there are 12 specific locations where *N. fossalis* has been found in Baja California (Sanborn 2009, pp. 2–3). Other than the original collection information, we have no specific data on these occurrences; however, development, clay mining, and agricultural activities have been ongoing in the areas where *N. fossalis* has been found in the past (Moran 1984, pp. 175–178). We cannot make any specific conclusions about how many of these occurrences are extant, but we do think that this species is as rare in Mexico as it is in the United States and that its existence is threatened by

development, clay mining, and agricultural activities in Mexico.

Areas Needed for Conservation: Core and Satellite Habitat Areas

Details about the distribution and status of this species provide important background information for understanding the areas that we are proposing for revised critical habitat. The areas that contain the features essential for the conservation of *Navarretia fossalis* and that we are proposing as revised critical habitat in this rule are represented by core habitat areas and satellite habitat areas. Core habitat represents the most critical areas in conserving this species, including areas that contain the highest concentrations of *N. fossalis* and the largest contiguous blocks of habitat for this species. We identified four core habitat areas; three core habitat areas were identified in the listing rule (along the San Jacinto River, in the Upper Salt Creek drainage, and on Otay Mesa), and in the current revised proposed critical habitat rule, we added one additional area that we believe represents a core habitat area (Mesa de Burro on the Santa Rosa Plateau). In addition to the four core areas, *N. fossalis* occurs at several other sites that make up the range of this species; many of these sites also contain the features essential to the conservation of this species.

In this rule, we use the term ''satellite habitat areas'' to mean habitat areas that support occurrences that are smaller than those supported by the ''core habitat areas,'' but provide the means to significantly contribute to the recovery of *N. fossalis.* Satellite habitat areas provide connectivity between the core habitat areas by shortening the distances that pollen and seeds would need to be transferred, fill in gaps that would exist in the species range, if only the core habitat areas were conserved, support stable occurrences (e.g., occurrences that continue to persist in an area), and likely support genetically unique occurrences. The satellite habitat areas are generally smaller than the core habitats. However, the satellite habitat areas contain the features essential to the conservation of *N. fossalis.*

Together, the core habitat areas and satellite habitat areas represent a matrix of viable occurrences that provide the stability, resilience, and flexibility that this species requires to survive current threats and adapt to future threats that may be caused by environmental changes. Special management considerations or protection of the core habitat areas and satellite habitat areas will help with the recovery of *N. fossalis* and bring the species to the point where the protections of the Act are no longer needed.

The four core habitat areas where this species occurs are large, both in number of occupied areas and in terms of the occurrence size (greater than 3,000 plants). The core habitat areas support self-sufficient occurrences that have been resilient to human impacts at the landscape scale. These core habitat areas contain the largest occurrences of *N. fossalis,* and, therefore, the conservation of these areas and the essential features contained therein will make a substantial contribution to the recovery of this species.

We have determined, however, that the conservation of the core habitat areas alone will not be sufficient to provide for recovery of *Navarretia fossalis.* As a result, we believe that the conservation of satellite habitat areas is essential for the recovery of this species. Satellite habitats include: (1) Important peripheral occurrences of this species that are on the geographic edge of this species' distribution; (2) occurrences that are isolated from other occurrences by geographic features; and (3) areas that are nested within the distribution of this species and provide connections between the core habitat areas and other satellite habitat areas. The satellite habitat areas are dispersed throughout the range of this species. Therefore, we believe the protection and management of both core and satellite habitat areas will result in a matrix of viable occurrences and supportive habitat areas that will provide for the long-term conservation of *N. fossalis.*

Previous Federal Actions

On October 18, 2005 (70 FR 60658), we published our final designation of critical habitat for *Navarretia fossalis.* On December 19, 2007, the Center for Biological Diversity filed a complaint in the U.S. District Court for the Southern District of California challenging our designation of critical habitat for *N. fossalis* and *Brodiaea filifolia* (*Center for Biological Diversity* v. *United States Fish and Wildlife Service et al.*, Case No. 07–CV–02379–W–NLS). This lawsuit challenged the validity of the information and reasoning we used to exclude areas from the 2005 critical habitat designation for *N. fossalis.* On July 25, 2008, we reached a settlement agreement, in which we agreed to reconsider critical habitat designation for *N. fossalis.* The settlement stipulated that we submit a proposed revised critical habitat designation for *N. fossalis* to the **Federal Register** for publication on or before May 29, 2009, and submit a final revised critical habitat designation to the **Federal Register** for publication on or before May 28, 2010.

Critical Habitat

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species and

(b) That may require special management considerations or protection; and

(2) 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—regulated taking.

Critical habitat receives protection under section 7(a)(2) 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, the habitat within the geographical area occupied by the species at the time of listing must contain physical and biological features that are essential to the conservation of the 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 (PCEs) laid out in the appropriate quantity and spatial arrangement essential to the conservation of the species). Under the Act, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed as critical habitat only when we determine that those areas are essential for the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the 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 habitat areas that we may eventually determine are necessary for the recovery of the species, based on scientific data not now available to the Service. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not promote the recovery of the species.

Areas that support occurrences, but are outside the critical habitat designation, will continue to be subject to conservation actions we implement 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 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 new information available to these planning efforts calls for a different outcome.

Methods

As required by section 4(b) of the Act, we used the best scientific and commercial data available in determining areas occupied at the time of listing that contain the features essential to the conservation of *Navarretia fossalis.* We reviewed the approach to the conservation of *N. fossalis* provided in its recovery plan (Service 1998a, pp. 1–113, appendices), the 2005 final designation of critical habitat for *N. fossalis* (October 18, 2005, 70 FR 60658), information from State, Federal, and Local government agencies, and information from academia and private organizations that collected scientific data on the species. Other information we used for this proposed revised critical habitat includes: The CNDDB (CNDDB 2008, pp. 1–44); published and unpublished papers, reports, academic theses, surveys; Geographic Information System (GIS) data (such as species occurrence data, soil data, land use, topography, aerial imagery, and ownership maps); correspondence to the Service from recognized experts; and other information as available.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas occupied by the species at the time of listing to propose as critical habitat, we consider those physical and biological features that are essential to the conservation of the species that may require special management considerations or protection. We consider the physical and biological features to be the primary constituent elements (PCEs) laid out in the appropriate quantity and spatial arrangement for the conservation of the species. The PCEs 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, and rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We derived the PCEs required for *Navarretia fossalis* from its biological needs. The area proposed for designation as revised critical habitat consists of ephemeral wetland habitat for the reproduction and growth of *N. fossalis,* intermixed wetland and upland habitats that act as the local watershed to support the ephemeral wetland habitat, and the topography and soils that support ponding during winter and spring months. The methods of dispersal and pollination for *N. fossalis* are not well understood and may not be captured by this proposed revised critical habitat. Likewise, the larger watershed areas that support the ephemeral wetland habitat are difficult to define and may require hydrological data and modeling that are not available; therefore, areas beyond the local watershed are not included in this proposed critical habitat rule. The PCEs and the resulting physical and biological features essential for the conservation of *N. fossalis* are derived from studies of this species' habitat, ecology, and life history as described below, in the ''Background'' section in this proposed rule, as well as in the previous critical habitat rule (October 18, 2005, 70 FR 60658), and in the final listing rule published in the **Federal Register** on October 13, 1998 (63 FR 54975).

Habitats That Are Representative of the Historic Geographical and Ecological Distribution of the Species

Navarretia fossalis is restricted to temporary wetlands in southern California and northwestern Baja

California (Moran 1977, pp. 155–156; Oberbauer 1992, p. 7; Day 1993, p. 847; CNDDB 2008, pp. 1–44), and primarily associated with vernal pools and seasonally flooded alkali vernal plain habitats (Moran 1977, pp. 155–156; Bramlet 1993a, p. 10; Day 1993, p. 847; Ferren and Fiedler 1993, pp. 126–127). In Los Angeles County, *N. fossalis* is known to occur in vernal pools on Cruzan Mesa and the associated drainage of Plum Canyon. In Riverside County, *N. fossalis* is known to occur in large vernal pools with basins that range in size from 0.5 ac (0.2 ha) to 10.0 ac (4.0 ha) (e.g., CNDDB 2008, EO 43, 44), and in temporary wetlands that are described as seasonally flooded alkali vernal plain habitat along the San Jacinto River and near Salt Creek in Hemet (e.g., CNDDB 2008, EO 22, 23, 24). In San Diego County, *N. fossalis* is found in vernal pools that are smaller than those in Riverside County, ranging in size from 0.01 ac (0.005 ha) to 0.2 ac (0.09 ha) and are often found in clusters of several vernal pools referred to as vernal pool complexes (e.g., CNDDB 2008, EO 4, 14, 19). In Mexico, *N. fossalis* is known from fewer than 12 occurrences, of which the main occurrences are clustered in three areas: along the international border, on the plateaus south of the Rio Guadalupe, and on the San Quintin coastal plain (Moran 1977, p. 156).

Ephemeral Wetland Habitat

Despite the variation in the types of habitat where *Navarretia fossalis* is found (i.e., vernal pool habitat and seasonally flooded alkali vernal plain habitat), these ephemeral wetlands all share the same temporary nature (i.e., areas fill with water during winter or spring months and dry completely during summer and fall months). *Navarretia fossalis* depends on both the inundation and the drying of its habitat for survival. This type of ephemerally wet habitat does not support upland plants that live in a dry environment year round or wetland plants that require year round moisture to become established (Keeler-Wolf *et al.* 1998). Rather, these habitats support specialized plants, such as *N. fossalis* that are able to grow in the open niche created by the exclusion of strictly upland and wetland plants.

Navarretia fossalis primarily occurs in ephemeral wetland habitat, more specifically, vernal pool and seasonally flooded alkali vernal plain habitat (Moran 1977, pp.156–157; Bramlet 1993a, p. 10; Bramlet 1993b, p. 14; Day 1993, p. 847). Vernal pools form during the winter rains in depressions that are part of a gently sloping, undulating landscape, where soil mounds are interspersed with basins. This landscape is called ''mima-mound'' topography (Cox 1984, pp. 1397–1398), which is situated above an impervious soil layer called a ''hard pan'' or ''clay pan.'' Additionally, the final listing rule states that *N. fossalis* can occur in ditches and other artificial depressions associated with degraded vernal pool habitat (63 FR 54975, October 13, 1998; Moran 1977, p. 155).

Seasonally flooded alkali vernal plain habitat includes alkali playa, alkali scrub, alkali vernal pool, and alkali annual grassland components. The hydrologic regime for this habitat involves sporadic flooding (as described above) in combination with slow drainage on the alkaline soils. The habitat floods locally on a seasonal basis. Mid-range floods occur less frequently, approximately every 20 to 50 years, but are necessary to maintain the habitat by removing scrub vegetation (Roberts 2004, p. 4). During a typical, seasonal flooding period, alkali scrub vegetation expands its distribution into the deeper areas of the seasonally flooded alkali vernal plain habitat and crowds out the more ephemeral wetland species. During a large scale flooding period, standing and slow draining water remains for weeks or months and results in the death of alkali scrub vegetation. As a result, conditions become favorable for annual species (e.g., *Navarretia fossalis*) to regain and locally expand their range (Bramlet 2004, p. 8; Roberts 2004, p. 4).

Intermixed Wetland and Upland Habitats That Act as the Local Watershed

Vernal pools within a vernal pool complex are hydrologically connected to one another within the local geographical context. Seasonally flooded alkali vernal plain habitats are also hydrologically connected by flowing water. Water flows over the surface from one vernal pool to another or throughout the seasonally flooded alkali vernal plain. Due to an impervious clay layer or hard pan, water also flows and collects below ground such that the soil becomes saturated with water. The result of the movement of the water through vernal pool and seasonally flooded alkali vernal plain systems is that pools fill and hold water continuously for a number of days following the initial rainfall (Hanes *et al.* 1990, p. 51). For this reason, these hydrologic systems are best described from a watershed perspective. The local watershed associated with a vernal pool complex or seasonally flooded alkali vernal plain includes all surfaces in the surrounding area that flow into the vernal pool complex or seasonally flooded alkali vernal plain. Some hydrologic systems (e.g., the San Jacinto River, the Salt Creek Seasonally Flooded Alkali Plain) have watersheds that cover a large area and that contribute to filling and the hydrological dynamics of the system, while other hydrologic systems have very small watersheds (e.g., Carroll Canyon, Nobel Drive) and fill almost entirely from direct rainfall (Hanes *et al.* 1990, p. 53; Hanes and Stromberg 1998, p. 38). It is also possible that subsurface inflows from surrounding soils within a watershed contribute to filling some vernal pools and seasonally flooded alkali vernal plains (Hanes *et al.* 1990, p. 53; Hanes and Stromberg 1998, p. 48).

Topography and Soils That Support Ponding During Winter and Spring

Impervious subsurface layers of clay soils or hardpan geology, combined with flat to gently sloping topography, serve to inhibit rapid infiltration of rainwater, resulting in ponded water in vernal pools and seasonally flooded alkali vernal plains (Bramlet 1993a, p. 1; Bauder and McMillian 1998, pp. 57–59). These soils also act as a buffer to moderate the water chemistry and rate of water loss to evaporation (Zedler 1987, pp. 17–30). In Los Angeles County, the vernal pools that support *Navarretia fossalis* are found on Cieneba-Pismo-Caperton soils (Service GIS analysis). In western Riverside County, the seasonally flooded alkali vernal plain habitat that supports *N. fossalis* is found on Domino, Traver, Waukena, and Chino soils (Bramlet 1993a, p. 1, 10; December 15, 1994, 59 FR 64812). In San Diego County, the vernal pool habitat that supports *N. fossalis* is found on Huerhuero, Placentia, Olivenhain, Stockpen, and Redding soils (Service GIS analysis).

Primary Constituent Elements for Navarretia fossalis

Under the Act and its implementing regulations, we are required to identify the physical and biological features within the geographical area occupied by *Navarretia fossalis* at the time of listing that are essential to the conservation of the species and which may require special management considerations or protection. The physical and biological features are those PCEs laid out in a specific special arrangement and quantity determined to be essential to the conservation of the species. All areas proposed as critical habitat for *N. fossalis* were occupied at the time of listing (see the ''Geographic Range and Status'' section for a more detailed explanation) and are currently

occupied, are within the species' geographic range, and contain sufficient essential features to support at least one life history function.

Based on our current knowledge of the life history, biology, and ecology of *Navarretia fossalis,* and the requirements of the habitat to sustain the essential life history functions of the species, we determined that the PCEs specific to *N. fossalis* are:

(1) PCE 1—Ephemeral wetland habitat. Vernal pools (up to 10 ac (4 ha)) and seasonally flooded alkali vernal plains that become inundated by the winter rains and hold water or have saturated soils for 2 weeks to 6 months during a year with average rainfall. This period of inundation is long enough to promote germination, flowering, and seed production for *N. fossalis* and other native species typical of vernal pool and seasonally flooded alkali vernal plain habitat, but not so long that true wetland species inhabit the areas.

(2) PCE 2—*Intermixed wetland and upland habitats that act as the local watershed.* Areas characterized by mounds, swales, and depressions within a matrix of upland habitat that results in intermittently flowing surface and subsurface water in swales, drainages, and pools that support the habitat described in PCE 1, and provide the water that allows for the inundation described in PCE 1.

(3) PCE 3—*Soils that support ponding during winter and spring.* Soils found in areas characterized in PCE 2 that allow for ponding of water because they have a clay component or other property that creates an impermeable surface or subsurface layer. The properties of these soils contribute to reduced percolation and minimal run-off of water, all of which lead to supporting the habitat and period of inundation described in PCE 1. These soil types are known to include, but are not limited to: Cieneba-Pismo-Caperton soils in Los Angeles County; Domino, Traver, and Willows soils in Riverside County; and Huerhuero, Placentia, Olivenhain, Stockpen, and Redding soils in San Diego County.

With this proposed designation of critical habitat, we intend to conserve the physical and biological features essential to the conservation of the species, through the identification of the appropriate quantity and spatial arrangement of the PCEs sufficient to support the life history functions of the species. For *Navarretia fossalis,* the size of the ephemeral wetland habitat can vary a great deal, but the important factor (i.e., the appropriate quantity and spatial arrangement of the PCEs) in any of the subunits proposed as critical habitat is that the vernal pool or alkali playa habitat has intact and functioning hydrology and intact adjacent upland areas that ensure a functioning ecosystem. All units and subunits proposed as critical habitat contain the PCEs in the appropriate quantity and spatial arrangement essential to the conservation of this species and support multiple life processes for *N. fossalis.*

Special Management Considerations or Protection

When designating critical habitat, we assess whether the occupied areas contain the physical and biological features that are essential to the conservation of the species, and whether these features may require special management considerations or protection.

The area proposed for designation as revised critical habitat will require some level of management to address the current and future threats to the physical and biological features essential to the conservation of the species. In all units, special management considerations or protection of the essential features may be required to provide for the sustained function of the ephemeral wetland ecosystems on which *N. fossalis* depends. The designation of critical habitat does not imply that lands outside of critical habitat do not play an important role in the conservation of *N. fossalis.* Activities with a Federal nexus that may affect areas outside of critical habitat, such as development, agricultural activities, and road construction, are still subject to review under section 7 of the Act if they may affect *N. fossalis,* because Federal agencies must consider both effects to the plant and effects to critical habitat independently. The prohibitions of section 9 of the Act applicable to *N. fossalis* under 50 CFR 17.71 (e.g., reduce to possession or maliciously damage or destroy on Federal lands) also continue to apply both inside and outside of designated critical habitat.

Researchers estimate that greater than 90 percent of the vernal pool habitat in southern California has been converted as a result of past human activities (Bauder and McMillian 1998, pp. 56–67; Keeler-Wolf *et al.* 1998, pp. 10, 60–61, 63–64). A detailed discussion of threats to *Navarretia fossalis* and its habitat can be found in the final listing rule (October 13, 1998, 63 FR 54975), the previous critical habitat designation (October 18, 2005, 70 FR 60658), and the Recovery Plan for Vernal Pools of Southern California (Service 1998a, pp.1–113, appendices). The features essential to the conservation of *N. fossalis* require special management considerations or protection to reduce the following threats, among others: habitat destruction and fragmentation from urban and agricultural development; pipeline construction; alteration of hydrology and floodplain dynamics; excessive flooding; channelization; water diversions; off-road vehicle activity; trampling by cattle and sheep; weed abatement; fire suppression practices (including discing and plowing to remove weeds and create fire breaks); competition from nonnative plant species; and direct and indirect impacts from some human recreational activities (October 13, 1998, 63 FR 54975; Service 1998a, p. 7).

Criteria Used To Identify Critical Habitat

We are proposing to designate critical habitat in areas that were occupied by the species at the time of listing and continue to be occupied today, and that contain the PCEs in the quantity and spatial arrangement to support life history functions essential for the conservation of the species (see the ''Geographic Range and Status'' section for more information). We are not proposing to designate any areas outside the geographical area occupied at the time of listing. All units and subunits proposed contain the PCEs in the appropriate quantity and spatial arrangement essential to the conservation of this species and support multiple life processes for *N. fossalis.*

As required by section 4(b)(1)(A) of the Act, we use the best scientific and commercial data available in determining areas that contain the features that are essential to the conservation of *Navarretia fossalis.* The ''Methods'' section summarizes the data used for this proposed revised critical habitat. This proposed revised rule is an effort to update our 2005 final designation of critical habitat for *N. fossalis* with the best available data. In some areas that were analyzed in 2005, we have new information that led us to either add or remove areas from this proposal to revise critical habitat.

This section provides details of the process and criteria we used to delineate proposed revised critical habitat. This proposed revised rule is the result of a progression of conservation efforts for *Navarretia fossalis.* This progression is based largely on the past analysis of the areas that are required for the conservation of *N. fossalis* as presented in the Recovery Plan for Vernal Pools of Southern California (Service 1998a, pp.1–113, appendices), the 2005 final critical habitat designation, and new

information we obtained on the species and its distribution since listing. Table 1 shows the changes in identified essential habitat between the 1998 Recovery Plan, the 2005 final critical habitat designation, and this proposed revised critical habitat designation. The unit names used in this proposed revised critical habitat are based on the names used for management areas used in the 1998 Recovery Plan. The specific changes made to the 2005 final designation of critical habitat are summarized in the ''Summary of Changes From Previously Designated Critical Habitat'' section of this rule.

TABLE 1—AREAS IDENTIFIED AS ESSENTIAL TO NAVARRETIA FOSSALIS CONSERVATION

Location*	Recovery plan appendix	Final critical habitat (2005)	Proposed revised critical habitat (2009)
Unit 1: Los Angeles Basin-Orange Management Area			
Cruzan Mesa	F	1A	1A.
Plum Canyon	N/A	1B	1B.
Unit 2: San Diego: Northern Coastal Mesa Management Area			
Stuart Mesa, Marine Corps Base (MCB) Camp Pendleton, Recovery plan (RP)** name: Stuart Mesa.	F	4(a)(3) exemption	4(a)(3) exemption.
Wire Mountain, MCB Camp Pendleton, RP name: Wire Mountain.	F		4(a)(3) exemption.
Poinsettia Lane Commuter Station, RP name: JJ 2 Poinsettia Lane.	F	2 (partially excluded under section 4(b)(2)).	2.
Unit 3: San Diego: Central Coastal Mesa Management Area			
Santa Fe Valley (Crosby Estates)	N/A		3A.
Carroll Canyon (D 5–8)			3B.
Nobel Drive (X 5)			3C.
Large Pool southwest of runway, MCAS Miramar	N/A		4(a)(3) exemption.
EE1–2, MCAS Miramar, RP name: EE1–2, Miramar Interior.	F	4(a)(3) exemption.	
Kearny Mesa (U 19)	N/A	4(a)(3) exemption.	
New Century (BB 2), RP name: BB 2 New Century	G.		
Montgomery Field, RP name: N1–4, 6 Montgomery Field.	F	Excluded under section 4(b)(2).	3D.
Unit 4: San Diego: Inland Management Area			
San Marcos (North L 15), RP name: L 7, 8, 14–20	G.		
San Marcos (Northwest L 14), RP name: L 7, 8, 14–20	G.		
San Marcos (L 1–6), RP name: L 1–6, 9–13 San Marcos.	F	4C1	4C1.
San Marcos (L 9–10), RP name: L 1–6, 9–13 San Marcos.	F	4C2	4C2.
San Marcos (L 11–13), RP name: L 1–6, 9–13 San Marcos.	F	4D	4D.
San Marcos (North L 15), RP name: L 7, 8, 14–20	G.		
Ramona, RP name: Ramona	F.		
Ramona, RP name: Ramona T	G	4E	4E.
Unit 5: San Diego: Southern Coastal Mesa Management Area			
Sweetwater Vernal Pools (S1–3), RP name: Sweetwater Lake.	F	5A (partially excluded under section 4(b)(2)).	5A.
Otay River Valley (M2)		5B	5B.
Otay Mesa (J26), RP name: J 26 Otay Mesa	F	5C.	
Proctor Valley (R1), RP name: R Proctor Valley	F		5F.
Otay Reservoir (K3–5), RP name: K3–5 Otay River	F		5G.
K1, 2, RP name: K 1, 2, 6, 7 Otay River	G	Excluded under section 4(b)(2).	
K 6, 7, RP name: K 1, 2, 6, 7 Otay River	G.		
Western Otay Mesa vernal pool complexes, RP name: J 2, 5, 7, 11–21, 23–30 Otay Mesa/J 3 Otay Mesa.	F/G	Excluded under section 4(b)(2).	5H/5I.
Western Otay Mesa vernal pool complexes (J 32 (West Otay A + B), J 33 (Sweetwater High School)).	N/A		5H.
Eastern Otay Mesa vernal pool complexes, RP name: 23–30 Otay Mesa/J 22 Otay Mesa.	F/G	Excluded under section 4(b)(2).	5H/5I.
Eastern Otay Mesa vernal pool complexes, RP name: J 19, 27, 28E, 28W Otay Mesa.		Excluded under section 4(b)(2).	
RP name: J (undescribed)	G.		

TABLE 1—AREAS IDENTIFIED AS ESSENTIAL TO NAVARRETIA FOSSALIS CONSERVATION—Continued

Location*	Recovery plan appendix	Final critical habitat (2005)	Proposed revised critical habitat (2009)
Unit 6: Riverside Management Area			
San Jacinto River, RP name: San Jacinto	F	Excluded under section 4(b)(2).	6A.
Salt Creek Seasonally Flooded Alkali Plain, RP name: Hemet/Salt Creek.	F	Excluded under section 4(b)(2).	6B.
Wickerd Road and Scott Road Pools	N/A		6C.
Skunk Hollow, RP name: Skunk Hollow		Excluded under section 4(b)(2).	6D.
RP name: Temecula	F.		
Mesa de Burro, RP name: Santa Rosa Plateau	F	Excluded under section 4(b)(2).	6E.
Total Areas (out of 39 areas listed in this table)	27	22	27.

*This table does not include all locations that are occupied by *Navarretia fossalis.* It includes only those locations that were included in Appendix F or G of the Recovery Plan; designated, excluded, or exempt in 2005; or proposed as critical habitat in the current rule. Note: The alpha-numeric labels were applied in the recovery plan.

**RP name = Name in recovery plan, if different from the current rule.

Appendices F and G of the Recovery Plan provide information on the areas that are needed to stabilize (or prevent extinction of) *Navarretia fossalis* (Appendix F) and the areas that are needed to reclassify (or recover) *N. fossalis* (Appendix G). In Table 1, we summarized the data from the recovery plan. According to this summary, 27 locations were highlighted as areas that needed to be conserved and managed to recover *N. fossalis.* Our 2005 final rule to designate critical habitat used the Recovery Plan as the basis for designating areas as critical habitat; however, the rule included some additions and subtractions of those areas determined as essential to the conservation of *N. fossalis* in the Recovery Plan. Nine areas that the Recovery Plan identified as important were not identified in the 2005 final rule as essential to the conservation of *N. fossalis,* and four areas were added that were not highlighted in the Recovery Plan. The nine areas that were in the Recovery Plan but not included in the 2005 final rule were sites for which we did not have specific occurrence data or areas where recent surveys had not found *N. fossalis.* For these reasons, we do not believe these areas are essential to the conservation of *N. fossalis* and we did not include them in the 2005 critical habitat designation. The four areas that were added to the 2005 final rule were locations where the occurrence data indicated that these areas contained the features essential to the conservation of *N. fossalis.*

A total of 22 areas were identified in the 2005 final rule as essential to the conservation of *N. fossalis* (see Table 1). There are eight occurrences of *N. fossalis* that were highlighted in the Recovery Plan that we did not include in this proposed revised critical habitat. We do not have detailed information on these occurrences, and during recent surveys at some of these sites, *N. fossalis* has not been observed. Additionally, we included areas in this proposed revised critical habitat (based on new data) that were not highlighted in the Recovery Plan. While some of the areas are different, we believe that the non-inclusion of some areas in the Recovery Plan and the inclusion of other areas for which we have better data will achieve the overall goal of the Recovery Plan for *N. fossalis* and provide for the conservation of this species.

In this proposed revised designation of critical habitat for *Navarretia fossalis,* we selected areas based on the best scientific data available that possess those physical and biological features essential to the conservation of the species, and that may require special management considerations or protection. We took into account the past conservation planning that occurred for *N. fossalis* in the Recovery Plan and in the 2005 critical habitat designation. For this proposed revised rule, we completed the following steps to delineate critical habitat: (1) Compiled all available data on *N. fossalis* into a GIS database; (2) reviewed data to ensure accuracy; (3) determined which occurrences existed at the time of listing; (4) determined which areas are currently occupied; (5) defined the areas containing the features essential to the conservation of *N. fossalis* in terms of core habitat areas and satellite habitat areas; (6) determined if each occupied area represents core habitat or satellite habitat and, therefore, should be proposed as critical habitat; and (7) for both core and satellite habitat areas, mapped the specific locations that contain the essential physical and biological features (PCEs in the quantity and spatial arrangement needed to support life history functions essential for *N. fossalis*). These steps are described in detail below.

(1) We compiled all available data on *Navarretia fossalis* into a GIS database. Data on locations where *N. fossalis* occurs was based on collections and observations made by botanists (both amateur and professional), biological consultants, and academic researchers. We compiled data from the following sources to create our GIS database for *N. fossalis:* (1) Data used in the Recovery Plan and in the 2005 final critical habitat rule for *N. fossalis;* (2) the CNDDB data report for *N. fossalis* and accompanying GIS records (CNDDB 2008, pp. 1–44); (3) data presented in the City of San Diego's Vernal Pool Inventory for 2002–2003 (City of San Diego 2004, pp. 1–125, appendices); (4) the data report for *N. fossalis* from the California Consortium of Herbaria and accompanying Berkeley Mapper GIS records (Consortium of California Herbaria 2008, pp. 1–17); (5) the Western Riverside County Multiple Species Habitat Conservation Plan (Western Riverside County MSHCP) species GIS database; and (6) the Carlsbad Fish and Wildlife Office's internal species GIS database, which includes the species data used for the San Diego Multiple Species Conservation Plan (MSCP) and the San Diego Multiple Habitat Conservation Plan (MHCP), reports from section 7 consultations, and FWS observations of

N. fossalis (CFWO internal species GIS database).

(2) We reviewed the data that we compiled to ensure its accuracy. We checked each data point in our database to ensure that it represented an original collection or observation of *Navarretia fossalis.* Data that did not represent an original collection or observation was removed from our database. Secondly, we checked each data point to ensure that it was mapped in the correct location. Data points that did not match the description for the original collection or observation were remapped in the correct location or removed from our database.

(3) We determined which occurrences existed at the time of listing. We concluded that all known occurrences, except for a single occurrence translocated after this species was listed, were extant at the time of listing. We drew this conclusion because *Navarretia fossalis* has limited dispersal capabilities. We believe that the documentation of additional occurrences after the species was listed was due to an increased effort to survey for this species. Therefore, except on the single occasion where this species was translocated to a new location, all of the areas that we know of for this species were occupied prior to the time this species was listed. In other words, we do not believe that this species has naturally colonized any new areas since it was listed.

(4) We determined which areas are currently occupied. For areas where we had past occupancy data for *Navarretia fossalis,* we assumed the area is currently occupied unless: (a) Two or more rare plant surveys conducted during the past 10 years did not find *N. fossalis* (providing the surveys were conducted in years with average rainfall and during the appropriate months to find this species (March, April, and May); or (b) the site was significantly disturbed since the last observation of the species at that location.

(5) We defined the areas necessary for conservation of *N. fossalis* in terms of ''core habitat areas'' and ''satellite habitat areas.'' See the ''Areas Needed for Conservation: Core and Satellite Habitat Areas'' section in this rule for definitions of these areas.

(6) We determined if each occupied area represents core habitat or satellite habitat, and, therefore, should be proposed as critical habitat. In the final listing rule (63 FR 54975, October 13, 1998), we stated that 60 percent of the known occurrences of *Navarretia fossalis* are concentrated in three locations: Otay Mesa in southern San Diego County, along the San Jacinto River in western Riverside County, and near Hemet in Riverside County (referred to as the Salt Creek Seasonally Flooded Alkali Plain in this proposed rule). These three areas represent core habitat for *N. fossalis.* In addition to these three core habitat areas, Mesa de Burro in Riverside County represents core habitat for this species due to the large size of the occurrence observed there in 2008 and because of the large amount of intact vernal pool habitat on this mesa. In total, we identified four core habitat areas for *N. fossalis.* These four areas represent large, interconnected ephemeral wetlands. Large occurrences of *N. fossalis* are currently present in these four areas, but there have been significant impacts to these areas in the form of habitat fragmentation, nonnative plant invasion, agricultural activities, and recreational use. These four core habitat areas are essential to the conservation of *N. fossalis* because the conservation of these areas will anchor the overall conservation effort for this species. Additionally, the conservation of these four areas will sustain the largest occurrences of *N. fossalis* and allow for *N. fossalis* to persist where it will be less constrained by the threats that negatively impact its essential habitat features (PCEs).

Habitat areas outside the four core habitat areas also support stable, intact occurrences of *Navarretia fossalis.* These satellite areas represent unique habitat within this species' range that also contain the PCEs laid out in the appropriate quantity and spatial arrangement essential for the conservation of the species. The conservation of multiple areas that support occurrences dispersed throughout the range of *N. fossalis* will allow occurrences to persist and expand, ensuring that this species will not go extinct. The satellite habitat areas occur over a wide range of soils and at various elevations that include several occurrences over a range of environmental variables, the preservation of which will help maintain the genetic diversity of *N. fossalis.* The satellite habitat areas allow for connections between existing occurrences of *N. fossalis,* and together with the core habitat areas, will create a sustainable matrix of habitat for this species that will enable it to evolve and respond to future environmental changes.

Areas were selected as satellite habitat areas if they are: (1) Important peripheral occurrences of this species that are on the geographic edge of this species' distribution; (2) occurrences that are isolated from other occurrences by geographic features; or (3) areas that are nested within the distribution of this species and provide connections between the core habitat areas and other satellite habitat areas.

(7) For the core and satellite habitat areas, we mapped the specific areas that contain the physical and biological features (the PCEs) in the quantity and spatial arrangement needed to support life history functions essential for *Navarretia fossalis.* We first mapped the ephemeral wetland habitat in the occupied area using occurrence data, aerial imagery, and 1:24,000 topographic maps. We then mapped the intermixed wetland and upland habitats that make up the local watersheds and the topography and soils that support the occupied ephemeral wetland habitat. We mapped this area using USGS topographic 1:24,000 scale maps, aerial imagery, and soil maps to identify the gently sloping area associated with ephemeral wetland habitat and any adjacent areas that slope directly into the ephemeral wetland habitat which likely contribute to the hydrology of the ephemeral wetland habitat. In most cases, we delineated the border of the proposed revised critical habitat around the occupied ephemeral wetlands and associated local watershed areas to follow natural breaks in the terrain such as ridgelines, mesa edges, and steep canyon slopes.

When determining the proposed revised critical habitat boundaries, we made every effort to map precisely only the areas that contain the PCEs and provide for the conservation of *Navarretia fossalis.* However, we cannot guarantee that every fraction of proposed revised critical habitat contains the PCEs due to the mapping scale that we use to draft critical habitat boundaries. Additionally, we made every attempt to avoid including developed areas such as lands underlying buildings, paved areas, and other structures that lack PCEs for *N. fossalis.* The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed areas. Any developed structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this proposed revised critical habitat are excluded by text in this rule and are not proposed for critical habitat designation. Therefore, Federal actions involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific actions may affect the species or PCEs in adjacent critical habitat.

Summary of Changes From Previously Designated Critical Habitat

The areas identified in this rule constitute a proposed revision from the areas we designated as critical habitat for *Navarretia fossalis* on October 18, 2005 (70 FR 60658). The differences include the following:

(1) We refined the PCEs to more accurately define the physical and biological features that are essential to the conservation of *Navarretia fossalis.* The PCEs were written in both the 2005 final critical habitat and this proposed rule to describe the ephemeral wetland habitat where *N. fossalis* occurs, the associated watersheds that support the ephemeral wetland habitat, and the soils and topography that allow water to pond during winter and spring months. In the PCE related to the vernal pools and flooded alkali vernal plains where *N. fossalis* occurs, we added information relating to the necessary timing and duration of ponding in the ephemeral wetlands where *N. fossalis* occurs (PCE 1). In the PCE related to the local watershed and filling of the ephemeral wetland habitat, we discussed the landforms that contribute to the local hydrology and local watershed (PCE 2). In the PCE related to soils types associated with habitat for *N. fossalis,* we state that these soil types facilitate the slow percolation and minimal run-off of water necessary for the ephemeral wetland habitat where *N. fossalis* occurs (PCE 3).

(2) We revised the criteria used to identify critical habitat. Similar to the 2005 critical habitat, we used the Recovery Plan as the basis for our criteria. However, in this proposed revised critical habitat we conducted an additional analysis of all the *Navarretia fossalis* data currently available. The result of the additional analysis was that some areas identified as essential in the 2005 designation were removed and other areas were included in this proposed rule that were not identified as essential in the 2005 designation. We described the steps that we used to identify and delineate the areas that we are proposing as critical habitat in more detail compared to the 2005 critical habitat designation to ensure that the public better understands why the areas are being proposed as critical habitat.

(3) We improved our mapping methodology to more accurately define the critical habitat boundaries and to better represent those areas that possess the physical and biological features essential to the conservation of the species. This proposed revised rule identifies 12,313 fewer acres (4,983 ha) considered essential to the conservation of *Navarretia fossalis* than we identified in the 2005 rule. However, this reduction is primarily due to our attempt to better represent the areas that contain the essential features for *N. fossalis.* For example, in the 2005 final rule, we delineated large areas of watershed habitat as essential, which resulted in large, poorly defined critical habitat areas. The major reductions to the 2005 critical habitat are discussed in detail below (see #6). Finally, in the 2005 final rule, we used a 100-meter grid to delineate critical habitat. In this proposed revised rule, we mapped the areas that contain the PCEs as accurately as possible by more directly approximating the delineation of essential areas rather than using a 100-meter grid to map essential areas. However, we acknowledge the possibility that, due to mapping, data, and resource constraints, there may be some undeveloped areas mapped as critical habitat that do not contain the PCEs.

(4) We identified several areas we are considering for exclusion from this proposed revised critical habitat designation under section 4(b)(2) of the Act. Any exclusions in our upcoming final revised critical habitat designation could differ from the exclusions we made in the 2005 final critical habitat designation.

(5) We added and subtracted some subunits and revised the area of proposed revised critical habitat. The 2005 final critical habitat designation (70 FR 60658, October 18, 2005) included 4 units and 10 subunits, comprising a total of 652 ac (264 ha), which were grouped to match the management areas described in the 1998 Recovery Plan. This proposed revision includes 6 units with 24 subunits (two of which are exempt from designation under section 4(a)(3)(B) of the Act), comprising a total of 7,086 ac (2,868 ha) of land considered essential to the conservation of *N. fossalis.* These 6 units and 24 subunits match the units and subunits in the 2005 critical habitat to the extent that the subunits overlap and match the management areas described in the 1998 Recovery Plan. In 2005 we identified 18,747 ac (7,587 ha) of land containing features essential to the conservation of *N. fossalis* that we did not designate as critical habitat. The lands were either exempt from critical habitat under section 4(a)(3)(B) of the Act or we excluded them under section 4(b)(2) of the Act. In this proposed revised rule, 2 subunits on MCB Camp Pendleton (145 ac (59 ha)) and MCAS Miramar (69 ac (28 ha)) are exempt under section 4(a)(3)(B) of the Act. We are also considering excluding certain areas under section 4(b)(2) of the Act from the final designation. Specifically, we are requesting public comment on the potential exclusion of 5,675 ac (2,296 ha) covered by the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP), 3 ac (1 ha) covered by the Carlsbad Habitat Management Plan (HMP) under the San Diego Multiple Habitat Conservation Plan (MHCP), and 86 ac (35 ha) covered by the County of San Diego under the San Diego Multiple Species Conservation Plan (MSCP).

In Table 2 below, we provide a comparison between the 2005 final critical habitat designation and this proposed revised critical habitat rule. The table identifies the change in area for each subunit in the 2005 critical habitat designation and our new areas for units and subunits in this proposed revised critical habitat designation. Some areas designated in the 2005 rule are not proposed as critical habitat because they do not meet the criteria we are using to designate critical habitat (See Table 2). Additionally, there are areas being proposed as critical habitat that were not considered in the 2005 final critical habitat because we have determined that these areas contain features essential for the conservation of *Navarretia fossalis.*

TABLE 2—A COMPARISON OF THE AREAS IDENTIFIED AS CONTAINING FEATURES ESSENTIAL TO THE CONSERVATION OF *Navarretia fossalis* IN THE 2005 FINAL CRITICAL HABITAT DESIGNATION AND THIS PROPOSED REVISED CRITICAL HABITAT DESIGNATION

Location*	2005 Final critical habitat		2009 Proposed revised critical habitat		Difference (2009 minus 2005)
	Subunit	Area containing essential features	Subunit	Area containing essential features	Area
Unit 1: Los Angeles Basin-Orange Management Area					
Cruzan Mesa	1A	294 ac (119 ha)	1A	129 ac (52 ha)	−165 ac (−67 ha).
Plum Canyon	1B	32 ac (13 ha)	1B	32 ac (13 ha)	0 ac (0 ha).
Unit 2: San Diego: Northern Coastal Mesa Management Area					
MCB Camp Pendleton	4(a)(3) exemption	67 ac (27 ha)	4(a)(3) exemption	145 ac (59 ha)	78 ac (32 ha).
Poinsettia Lane Commuter Station	2; partially excluded under section 4(b)(2).	22 ac (9 ha)	2	9 ac (4 ha)	−13 ac (−5 ha).
Unit 3: San Diego: Central Coastal Mesa Management Area					
Santa Fe Valley	Proposed as Unit 3, but determined not essential.		Not proposed		
Santa Fe Valley (Crosby Estates)			3A	5 ac (2 ha)	5 ac (2 ha).
Carroll Canyon			3B	20 ac (8 ha)	20 ac (8 ha).
Nobel Drive			3C	37 ac (15 ha)	37 ac (15 ha).
MCAS Miramar	4(a)(3) exemption	61 ac (25 ha)	4(a)(3) exemption	69 ac (28 ha)	8 ac (3 ha).
Montgomery Field	Excluded under section 4(b)(2).	38 ac (16 ha)	3D	48 ac (20 ha)	10 ac (4 ha).
Unit 4: San Diego: Inland Management Area					
San Marcos (Upham)	4C1	34 ac (14 ha)	4C1	34 ac (14 ha)	0.
San Marcos (Universal Boot)	4C2	32 ac (13 ha)	4C2	32 ac (13 ha)	0.
San Marcos (Bent Avenue)	4D	7 ac (3 ha)	4D	5 ac (2 ha)	−2 ac (−1 ha).
Ramona	4E	86 ac (35 ha)	4E	135 ac (55 ha)	49 ac (20 ha).
Unit 5: San Diego: Southern Coastal Mesa Management Area					
Sweetwater Vernal Pools (S1–3)	5A; partially excluded under section 4(b)(2).	163 ac (66 ha)	5A	95 ac (38 ha)	−68 ac (−27 ha).
Otay River Valley (K1 and K2)	Excluded under section 4(b)(2).	57 ac (23 ha)	Not proposed, determined not essential.		−57 ac (−23 ha).
Otay River Valley (M2)	5B and excluded under section 4(b)(2).	109 ac (44 ha)	5B	24 ac (10 ha)	−85 ac (−34 ha).
Otay Mesa (J26)	5C and excluded under section 4(b)(2).	19 ac (8 ha)	Not proposed, determined not essential.		−19 ac (−8 ha).
Arnie's Point	Proposed as Subunit 5D, but determined not essential.		Not proposed		
Proctor Valley (R1–2)			5F	88 ac (36 ha)	88 ac (36 ha).
Otay Lakes (K3–5)			5G	140 ac (57 ha)	140 ac (57 ha).
Western Otay Mesa vernal pool complexes.	Excluded under section 4(b)(2).	117 ac (47 ha)	5H	143 ac (58ha)	26 ac (11 ha).
Eastern Otay Mesa vernal pool complexes.	Excluded under section 4(b)(2).	277 ac (112 ha)	5I	221 ac (89 ha)	−56 ac (−23 ha).
Unit 6: Riverside Management Area					
San Jacinto River	Excluded under section 4(b)(2).	10,774 ac (4,360 ha).	6A	3,550 ac (1,437 ha).	−7,224 ac (−2,924 ha).
Salt Creek Seasonally Flooded Alkali Plain.	Excluded under section 4(b)(2).	2,233 ac (904 ha)	6B	1,054 ac (427 ha)	−1,179 ac (−477 ha).
Wickerd Road and Scott Road Pools	Excluded under section 4(b)(2).	275 ac (111 ha)	6C	205 ac (83 ha)	−70 ac (−28 ha).

TABLE 2—A COMPARISON OF THE AREAS IDENTIFIED AS CONTAINING FEATURES ESSENTIAL TO THE CONSERVATION OF *Navarretia fossalis* IN THE 2005 FINAL CRITICAL HABITAT DESIGNATION AND THIS PROPOSED REVISED CRITICAL HABITAT DESIGNATION—Continued

Location*	2005 Final critical habitat		2009 Proposed revised critical habitat		Difference (2009 minus 2005)
	Subunit	Area containing essential features	Subunit	Area containing essential features	Area
Skunk Hollow	Excluded under section 4(b)(2).	306 ac (124 ha)	6D	158 ac (64 ha)	−148 ac (−60 ha).
Mesa de Burro	Excluded under section 4(b)(2).	4,396 ac (1,779 ha).	6E	708 ac (287 ha)	−3,688 ac (−1,493 ha).
Total Area Essential for the Conservation of *Navarretia fossalis*.		19,399 ac (7,851 ha).		7,086 ac (2,868 ha).	−12,313 ac (−4,983 ha).**

*This table does not include all locations that are occupied by *Navarretia fossalis*. It includes only those locations that were designated as critical habitat in 2005 or proposed as critical habitat in this rule.
**Values in this table may not sum due to rounding.

(6) Following is a list of the areas reduced or enlarged in this proposed revision to critical habitat designation, or eliminated from the 2005 final critical habitat designation, and an explanation of why these areas are no longer considered to contain the PCEs in the appropriate spatial arrangement and quantity essential to the conservation of *Navarretia fossalis.*

(a) Cruzan Mesa—The habitat identified as essential to the conservation of *N. fossalis* on Cruzan Mesa in 2005 included the areas on top of this mesa where occurrences of *N. fossalis* had been found. The slopes of the mesa were also included due to the gridding technique that was used to describe critical habitat in the 2005 final rule. Because the mesa slopes do not contribute to the watershed of the vernal pools on Cruzan Mesa occupied by *N. fossalis,* they were removed. This area was reduced by 165 ac (67 ha).

(b) Poinsettia Lane Commuter Station—The habitat identified as essential to the conservation of *N. fossalis* at the Poinsettia Lane Commuter Station in 2005 included several vernal pools where occurrences of *N. fossalis* had been found. Due to the base map layer and the coarseness of the gridding techniques used in the 2005 final rule, some of the area designated as critical habitat consisted of developed residential lots and some of the area was on the west side of the railroad tracks where *N. fossalis* has not been found. These areas do not contribute to the watershed of the vernal pools at the Poinsettia Lane Commuter Station and were removed. In some places the boundary of this proposed subunit includes lands that were not mapped in 2005 due to our change in mapping methodology to better capture the watershed for these vernal pools. This area was reduced by 13 ac (5 ha).

(c) San Marcos (Bent Avenue)—The habitat identified as essential to the conservation of *N. fossalis* in San Marcos in 2005 included several vernal pools where occurrences of *N. fossalis* had been found. In the 2005 final rule, we were unaware that the designated critical habitat included developed areas. These areas do not contribute to the watershed of the vernal pools in San Marcos and were removed. This area was reduced by 2 ac (1 ha).

(d) Ramona—The habitat identified as essential to the conservation of *N. fossalis* in Ramona in the 2005 final rule captured the vernal pools where *N. fossalis* had been found, but did not capture the associated watershed area. In some places, the boundary of this proposed subunit includes lands that were not mapped in 2005 due to our change in mapping methodology to better capture the watershed for the vernal pools in this area. This area was enlarged by 49 ac (20 ha).

(e) Montgomery Field—The habitat identified as essential to the conservation of *N. fossalis* at Montgomery Field in the 2005 final rule did not capture all of the vernal pool and associated watershed area essential for the conservation of *N. fossalis.* In some places, the boundary of this proposed subunit includes lands that were not mapped in 2005 due to our change in mapping methodology to better capture the vernal pools and watershed area in this subunit. This area was enlarged by 10 ac (4 ha).

(f) Sweetwater Vernal Pools—The habitat identified as essential to the conservation of *N. fossalis* at the Sweetwater Vernal Pools in the 2005 final rule included several vernal pools where occurrences of *N. fossalis* had been found. Due to the coarseness of the gridding technique used in the 2005 final rule, the lands designated included areas that actually slope away from the vernal pools. These areas do not contribute to the watershed of the Sweetwater vernal pools and were removed. This area was reduced by 68 ac (27 ha).

(g) Otay River Valley (K1 and EO 10)—The habitat identified as essential to the conservation of *N. fossalis* in the Otay River Valley at the K1 and K2 vernal pool complexes are not known to support *N. fossalis* at this time. We have no data that indicates *N. fossalis* occurred in the K1 vernal pool complex. *Navarretia fossalis* was last reported in the Otay River Valley at CNDDB EO 10 in 1981. At this time, we do not believe that the unoccupied habitat in the Otay River Valley is essential for the conservation of *N. fossalis.* More occupied habitat exists for *N. fossalis* than we were aware of when the 1998 Recovery Plan was written and we believe that the species can be recovered with the management and protection of habitat that is currently occupied. We removed 57 ac (23 ha) in the Otay River Valley.

(h) Otay River Valley (M2)—The habitat identified as essential to the conservation of *N. fossalis* in the Otay River Valley in 2005 included several vernal pools where occurrences of *N. fossalis* had been found. Due to the coarseness of the gridding technique in the 2005 final rule, the lands designated included areas that actually slope away from the vernal pools. These areas do not contribute to the watershed of the vernal pools in the Otay River Valley and were removed. This area was reduced by 85 ac (34 ha).

(i) Otay Mesa (J26)—The habitat identified as essential to the conservation of *N. fossalis* on Otay Mesa at the J26 vernal pool complex is not known to support an occurrence of *N. fossalis* at this time, and we have no data that indicates *N. fossalis* ever occurred in the J26 vernal pool

complex. Surveys of the area conducted by the City of San Diego in 2003 did not locate *N. fossalis* in the J26 vernal pool complex. The 1998 Recovery Plan indicated the J26 vernal pool complex is important for the stabilization of *N. fossalis* as a species. However, at this time, we do not believe that the unoccupied habitat at the J26 vernal pool complex in Otay Mesa is essential for the conservation of *N. fossalis.* More occupied habitat for this species exists than we were aware of when the 1998 Recovery Plan was written and we believe that *N. fossalis* can be recovered with the management and protection of habitat that is currently occupied. We removed 19 ac (8 ha) at the J26 vernal pool complex.

(j) Western Otay Mesa vernal pool complexes—The habitat identified as essential to the conservation of *N. fossalis* within the Western Otay Mesa vernal pool complexes in 2005 included several vernal pools where occurrences of *N. fossalis* had been found. Due to the coarseness of the gridding technique used in the 2005 final rule, the lands designated included areas that actually slope away from the vernal pools. These areas do not contribute to the watershed of the vernal pools within the Western Otay Mesa vernal pool complexes and were removed. There are also additional areas that provide habitat for *N. fossalis* that were not included in the 2005 final rule. These areas meet our criteria for critical habitat as described in this proposed revised critical habitat and have been included. In some places, the boundary of this proposed subunit includes essential habitat that was not mapped in 2005. When our mapping methods changed, we used more detailed maps to ensure that all vernal pool complexes occupied by *N. fossalis* were accurately mapped. Overall, this area was enlarged by 26 ac (11 ha).

(k) Eastern Otay Mesa vernal pool complexes—The habitat identified as essential to the conservation of *N. fossalis* within the Eastern Otay Mesa vernal pool complexes in 2005 included several vernal pools where occurrences of *N. fossalis* had been found. Due to the coarseness of the gridding technique used to describe critical habitat in the 2005 final rule, the lands designated included areas that actually slope away from the vernal pools. These areas do not contribute to the conservation of *N. fossalis* within the Eastern Otay Mesa vernal pool complexes and were removed. There are also additional areas that provide habitat for *N. fossalis* that were not included in the 2005 final rule. These areas meet our criteria for critical habitat as described in this proposed revised critical habitat and have been included. In some places, the boundary of this proposed subunit includes lands that were not mapped in 2005. When our mapping methods changed, we used more detailed maps to ensure that all vernal pool complexes occupied by *N. fossalis* were accurately mapped. Overall, this area was reduced by 57 ac (23 ha).

(l) San Jacinto River—The habitat identified as essential to the conservation of *N. fossalis* along the San Jacinto River in 2005 included a large area north of the habitat known to support occurrences of *N. fossalis.* This area is referred to as Mystic Lake. It is an ephemeral lake bed that only fills during years of high rainfall. Mystic Lake may help create conditions that result in the appropriate habitat for *N. fossalis* to the south (downstream). However, based on the best available data, we do not believe that this area provides an essential contribution to the viability of the occurrences of *N. fossalis* along the San Jacinto River. In this proposed revised rule we have identified the ephemeral wetland habitat that supports occurrences of *N. fossalis* and local associated watershed areas as PCEs. The Mystic Lake area included in the 2005 critical habitat rule does not constitute part of the local associated watershed area for the San Jacinto River occurrences as defined in this proposed revised rule. Although the Mystic Lake area may contribute to conservation of *N. fossalis* in a general sense, it is not occupied by the species and we do not consider it to be essential to the conservation of the species. In addition to the removal of the Mystic Lake area, some habitat on the outer edges of the San Jacinto River flood plain were removed from critical habitat because they do not contain the physical and biological features that are essential to the conservation of this species. This area was reduced by 7,224 ac (2,924 ha).

(m) Salt Creek Seasonally Flooded Alkali Plain—The habitat identified as essential to the conservation of *N. fossalis* at the Salt Creek Seasonally Flooded Alkali Plain in 2005 included a large area to the west that is outside of the local watershed for this vernal pool complex. Upon closer examination of USGS 1:24,000 scale topographic maps, we determined that some areas identified in the 2005 rule as essential to the conservation of *N. fossalis* do not fall within the local watershed of this vernal pool complex. Impacts originating from these more distant watershed areas could affect the vernal pool complex, but we do not believe that these areas contain essential physical and biological features or are otherwise essential to the conservation of this species in the Salt Creek Seasonally Flooded Alkali Plain. This area was reduced by 1,179 ac (477 ha).

(n) Wickerd Road and Scott Road Pools—The habitat identified as essential to the conservation of *N. fossalis* at the Wickerd Road and Scott Road Pools in 2005 included two vernal pools where occurrences of *N. fossalis* had been found. Due to the coarseness of the gridding technique that was used to describe critical habitat in the 2005 final rule, some of the areas consisted of developed residential lots. These areas do not contribute to the watershed of the vernal pools at Wickerd Road and Scott Road Pools and were removed. In some places the boundary of this proposed subunit includes lands that were not mapped in 2005 due to our change in mapping methodology to better capture the watershed for these two pools. This area was reduced by 70 ac (28 ha).

(o) Skunk Hollow—The habitat identified as essential to the conservation of *N. fossalis* at Skunk Hollow in 2005 included two vernal pools where occurrences of *N. fossalis* had been found. Due to the coarseness of the gridding technique that was used to describe critical habitat in the 2005 final rule, some of the areas designated consisted of developed residential lots. There were also some areas included that slope away from the vernal pools. These areas do not contribute to the watershed of the vernal pools at Skunk Hollow and were removed. In some places, the boundary of this proposed subunit includes lands that were not mapped in 2005 due to our change in mapping methodology to better capture the watershed for these two pools. This area was reduced by 148 ac (60 ha).

(p) Santa Rosa Plateau (Renamed ''Mesa de Burro'' in this revised proposed critical habitat rule)—The habitat identified as essential to the conservation of *N. fossalis* on the Santa Rosa Plateau in the 2005 rule included the entire plateau area (i.e., flat table-like geological formations), which contains three distinct plateaus. Upon further review, we found that *N. fossalis* only occurs on one of the plateaus: Mesa de Burro. We determined that only the Mesa de Burro plateau contains the physical and biological features essential to the conservation of this species. The other areas on the Santa Rosa Plateau are not known to support *N. fossalis* and are not hydrologically connected to Mesa de Burro, and therefore are not essential to the conservation of *N. fossalis.* This area was reduced by 3,688 ac (1,493 ha).

(7) The following areas we consider to contain features essential to the conservation of the species have been added to this proposed revised critical habitat, but were not considered essential to the conservation of *Navarretia fossalis* in the 2005 final critical habitat designation: Santa Fe Valley (Crosby Estates); Carroll Canyon; Nobel Drive; Proctor Valley; and Otay Lakes. We have added a total of 290 ac (117 ha) of proposed critical habitat in these five new subunits. An explanation of how the added areas contribute to the conservation of *N. fossalis* is provided below in the ''Proposed Revised Critical Habitat Designation'' section.

Proposed Revised Critical Habitat Designation

We are proposing 6 units that include 22 subunits as critical habitat for *Navarretia fossalis.* The critical habitat areas we describe below, which include the 22 subunits we are proposing as critical habitat but not the 2 subunits that are exempt from critical habitat, constitute our best assessment at this time of areas that meet the definition of critical habitat for *N. fossalis.* Table 3 identifies the approximate area of each proposed critical habitat subunit by landownership. These subunits, which generally correspond to the geographic area of the subunits delineated in the 2005 designation (see Table 2 for a detailed comparison of this proposed rule and the 2005 designation), if finalized, will replace the current critical habitat designation for *N. fossalis* in 50 CFR 17.96(a). The critical habitat areas we describe below constitute our best assessment of areas determined to be occupied at the time of listing that contain the primary constituent elements with the appropriate spatial arrangement and quantity (i.e., essential features) that may require special management considerations or protection. We are not proposing any unoccupied areas or areas outside of the species' historical range because we determined that occupied lands within the species' historical range are sufficient for the conservation of *N. fossalis,* providing that these lands are protected and receive special management considerations for *N. fossalis.*

TABLE 3—AREA ESTIMATES (ACRES (AC) HECTARES (HA)) AND LAND OWNERSHIP FOR *Navarretia fossalis* PROPOSED REVISED CRITICAL HABITAT

Location	Federal	State government	Local government	Private	Total
Unit 1: Los Angeles Basin-Orange Management Area					
1A. Cruzan Mesa				129 ac (52 ha)	129 ac (52 ha).
1B. Plum Canyon				32 ac (13 ha)	32 ac (13 ha).
Unit 2: San Diego: Northern Coastal Mesa Management Area					
MCB Camp Pendleton	4(a)3 exemption*				4(a)3 exemption.*
2. Poinsettia Lane Commuter Station			6 ac (2 ha)	3 ac (1 ha)	9 ac (4 ha).
Unit 3: San Diego: Central Coastal Mesa Management Area					
3A. Santa Fe Valley (Crosby Estates)				5 ac (2 ha)	5 ac (2 ha).
3B. Carroll Canyon			16 ac (7 ha)	3 ac (1 ha)	20 ac (8 ha).
3C. Nobel Drive			37 ac (15 ha)		37 ac (15 ha).
MCAS Miramar	4(a)3 exemption*				4(a)3 exemption.*
3D. Montgomery Field			48 ac (20 ha)		48 ac (20 ha).
Unit 4: San Diego: Inland Management Area					
4C1. San Marcos (Upham)				34 ac (14 ha)	34 ac (14 ha).
4C2. San Marcos (Universal Boot)			15 ac (6 ha)	17 ac (7 ha)	32 ac (13 ha).
4D. San Marcos (Bent Avenue)				5 ac (2 ha)	5 ac (2 ha).
4E. Ramona			3 ac (1 ha)	132 ac (53 ha)	135 ac (55 ha).
Unit 5: San Diego: Southern Coastal Mesa Management Area					
5A. Sweetwater Vernal Pools (S1–3)	23 ac (9 ha)	1 ac (<1 ha)	71 ac (29 ha)		95 ac (38 ha).
5B. Otay River Valley (M2)				24 ac (10 ha)	24 ac (10 ha).
5F. Proctor Valley (R1–2)			51 ac (21 ha)	37 ac (15 ha)	88 ac (36 ha).
5G. Otay Lakes (K3–5)			140 ac (57 ha)		140 ac (57 ha).
5H. Western Otay Mesa vernal pool complexes.			45 ac (18 ha)	98 ac (40 ha)	143 ac (58 ha).
5I. Eastern Otay Mesa vernal pool complexes.				221 ac (89 ha)	221 ac (89 ha).
Unit 6: Riverside Management Area					
6A. San Jacinto River		1,504 ac (608 ha)		2,046 ac (828 ha)	3,550 ac (1,437 ha).
6B. Salt Creek Seasonally Flooded Alkali Plain.				1,054 ac (427 ha)	1,054 ac (427 ha).
6C. Wickerd Road and Scott Road Pools.				205 ac (83 ha)	205 ac (83 ha).
6D. Skunk Hollow				158 ac (64 ha)	158 ac (64 ha).

TABLE 3—AREA ESTIMATES (ACRES (AC) HECTARES (HA)) AND LAND OWNERSHIP FOR *Navarretia fossalis* PROPOSED REVISED CRITICAL HABITAT—Continued

Location	Federal	State government	Local government	Private	Total
6E. Mesa de Burro		675 ac (273 ha)		32 ac (13 ha)	708 ac (287 ha).
Total	23 ac (9 ha)	2,180 ac (882 ha)	434 ac (176 ha)	4,235 ac (1,714 ha).	6,872 ac (2,781 ha).**

*145 ac (59 ha) of federally owned land on MCB Camp Pendleton and 69 ac (28 ha) of federally owned land MCAS Miramar are exempt from this critical habitat (see ''Exemptions under Section 4(a)(3) of the Act'' section).
**Values in this table may not sum due to rounding.

Critical Habitat Units

Presented below are brief descriptions of all subunits and reasons why they meet the definition of critical habitat for *Navarretia fossalis.* The units in this proposed revised critical habitat correspond to the management areas described in the 1998 Recovery Plan for Vernal Pools of Southern California. Each subunit contains either (1) a core habitat area; or (2) a satellite habitat area that provide connectivity between core habitat areas or other satellite habitat areas that are captured in other subunits. Areas identified as subunits that harbor satellite habitat areas were identified as containing features essential to the conservation of the species (compared to other areas not identified as essential habitat) due to a combination of their geographic proximity to core habitat areas, their status as an area that supports a stable occurrence (representing occurrences that continue to persist within a given geographic area), and the likelihood that these particular habitat areas support genetically unique occurrences. Other areas not chosen as satellite areas/subunits include occurrences that are represented by one or more of the following characteristics: small population size, no detailed information on occurrence, lack of observations during recent surveys, locations not identified in the Recovery Plan, or areas that have low likelihood of persistence due to fragmentation or enclosure by developed areas, resulting in unstable occurrences.

Unit 1: Los Angeles Basin—Orange Management Area

Unit 1 is located in northwestern Los Angeles County and consists of two subunits totaling 161 ac (65 ha) of private land.

Subunit 1A: Cruzan Mesa

Subunit 1A is located near the City of Santa Clarita in Los Angeles County, California. This subunit is on Cruzan Mesa, northwest of Forest Park and the Sierra Highway and southwest of Vasquez Canyon Road. Subunit 1A consists of 129 ac (52 ha) of private land and meets our selection criteria as satellite habitat. Cruzan Mesa is one of the only areas in Los Angeles County that supports mesa-top vernal pools. As satellite habitat, this subunit supports a stable occurrence of *Navarretia fossalis,* provides potential connectivity with Subunit 1B, and likely supports a genetically distinct occurrence because of the separation of these two northern occurrences from other occurrences of *N. fossalis.* This subunit and subunit 1B (described below) represent the most northern occurrences of this species. Subunit 1A contains physical and biological features that are essential to the conservation of *N. fossalis,* including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species and activities (e.g., mowing, grading) that occur in the vernal pool basins. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations.

Subunit 1B: Plum Canyon

Subunit 1B is located near the City of Santa Clarita in Los Angeles County, California. This subunit is in Plum Canyon, west of Forest Park and the Sierra Highway and north of Plum Canyon Road. Subunit 1B consists of 32 ac (13 ha) of private land and meets our selection criteria as satellite habitat. As satellite habitat, this subunit supports a stable occurrence of *Navarretia fossalis,* provides potential connectivity with Subunit 1A, and likely supports a genetically distinct occurrence because of the separation of these two northern occurrences from other occurrences of *N. fossalis.* The Plum Canyon vernal pool habitat occurs on a flat area downslope from the vernal pools on Cruzan Mesa. The vernal pools on Cruzan Mesa (Subunit 1A) and Plum Canyon represent the only habitat for *N. fossalis* in Los Angeles County and the most northern occurrences of this species. Subunit 1B contains physical and biological features that are essential to the conservation of *N. fossalis,* including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species within this subunit. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations.

Unit 2: San Diego—Northern Coastal Mesa Management Area

Unit 2 is located in Northern Coastal San Diego County and consists of one subunit totaling 9 ac (4 ha), as well as, the exempt areas on MCB Camp Pendleton. This unit contains 6 ac (3 ha) owned by the North County Transit District, and 3 ac (1 ha) of private land. MCB Camp Pendleton is exempt in this revised critical habitat designation for *Navarretia fossalis* under section 4(a)(3)(B) of the Act because the 2007 Integrated Natural Resources Management Plan (INRMP) for MCB Camp Pendleton provides a benefit to *N. fossalis* (see the ''Exemptions under Section 4(a)(3) of the Act'' section of this proposed rule for a detailed discussion).

Unit 2: Poinsettia Lane Commuter Station

Unit 2 is located adjacent to the City of Carlsbad in San Diego County, California. This subunit is loosely

bounded by Avenida Encinas on the north, a housing development on the east, Poinsettia Lane on the south, and train tracks on the west. Unit 2 consists of approximately 9 ac (4 ha) that includes 6 ac (2 ha) of land owned by State or local governments and 3 ac (1 ha) of private land. Unit 2 meets our selection criteria as satellite habitat. As satellite habitat, this subunit supports a stable occurrence of *Navarretia fossalis* and provides potential connectivity between occurrences of *N. fossalis* on MCB Camp Pendleton and in Subunits 4C1, 4C2, and 4D. The Poinsettia Lane vernal pool complex consists of a series of vernal pools that run parallel to the berm created by the train tracks. Unit 2 contains the physical and biological features that are essential to the conservation of *N. fossalis* including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species and activities (e.g., unauthorized recreational use) that occur in the vernal pool basins. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations. We are considering this subunit for exclusion under 4(b)(2) of the Act; please see the ''Proposed Exclusions under Section 4(b)(2) of the Act'' section of this proposed rule for more information.

Unit 3: San Diego: Central Coastal Mesa Management Area

Unit 3 is located in Central Coastal San Diego County and consists of four subunits totaling 110 ac (45 ha), as well as the exempt lands on MCAS Miramar. This unit contains 102 ac (42 ha) owned by State and local governments, and 8 ac (3 ha) of private land. MCAS Miramar is exempt in this proposed revised critical habitat designation for *Navarretia fossalis* under section 4(a)(3)(B) of the Act, because the 2006 INRMP for MCAS Miramar provides a benefit to *N. fossalis* (see the ''Exemptions under Section 4(a)(3) of the Act'' section of this proposed rule for a detailed discussion).

Subunit 3A: Santa Fe Valley: Crosby Estates

Subunit 3A is located southwest of Lake Hodges and east of the unincorporated community of Rancho Santa Fe. This subunit is loosely bounded by a driving range to the north and northwest, High Society Way on the east and southeast, and Country Girl Lane on the southwest. Subunit 3A consists of 5 ac (2 ha) of private land and meets our selection criteria as satellite habitat. As satellite habitat, this subunit supports a stable occurrence of *Navarretia fossalis* and provides potential connectivity between occurrences of *N. fossalis* in San Marcos and in Subunit 3B. The Crosby Estates vernal pool complex consists of a series of vernal pools on a flat area 150 ft (46 m) above the San Dieguito River. This vernal pool complex occurred naturally, but it had been degraded by past agricultural activities. It was restored as to its current condition when the adjacent area was developed. Subunit 3A contains physical and biological features that are essential to the conservation of *N. fossalis,* including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species that occur in the vernal pool basins. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations. We are considering this subunit for exclusion under 4(b)(2) of the Act; please see the ''Proposed Exclusions under Section 4(b)(2) of the Act'' section of this proposed rule for more information.

Subunit 3B: Carroll Canyon

Subunit 3B is located in the City of San Diego in San Diego County, California. This subunit is located to the southwest of the intersection of Parkdale Avenue and Osgood Way, and is loosely bounded by residential development on the north, open space to the east, and a quarry to the south and west. Subunit 3B consists of approximately 20 ac (8 ha) that includes 17 ac (7 ha) of land owned by State or local governments and 3 ac (1 ha) of private land. Subunit 3B meets our selection criteria as satellite habitat. As satellite habitat, this subunit supports a stable occurrence of *Navarretia fossalis* and provides potential connectivity between occurrences of *N. fossalis* in Subunits 3A and 3C. The Carroll Canyon vernal pool complex consists of a group of vernal pools on the edge of a mesa north of Carroll Canyon. Historically, there may have been more habitat for this species in this area; however, the majority of vernal pool habitat in the vicinity of this subunit has been developed. Subunit 3B contains the physical and biological features that are essential to the conservation of *N. fossalis,* including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species and activities (e.g., trespass, illegal trash dumping) that occur in the vernal pool basins. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations.

Subunit 3C: Nobel Drive

Subunit 3C is located in the City of San Diego in San Diego County, California. This subunit is loosely bounded by the 805 interstate on the northeast, the train tracks on the south, and Nobel Drive on the northwest. Subunit 3C consists of 37 ac (15 ha) of land owned by State or local governments and meets our selection criteria as satellite habitat. As satellite habitat, this subunit supports a stable occurrence of *Navarretia fossalis* and provides potential connectivity between occurrences of *N. fossalis* in Subunits 3B and 3D. The Nobel Drive vernal pool complex consists of a group of vernal pools on a mesa-top north of Rose Canyon. Subunit 3C contains the physical and biological features that are essential to the conservation of *N. fossalis,* including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species and activities

(e.g., unauthorized recreational use) that occur in the vernal pool basins. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations.

Subunit 3D: Montgomery Field

Subunit 3D is located in the City of San Diego in San Diego County, California. This subunit is located at Montgomery Field (airport) to the northeast of the runway area. Subunit 3D consists of 48 ac (20 ha) of land owned by the City of San Diego and meets our selection criteria as satellite habitat. As satellite habitat, this subunit supports a stable occurrence of *Navarretia fossalis* and provides potential connectivity with the occurrence of *N. fossalis* in Subunit 3C. The Montgomery Field vernal pool complex consists of a large group of vernal pools east of the runway area at Montgomery Field, although only the northeastern portion of this vernal pool complex is being proposed as critical habitat. *Navarretia fossalis* has not been documented in the southeastern portion of this vernal pool complex. The northeastern portion and southeastern portion of this vernal pool complex are hydrologically disconnected by past development of the area. Subunit 3D contains the physical and biological features that are essential to the conservation of *N. fossalis,* including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species that occur in the vernal pool basins. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations.

Unit 4: San Diego: Inland Management Area

Unit 4 is located in Inland San Diego County and consists of four subunits totaling 206 ac (83 ha). This unit contains 15 ac (6 ha) owned by State and local governments, and 191 ac (77 ha) of private land.

Subunits 4C1, 4C2, and 4D: San Marcos

Subunits 4C1, 4C2, and 4D are located in the City of San Marcos in San Diego County, California. These three subunits consist of three separate vernal pool complexes. The first (Subunit 4C1) is loosely bounded by La Mirada Drive on the northeast, Las Posas Road on the southeast, Linda Vista Drive on the southwest, and South Pacific Street on the northwest. The second (Subunit 4C2) is loosely bounded by Linda Vista Drive on the northeast, Las Posas Road on the east, West San Marcos Boulevard on the south, and South Pacific Street on the west. The third (Subunit 4D) is loosely bounded by South Bent Avenue on the northeast, commercial development on the southeast and southwest, and Linda Vista Drive on the northwest. Subunit 4C1 consists of 34 ac (14 ha) of private land, Subunit 4C2 consists of 15 ac (6 ha) of land owned by local government and 17 ac (7 ha) of private land, and Subunit 4D consists of 5 ac (2 ha) of private land. These three subunits meet our selection criteria as satellite habitat areas because they support stable occurrences of *Navarretia fossalis* and provide potential connectivity between occurrences of *N. fossalis* in Unit 2 and Subunit 4E. We grouped these vernal pool complexes because of the clustered nature of these occurrences. These subunits have separate subunit numbers to be consistent with the numbering identified in the previous critical habitat designation. Subunits 4C1, 4C2, and 4D contain the physical and biological features that are essential to the conservation of *N. fossalis,* including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in these subunits may require special management considerations or protection to address threats from nonnative plant species and activities (e.g., commercial development, trespass, off-road vehicle use) that occur in the vernal pool basins. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations.

Subunit 4E: Ramona

Subunit 4E is located in the unincorporated community of Ramona. This subunit is loosely bounded by the Ramona Airport and Ramona Airport Road on the north, Sawday Road on the east, Santa Maria Creek on the south, and a series of rock outcrops on the west. Subunit 4E consists of approximately 135 ac (55 ha) that includes 3 ac (1 ha) of land owned by State or local governments and 132 ac (53 ha) of private land. Subunit 4E meets our selection criteria as satellite habitat. As satellite habitat, this subunit supports a stable occurrence of *Navarretia fossalis* and provides potential connectivity with occurrences of *N. fossalis* in Subunits 4C1, 4C2, and 4D. The vernal pools in this subunit occur in gently sloping grassland habitat and are at the highest elevation where *N. fossalis* is known to occur. Subunit 4E contains the physical and biological features that are essential to the conservation of *N. fossalis,* including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species and activities (e.g., agricultural activities, recreational use) that occur in the vernal pool basins. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations.

Unit 5: San Diego: Southern Coastal Mesa Management Area

Unit 5 is located in Southern San Diego County and consists of six subunits totaling 711 ac (288 ha). This unit contains 23 ac (9 ha) of federally owned land, 308 ac (124 ha) of land owned by State and local governments, and 380 ac (154 ha) of private land.

Subunit 5A: Sweetwater Vernal Pools

Subunit 5A is located southwest of the Sweetwater Reservoir. This subunit is loosely bounded by the Sweetwater Reservoir on the north, steeply sloping topography on the east, State Route 125 on the south, and an unnamed drainage on the west. Subunit 5A consists of approximately 95 ac (38 ha) and includes 23 ac (9 ha) of Federal land that is part of the San Diego National Wildlife Refuge Complex and 72 ac (29 ha) of land owned by State or local governments and meets our selection criteria as satellite habitat. This satellite habitat subunit supports a stable occurrence of *Navarretia fossalis* and provides potential connectivity between occurrences of *N. fossalis* in Subunits 5B and 5F. Some of the area occupied by *N. fossalis* was lost during the construction of State Route 125. The soil

from that area was salvaged and is being used to restore other vernal pools in this subunit. Subunit 5A contains the physical and biological features that are essential to the conservation of *N. fossalis,* including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species and activities (e.g., unauthorized recreational use) that occur in the vernal pool basins. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations.

Subunit 5B: Otay River Valley

Subunit 5B is located adjacent to the City of Chula Vista in San Diego County, California. This subunit is loosely bounded by Olympic Parkway on the north, a housing development on the east, and a landfill to the southwest. Subunit 5B consists of 24 ac (10 ha) of private land and meets our selection criteria as satellite habitat, which supports a stable occurrence of *Navarretia fossalis* and provides potential connectivity between occurrences of *N. fossalis* in Subunits 5A and 5H. Subunit 5B contains the physical and biological features that are essential to the conservation of *N. fossalis,* including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species and activities (e.g., unauthorized recreational use) that occur in the vernal pool basins. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations. We are considering the portion of this subunit covered by the County of San Diego Subarea Plan under the MSCP for exclusion under 4(b)(2) of the Act; please see the ''Proposed Exclusions under Section 4(b)(2) of the Act'' section of this proposed rule for more information.

Subunit 5F: Proctor Valley

Subunit 5F is located between the unincorporated communities of Eastlake and Jamul in San Diego County, California. This subunit is located along Proctor Valley Road in Proctor Valley. Subunit 5F consists of approximately 88 ac (36 ha) and includes 51 ac (21 ha) of land owned by the City of San Diego and 37 ac (15 ha) of private land. Subunit 5F meets our selection criteria as satellite habitat, which supports a stable occurrence of *Navarretia fossalis* and provides potential connectivity between occurrences of *N. fossalis* in Subunits 5A and 5G. The vernal pools in this subunit occur in Proctor Valley on a flat area that is slightly elevated from the stream channel that runs through this valley. The vernal pools in this subunit to the west of Proctor Valley Road have been severely impacted by off-road vehicle use, but the vernal pools to the east of Proctor Valley road have remained relatively intact. Subunit 5F contains the physical and biological features that are essential to the conservation of *N. fossalis,* including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species and activities (e.g., unauthorized recreational use, off-road vehicle use) that occur in the vernal pool basins. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations. We are considering the portion of this subunit covered by the County of San Diego Subarea Plan under the MSCP for exclusion under 4(b)(2) of the Act; please see the ''Proposed Exclusions under Section 4(b)(2) of the Act'' section of this proposed rule for more information.

Subunit 5G: Otay Lakes

Subunit 5G is located east of the City of Chula Vista in San Diego County, California. This subunit is loosely bounded by Lower Otay Reservoir to the north and west and by the slopes of Otay Mountain to the southeast. Subunit 5G consists of 140 ac (57 ha) of land owned by State or local governments and meets our selection criteria as satellite habitat because this location supports a stable occurrence of *Navarretia fossalis* and provides potential connectivity between occurrences of *N. fossalis* in Subunits 5F and 5I. The vernal pool complexes in this subunit are located on the flat areas to the south of Lower Otay Reservoir. Subunit 5G contains the physical and biological features that are essential to the conservation of *N. fossalis,* including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species and activities (e.g., unauthorized recreational use) that occur in the vernal pool basins. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations.

Subunit 5H: Western Otay Mesa Vernal Pool Complexes

Subunit 5H is located within the Otay Mesa Community planning area of the City of San Diego in San Diego County, California. Subunit 5H consists of approximately 143 ac (58 ha) that includes 45 ac (18 ha) of land owned by State or local governments and 98 ac (40 ha) of private land. Subunit 5H and Subunit 5I encompass the core habitat on Otay Mesa. As core habitat, this subunit contains a large area of habitat that supports sizable occurrences of *Navarretia fossalis* and provides potential connectivity between occurrences of *N. fossalis* in Subunits 5G and 5I. This subunit contains several mesa-top vernal pool complexes on western Otay Mesa (Bauder vernal pool complexes J 2N, J 2S, J 2W, J 4, J 13N, J 13S, J 14, J 33, J 34 as in Appendix D of City of San Diego, 2004). Subunit 5H contains the physical and biological features that are essential to the conservation of *N. fossalis,* including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species and activities (e.g., unauthorized recreational use,

residential and commercial development) that occur in the vernal pool basins. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations.

Subunit 5I: Eastern Otay Mesa Vernal Pool Complexes

Subunit 5I is located in the City of San Diego in San Diego County, California. This subunit contains several mesa top vernal pool complexes on eastern Otay Mesa. Subunit 5I consists of 220 ac (89 ha) of private land. Subunit 5I along with Subunit 5H encompass the core habitat on Otay Mesa. As core habitat, this subunit contains a large area of habitat that supports sizable occurrences of *Navarretia fossalis* and provides potential connectivity between occurrences of *N. fossalis* in Subunits 5B and 5H. This subunit contains several mesa-top vernal pool complexes on eastern Otay Mesa (Bauder vernal pool complexes J 22, J 29, J 30, J 31N, J 31S as in Appendix D of City of San Diego, 2004 and Service GIS). Subunit 5I contains the physical and biological features that are essential to the conservation of *N. fossalis,* including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species and activities (e.g., unauthorized recreational use, residential and commercial development) that occur in the vernal pool basins. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations. We are considering the portion of this subunit covered by the County of San Diego Subarea Plan under the MSCP for exclusion under 4(b)(2) of the Act; please see the ''Proposed Exclusions Under Section 4(b)(2) of the Act'' section of this proposed rule for more information.

Unit 6: Riverside Management Area

Unit 6 is located in Western Riverside County and consists of five subunits totaling 5,675 ac (2,297 ha). This unit contains 2,179 ac (882 ha) of land owned by the State of California's Department of Fish and Game and 3,496 ac (1,415 ha) of private land.

Subunit 6A: San Jacinto River

Subunit 6A is generally located along the San Jacinto River near the cities of Hemet and Perris in Riverside County, California. This subunit is loosely bounded by Mystic Lake on the northeast and by the Perris Airport in the southwest. Subunit 6A consists of approximately 3,550 ac (1,437 ha), including 1,504 ac (609 ha) of land owned by State or local governments and 2,046 ac (828 ha) of private land. Subunit 6A encompasses the core habitat along the San Jacinto River. As core habitat, this subunit contains a large area of habitat that supports sizable occurrences of *Navarretia fossalis* and provides potential connectivity between occurrences of *N. fossalis* in Subunits 6B and 5C. This subunit consists of seasonally flooded alkali vernal plains that occur along the San Jacinto River. Subunit 6A contains the physical and biological features that are essential to the conservation of *N. fossalis,* including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species and activities (e.g., manure dumping, flood control) that occur in the vernal pool basins. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations. We are considering this subunit for exclusion under 4(b)(2) of the Act; please see the ''Proposed Exclusions Under Section 4(b)(2) of the Act'' section of this proposed rule for more information.

Subunit 6B: Salt Creek Seasonally Flooded Alkali Plain

Subunit 6B is located near the City of Hemet and west of the Hemet-Ryan Airport in Riverside County, California. This subunit is loosely bounded by Devonshire Avenue on the north, Warren Road on the east, the train tracks on the south, and the low-lying hills on the west. Subunit 6B consists of 1,054 ac (427 ha) of private land that encompasses the core habitat along the Upper Salt Creek drainage in western Hemet. As core habitat, this subunit contains a large area of habitat that supports sizable occurrences of *Navarretia fossalis* and provides potential connectivity between occurrences of *N. fossalis* in Subunits 6A and 6C. This subunit consists of seasonally flooded alkali vernal plains. Subunit 6B contains the physical and biological features that are essential to the conservation of *N. fossalis,* including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species and activities (e.g., grazing, flood control, discing for vegetation control) that occur in the vernal pool basins. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations. We are considering this subunit for exclusion under 4(b)(2) of the Act; please see the ''Proposed Exclusions under Section 4(b)(2) of the Act'' section of this proposed rule for more information.

Subunit 6C: Wickerd and Scott Road Pools

Subunit 6C is located in the City of Menifee in Riverside County, California. This subunit is loosely bounded by low-lying hills north of Garbani Road on the north, Briggs Road on the east, Scott Road on the south, and Menifee Road on the west. Subunit 6C consists of 205 ac (83 ha) of private land and meets our selection criteria as satellite habitat because this location supports a stable occurrence of *Navarretia fossalis* and provides potential connectivity between occurrences of *N. fossalis* in Subunits 6A, 6B, and 6D. This subunit consists of two large vernal pools. Subunit 6C contains the physical and biological features that are essential to the conservation of *N. fossalis,* including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species and activities (e.g., residential or agricultural

development, discing for vegetation control, and maintenance of existing pipelines) that occur in the vernal pool basins. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations. We are considering this subunit for exclusion under 4(b)(2) of the Act; please see the ''Proposed Exclusions under Section 4(b)(2) of the Act'' section of this proposed rule for more information.

Subunit 6D: Skunk Hollow

Subunit 6D is located east of the City of Murrieta in Riverside County, California. This subunit is loosely bounded by Browning Street on the north, the edge of an unnamed canyon on the east, Murrieta Hot Springs Road on the south, and Pourroy Avenue on the west. Subunit 6D consists of 158 ac (64 ha) of private land and meets our selection criteria as satellite habitat because this subunit supports a stable occurrence of *Navarretia fossalis* and provides potential connectivity between occurrences of *N. fossalis* in Subunits 6C and 6E. This subunit consists of the large Skunk Hollow vernal pool and a small pool to the east of the Skunk Hollow pool. Subunit 6D contains the physical and biological features that are essential to the conservation of *N. fossalis,* including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species and activities (e.g., unauthorized recreational use) that occur in the vernal pool basins. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations. We are considering this subunit for exclusion under 4(b)(2) of the Act; please see the ''Proposed Exclusions under Section 4(b)(2) of the Act'' section of this proposed rule for more information.

Subunit 6E: Mesa de Burro

Subunit 6E is located west of the City of Murrieta in Riverside County, California. This subunit is on Mesa de Burro within the Santa Rosa Plateau Ecological Reserve. Subunit 6E consists of approximately 708 ac (287 ha), including 676 ac (274 ha) of land owned by State or local governments and 32 ac (13 ha) of private land. Subunit 6E encompasses the core habitat on Mesa de Burro at the Santa Rosa Plateau.

As core habitat, this subunit contains a large area of habitat that supports a sizable occurrence of *Navarretia fossalis* and provides potential connectivity between occurrences of *N. fossalis* on MCB Camp Pendleton and in Subunit 6D. This subunit consists of seasonally flooded alkali vernal plains, including mesa-top vernal pools on volcanic basalt soils. Subunit 6E contains the physical and biological features that are essential to the conservation of *N. fossalis,* including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species and activities (e.g., unauthorized recreational use) that occur in the vernal pool basins. Please see the ''Special Management Considerations or Protection'' section of this proposed rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations. We are considering this subunit for exclusion under 4(b)(2) of the Act; please see the ''Proposed Exclusions under Section 4(b)(2) of the Act'' section of this proposed rule for more information.

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 destroy or adversely modify critical habitat. Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F.3d 1059 (9th Cir 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F.3d 434, 442F (5th Cir 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the PCEs to be functionally established) to serve its intended conservation role for the species (Service 2004a, p. 3).

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)). The conservation recommendations in a conference report or opinion are advisory.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. 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 in most cases. 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 designated critical habitat; or

(2) A biological opinion for Federal actions that are likely to adversely affect listed species or designated critical habitat.

An exception to the concurrence process referred to in (1) above occurs in consultations involving National Fire Plan projects. In 2004, the U.S. Forest Service and the BLM reached agreements with the Service to streamline a portion of the section 7 consultation process (BLM–ACA 2004, pp. 1–8; FS–ACA 2004, pp. 1–8). The agreements allow the U.S. Forest Service and the BLM the opportunity to make ''not likely to adversely affect'' (NLAA) determinations for projects implementing the National Fire Plan.

Such projects include prescribed fire, mechanical fuels treatments (thinning and removal of fuels to prescribed objectives), emergency stabilization, burned area rehabilitation, road maintenance and operation activities, ecosystem restoration, and culvert replacement actions. The U.S. Forest Service and the BLM must ensure staff are properly trained, and both agencies must submit monitoring reports to the Service to determine if the procedures are being implemented properly and that effects on endangered species and their habitats are being properly evaluated. As a result, we do not believe the alternative consultation processes being implemented as a result of the National Fire Plan will differ significantly from those consultations being conducted by the Service.

If we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define ''Reasonable and prudent alternatives'' at 50 CFR 402.02 as alternative actions identified during consultation that:

- Can be implemented in a manner consistent with the intended purpose of the action,
- Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,
- Are economically and technologically feasible, and
- Would, in the Director's opinion, avoid jeopardizing the continued existence of the listed species or destroying or adversely modifying its 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.

When we issue a biological opinion concluding that a project is not likely to jeopardize a listed species or adversely modify its critical habitat but may result in incidental take of listed animals, we provide an incidental take statement that specifies the impact of such incidental taking on the species. We then define ''Reasonable and Prudent Measures'' considered necessary or appropriate to minimize the impact of such taking. Reasonable and prudent measures are binding measures the action agency must implement to receive an exemption to the prohibition against take contained in section 9 of the Act. These reasonable and prudent measures are implemented through specific ''Terms and Conditions'' that must be followed by the action agency or passed along by the action agency as binding conditions to an applicant. Reasonable and prudent measures, along with the terms and conditions that implement them, cannot alter the basic design, location, scope, duration, or timing of the action under consultation and may involve only minor changes (50 CFR 402.14). The Service may provide the action agency with additional conservation recommendations, which are advisory and not intended to carry binding legal force.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Federal activities that may affect *Navarretia fossalis* or its designated critical habitat will require section 7 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 or a permit under section 10(a)(1)(B) of the Act from the Service) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) will also be subject to the section 7 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 consultations.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, or would retain its current ability for the primary constituent elements to be functionally established. Activities that may destroy or adversely modify critical habitat are those that alter the physical and biological features to an extent that appreciably reduces the conservation value of critical habitat for *Navarretia fossalis.* Generally, the conservation role of the *N. fossalis* proposed revised critical habitat units is to support viable occurrences in core habitat areas and satellite habitat areas.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those 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 adversely affect critical habitat and therefore should result in consultation for *Navarretia fossalis* include, but are not limited to, the following:

(1) Actions that would impact the ability of an ephemeral wetland to continue to provide habitat for *Navarretia fossalis* and other native species that require this specialized habitat type. Such activities could include, but are not limited to, water impoundment, stream channelization, water diversion, water withdrawal, and development activities. These activities could alter the biological and physical features that provide the appropriate habitat for *N. fossalis* by eliminating ponding habitat, changing the duration and frequency of the ponding events that this species relies on, making the habitat too wet and allowing for obligate wetland species to become established, making the habitat too dry and allowing upland species to become established, causing large amounts of sediment to be deposited in *N. fossalis* habitat, or causing increased erosion and incising of waterways.

(2) Actions that would impact the soil and topography that cause water to pond during the winter and spring months. Such activities could include, but are not limited to, deep ripping of soils, trenching, soil compaction, and development activities. These activities could alter the biological and physical features that provide the appropriate habitat for *N. fossalis* by eliminating ponding habitat, impacting the impervious nature of the soil layer, or making the soil so impervious that water pools for an extended, detrimental hydroperiod (as described in the PCEs).

Exemptions Under Section 4(a)(3) of the Act

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 670a of this title, if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

The Sikes Act Improvement Act of 1997 required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an 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:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) 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.

We consult with the military on the development and implementation of INRMPs for installations with federally listed species. Any INRMPs developed by military installations located within the range of *Navarretia fossalis* and which contain those features essential to the species' conservation were analyzed for exemption under the authority of section 4(a)(3)(B) of the Act.

Both Marine Corps Base (MCB) Camp Pendleton and Marine Corps Air Station (MCAS) Miramar have approved INRMPs that address *Navarretia fossalis,* and the Marine Corps (on both installations) has committed to work closely with us, California Department of Fish and Game, and California Department of Parks and Recreation to continually refine the existing INRMPs as part of the Sikes Act's INRMP review process. In accordance with section 4(a)(3)(B)(i) of the Act, we determined that conservation efforts identified in the INRMPs will provide a benefit to *N. fossalis* occurring in habitats within or adjacent to MCB Camp Pendleton and MCAS Miramar (see the following sections that detail this determination for each installation). Therefore, 214 ac (87 ha) of habitat on MCB Camp Pendleton and MCAS Miramar are exempt from revised critical habitat for *N. fossalis* under section 4(a)(3) of the Act.

Marine Corps Base Camp Pendleton (MCB Camp Pendleton)

In the previous final critical habitat designation for *Navarretia fossalis,* we exempted MCB Camp Pendleton from the designation of critical habitat (October 18, 2005, 70 FR 60658). We based this decision on the conservation benefits to *N. fossalis* identified in the INRMP developed by MCB Camp Pendleton in November 2001. A revised and updated INRMP was prepared by MCB Camp Pendleton in March 2007 (Marine Corp Base Camp Pendleton 2007). We determined that conservation efforts identified in the INRMP provide a benefit to the occurrences of *N. fossalis* and vernal pool habitat occurring on MCB Camp Pendleton (Marine Corp Base Camp Pendleton 2007, Section 4, pp. 51–76). This conservation includes the 145 ac (59 ha) of habitat that we believe to be essential for the conservation of *N. fossalis* on Stuart Mesa and near the Wire Mountain Housing Complex. Therefore, lands containing features essential to the conservation of *N. fossalis* on this installation are exempt from revised critical habitat for *N. fossalis* under section 4(a)(3) of the Act.

The INRMP for MCB Camp Pendleton benefits *Navarretia fossalis* through ongoing efforts to survey and monitor the species, and by providing this information to all necessary personnel through MCB Camp Pendleton's GIS database on sensitive resources and in their published resource atlas. The INRMP also benefits *N. fossalis* by implementing the following base directives to avoid and minimize adverse effects to the species: (1) Keeping bivouac/command post/field support activities at least 984 ft (300 m) from *N. fossalis* habitat year-round; (2) keeping vehicle/equipment on existing roads (however, foot traffic is authorized year-round); and (3) prohibiting digging (including construction of fighting positions) in *N. fossalis* habitat (Marine Corp Base Camp Pendleton 2007, Appendix F, p. 54). Additionally, MCB Camp Pendleton's environmental security staff reviews projects and enforces existing regulations and orders that, through their implementation, avoid and minimize impacts to natural resources, including *N. fossalis* and its habitat. As a result, activities occurring on MCB Camp Pendleton are currently being conducted in a manner that benefits *N. fossalis.* Finally, MCB Camp Pendleton provides training to personnel on environmental awareness for sensitive resources on the base, including *N. fossalis* and vernal pool habitat. We are currently consulting with the Marine Corps under section 7 of the Act to programmatically address potential impacts of military training and other activities on MCB Camp Pendleton. Upon completion of this consultation, we anticipate additional measures that benefit *N. fossalis* to be incorporated into the INRMP for MCB Camp Pendleton.

Marine Corps Air Station Miramar (MCAS Miramar)

In the previous final critical habitat designation for *Navarretia fossalis,* we exempted MCAS Miramar from the designation of critical habitat (October 18, 2005, 70 FR 60658). We based this decision on the conservation benefits to *N. fossalis* identified in the INRMP developed by MCAS Miramar in May 2000. A revised and updated INRMP was prepared by MCAS Miramar in October 2006 (Gene Stout and Associates *et al.* 2006). We determined that conservation efforts identified in the INRMP provide a benefit to the occurrences of *N. fossalis* and vernal pool habitat occurring on MCAS Miramar (Gene Stout and Associates *et al.* 2006, Section 7, pp. 17–23). This conservation includes the 69 ac (28 ha) of habitat that we have determined contains the features essential for the conservation of *N. fossalis* in the western portion of MCAS Miramar. Therefore, lands containing features essential to the conservation of *N. fossalis* on this installation are exempt from revised critical habitat for *N. fossalis* under section 4(a)(3) of the Act.

The INRMP for MCAS Miramar benefits *Navarretia fossalis* through ongoing efforts to avoid and minimize impacts to the species and vernal pool habitat. The INRMP classifies all *N. fossalis* habitat and nearly all other vernal pool basins and watersheds on MCAS Miramar as a Level I Management Area (Gene Stout and Associates et al. 2006, Section 5, Table 1). Under the INRMP, Level I

Management Areas receive the highest conservation priority of the various Management Areas on MCAS Miramar. The conservation of vernal pool basins and watersheds in the Level I Management Areas is achieved through: (1) Education of base personnel; (2) implementation of proactive measures that help avoid accidental impacts (e.g., signs and fencing); (3) development of procedures to respond to and restore accidental impacts on vernal pools; and (4) maintenance of an inventory of vernal pool basins and the associated watersheds on MCAS Miramar (Gene Stout and Associates *et al.* 2006, Section 7, pp. 17–23). Additionally, the MCAS Miramar's environmental security staff reviews projects and enforces existing regulations and orders that, through their implementation, avoid and minimize impacts to natural resources, including *N. fossalis* and its habitat. Activities occurring on MCAS Miramar are currently being conducted in a manner that benefits *N. fossalis* and prevents degradation or destruction of the species' vernal pool habitat.

Proposed Exclusions Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate and revise critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the 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.

Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If based on this analysis, we make this determination, then we can exclude the area only if such exclusion would not result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus; the educational benefits of mapping essential habitat for recovery of the listed species; and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; and/or implementation of a management plan that provides equal to or more conservation than a critical habitat designation would provide.

In the case of *N. fossalis,* the benefits of critical habitat include public awareness of *N. fossalis* presence and the importance of habitat protection, and in cases where a Federal nexus exists, increased habitat protection for *N. fossalis* due to the protection from adverse modification or destruction of critical habitat. In practice, a Federal nexus exists primarily on Federal lands or for projects undertaken or requiring authorization by a Federal agency.

When we evaluate the existence of a conservation plan when considering the benefits of exclusion, we consider a variety of factors including, but not limited to, whether the plan is finalized; how it provides for the conservation of the essential physical and biological features; whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future; whether the conservation strategies in the plan are likely to be effective; and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

After evaluating the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to determine whether the benefits of exclusion outweigh those of inclusion. If we determine that they do, we then determine whether exclusion would result in extinction. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

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 (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).

As discussed above, consultation under section 7(a)(2), and the duty to avoid jeopardy to a listed species and adverse modification of designated critical habitat, is only triggered where Federal agency action involved. In the absence of Federal agency action, the primary regulatory restriction applicable to non-Federal landowners is the prohibition against take of listed animal

species under section 9 of the Act. In order to take listed animal species where no independent Federal action is involved that would trigger section 7 consultation, a private landowner must obtain an incidental take permit under section 10 of the Act. However, because take of listed plants is not prohibited under the Act, section 10 permits are not required for listed plant species. As a consequence, the Department's Cooperative Conservation approach is particularly suited to the conservation of listed plant species. By entering into voluntary conservation agreements and management plans with non-Federal landowners to protect listed plant species on non-Federal lands and by encouraging non-Federal landowners to voluntarily include measures to conserve listed plants in HCPs developed for animal species under section 10 of the Act, we can extend essential protection to listed plants beyond those available under the regulatory provisions of the Act.

Many private landowners, however, are wary of the possible consequences of encouraging endangered species to their property. Mounting evidence suggests 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, particularly for listed plant species.

Benefits of Excluding Lands With HCPs

The benefits of excluding lands with approved HCPs from critical habitat designation, such as HCPs that cover listed plant species, include relieving landowners, communities, and counties of any additional regulatory burden that might be imposed as a result of the critical habitat designation. Many HCPs take years to develop, and upon completion, are consistent with the recovery objectives for listed species that are covered within the plan area. Many conservation plans also provide conservation benefits to unlisted sensitive species.

A related benefit of excluding lands covered by approved HCPs 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. Habitat Conservation Plans often cover a wide range of species, including listed plant species and species that are not State and federally listed and would otherwise receive little protection from development. By excluding these lands, we preserve our current partnerships and encourage additional conservation actions in the future.

We also note that permit issuance in association with HCP applications requires consultation under section 7(a)(2) of the Act, which would include the review of the effects of all HCP-covered activities that might adversely impact the species under a jeopardy standard, including possibly significant habitat modification (see definition of ''harm'' at 50 CFR 17.3), even without the critical habitat designation. In addition, all other Federal actions that may affect the listed species would still require consultation under section 7(a)(2) of the Act, and we would review these actions for possibly significant habitat modification in accordance with the definition of harm referenced above.

The information provided in the previous section applies to the following discussions of proposed exclusions under section (4)(b)(2). *Navarretia fossalis* is covered under the City of Carlsbad Habitat Management Plan (HMP) under the MHCP, the County of San Diego Subarea Plan under the MSCP, and the Western Riverside County MSHCP. We are considering the exclusion of lands covered by these plans. We are also asking for public comment on the possible exclusion of essential habitat within the City of Chula Vista Subarea plan. The Chula Vista Subarea Plan does not specifically address the conservation of *N. fossalis* (see Table 4 for a list of the subunits that we are considering for exclusion). Portions of the proposed critical habitat subunits may warrant exclusion from the proposed designation of critical habitat under section 4(b)(2) of the Act based on the partnerships, management, and protection afforded under these approved and legally operative Habitat Conservation Plans (HCPs). In this revised proposed rule, we are seeking input from the stakeholders in these HCPs and the public as to whether or not we should exclude these areas from the final revised critical habitat designation. Below is a brief description of each plan and the lands proposed as critical habitat that are covered by each plan.

TABLE 4—AREAS BEING CONSIDERED FOR EXCLUSION FROM THE FINAL REVISED CRITICAL HABITAT UNDER SECTION 4(B)(2) OF THE ACT

Submit	Area considered for exclusion
Carlsbad HMP under the San Diego MHCP	
2. Poinsettia Lane Commuter Station	3 ac (1 ha).
Subtotal Carlsbad HMP under the San Diego MHCP	3 ac (1 ha).
County of San Diego subarea plan under the San Diego MSCP	
3A. Sante Fe Valley: Crosby Estates	5 ac (2 ha).
5B. Otay River Valley	13 ac (5 ha).
5F. Proctor Valley	37 ac (15 ha).
5I. Eastern Otay Mesa vernal pool complexes	30 ac (13 ha).
Subtotal County of San Diego subarea plan under the San Diego MSCP	86 ac (35 ha).
Western Riverside County MSHCP	
6A. San Jacinto River	3,550 ac (1,437 ha).
6B. Salt Creek Seasonally Flooded Alkali Plain	1,054 ac (427 ha).
6C. Wickerd Road Pool and Scott Road Pool	205 ac (83 ha).
6D. Skunk Hollow	158 ac (64 ha).
6E. Mesa de Burro	708 ac (287 ha).
Subtotal for Western Riverside County MSHCP	5,675 ac (2,297 ha).
Total	5,725 ac (2,317 ha).*

*Values in this table may not sum due to rounding.

San Diego Multiple Habitat Conservation Program (MHCP)—Carlsbad HMP

The San Diego MHCP is a comprehensive, multi-jurisdictional, planning program designed to create, manage, and monitor an ecosystem preserve in northwestern San Diego County. The San Diego MHCP is also a regional subarea plan under the State of California's Natural Communities Conservation Plan (NCCP) program and was developed in cooperation with California Department of Fish and Game (CDFG). The MHCP preserve system is intended to protect viable occurrences of native plant and animal species and their habitats in perpetuity, while accommodating continued economic development and quality of life for residents of northern San Diego County. The MHCP includes an approximately 112,000-ac (45,324-ha) study area within the cities of Carlsbad, Encinitas, Escondido, San Marcos, Oceanside, Vista, and Solana Beach. At this time, only the City of Carlsbad has completed its Subarea Plan, which is called the Carlsbad Habitat Management Plan (Carlsbad HMP). We are only considering lands covered by the Carlsbad HMP for exclusion. The section 10(a)(1)(B) permit for the City of Carlsbad HMP was issued on November 9, 2004 (Service 2004c).

Navarretia fossalis is a conditionally covered species under the Carlsbad HMP. ''Conditional'' coverage means that the City of Carlsbad will receive assurances for this species after a series of conditions is met for this species. There is currently one area within the City of Carlsbad that helps to support an occurrence of *N. fossalis.* This occurrence is on land that is conserved and some management is currently occurring under the Carlsbad HMP. Any new occurrences of *N. fossalis* that are discovered will be conserved under the Narrow Endemics Policy that provides special protection to rare species such as *N. fossalis.* Under the Narrow Endemics Policy of the MHCP, any new occurrences found within Focused Planning Areas (FPA) (i.e., core areas and linkages important for conservation of sensitive species) will be conserved at levels of 95 to 100 percent. New occurrences found outside of FPAs will be conserved at a minimum level of 80 percent based on the Narrow Endemics Policy. The Narrow Endemics Policy requires the conservation of new occurrences of narrow endemic species (80 percent outside of FPAs), mitigation for unavoidable impacts, and implementation of management practices designed to achieve no net loss of these narrow endemic species. Additionally, cities cannot permit more than 5 percent gross cumulative loss of narrow endemic species or occupied area within the FPAs and no more than 20 percent cumulative loss of narrow endemic locations, population numbers, or occupied acreage outside of FPAs (AMEC Earth and Environmental, Inc. 2003).

The Carlsbad HMP currently provides conservation for the *Navarretia fossalis* habitat at the Poinsettia Lane Commuter Station within Unit 2, which is within the boundaries of the Carlsbad HMP. Unit 2 consists of 9 ac (4 ha); 3 ac (1 ha) is private land within the Carlsbad HMP and 6 ac (2 ha) is on land owned by the North County Transit District that is not part of the Carlsbad HMP. The conservation for the 3 ac (1 ha) of habitat within the Carlsbad HMP is outlined in the biological opinion for the Carlsbad HMP (Service 2004c, pp. 312–16). The land is conserved with conservation easements, and funds have been designated for the management of this area to benefit vernal pool species, including *N. fossalis* (Service 2004c, p. 314).

Since the issuance of the permit for the Carlsbad HMP the 3 ac (1 ha) of land that we are considering for exclusion has been restored with native vegetation. This 3-acre (1 ah) area is conserved and management actions have taken place. Carlsbad HMP also provides the framework to develop a

comprehensive management plan that outlines measures necessary for the long-term conservation of *Navarretia fossalis* and has funding to implement a management plan. We anticipate working with the City of Carlsbad to draft a management plan that will provide for the long-term conservation of this area.

San Diego Multiple Species Conservation Program (MSCP)—County of San Diego's Subarea Plan

The MSCP is a subregional HCP made up of several subarea plans that has been in place for more than a decade. The subregional plan area encompasses approximately 582,243 ac (235,626 ha) (County of San Diego 1997, p. 1–1; MSCP 1998, pp. 2–1, and 4–2 to 4–4) and provides for conservation of 85 federally listed and sensitive species (''covered species'') through the establishment and management of approximately 171,920 ac (69,574 ha) of preserve lands within the Multi-Habitat Planning Area (MHPA) (City of San Diego) and Pre-Approved Mitigation Areas (PAMA) (County of San Diego). The MSCP was developed in support of applications for incidental take permits for several federally listed species by 12 participating jurisdictions and many other stakeholders in southwestern San Diego County. Under the umbrella of the MSCP, each of the 12 participating jurisdictions is required to prepare a subarea plan that implements the goals of the MSCP within that particular jurisdiction. *Navarretia fossalis* was evaluated in the County of San Diego and the City of San Diego Subarea Plans. As discussed under the ''Benefits of Excluding Lands with HCPs'' section of this rule, we are only considering exclusion of lands within the County of San Diego Subarea Plan. Specifically, we are considering the exclusion of 134 ac (54 ha) in Subunits 3A, 5B, 5F, and 5I; we are only considering a portion of the lands in Subunits 5B, 5F, and 5I (see Table 4 for the amount of land being considered for exclusion in each subunit).

Upon completion of preserve assembly, approximately 171,920 ac (69,574 ha) of the 582,243-ac (235,626-ha) MSCP plan area will be preserved (MSCP 1998, pp. 2–1 and 4–2 to 4–4). San Diego County's subarea plan identifies areas where mitigation activities should be focused to assemble its preserve areas (i.e., PAMA). Those areas of the MSCP preserve that are already conserved, as well as those areas that are designated for inclusion in the preserve under the plan, are referred to as the ''preserve area'' in this proposed revised critical habitat designation. When the preserve is completed, the public sector (i.e., Federal, State, and local government, and general public) will have contributed 108,750 ac (44,010 ha) (63.3 percent) to the preserve, of which 81,750 ac (33,083 ha) (48 percent) was existing public land when the MSCP was established and 27,000 ac (10,927 ha) (16 percent) will have been acquired. At completion, the private sector will have contributed 63,170 ac (25,564 ha) (37 percent) to the preserve as part of the development process, either through avoidance of impacts or as compensatory mitigation for impacts to biological resources outside the preserve. Currently and in the future, Federal and State governments, local jurisdictions and special districts, and managers of privately owned lands will manage and monitor their lands in the preserve for species and habitat protection (MSCP 1998, pp. 2–1 and 4–2 to 4–4).

Private lands within the PAMA are subject to special restrictions on development, and lands that are dedicated to the preserve must be legally protected and permanently managed to conserve the covered species. Public lands owned by the County, State of California, and the Federal Government that are identified for conservation under the MSCP must also be protected and permanently managed to protect the covered species.

Numerous processes are incorporated into the MSCP that allow our oversight of the MSCP implementation. For example, the MSCP imposes annual reporting requirements and provides for our review and approval of proposed subarea plan amendments and preserve boundary adjustments and for Service review and comment on projects during the California Environmental Quality Act review process. We also chair the MSCP Habitat Management Technical Committee and the Monitoring Subcommittee (MSCP 1998, pp. 5–11 to 5–23). Each MSCP subarea plan must account annually for the progress it is making in assembling conservation areas. We must receive annual reports that include, both cumulatively and by project, the habitat acreage destroyed and conserved within the subareas. This accounting process ensures that habitat conservation proceeds in rough proportion to habitat loss and in compliance with the MSCP subarea plans and the plans' associated implementing agreements.

To protect vernal pool habitat, the County of San Diego subarea plan requires that: (1) Development be configured in a manner that minimizes impacts to sensitive biological resources (Service 1997, p. 10; Service 1998b, p. 7); (2) unavoidable impacts to vernal pools associated with reasonable use or essential public facilities be minimized and mitigated to achieve no net loss of function and value; and (3) a sufficient amount of watershed be avoided as necessary for the continuing viability of vernal pools (Service 1997, pp. 43–44; Service 1998b, p. 67).

At this time, a portion of lands that meet the definition of critical habitat for *Navarretia fossalis* inside the County's subarea plan under the MSCP have already been conserved. Although some areas placed in conservation are not yet fully managed, such management will occur over time as the subarea plan is implemented. There are also lands inside the PAMA, that, although they have not yet been formally committed to the preserve, are reasonably assured of conservation for *N. fossalis* in accordance with the subarea plan. There are also lands in Subunits 5B and 5I that are not currently covered by the County of San Diego's Subarea Plan because they are in major and minor amendment areas. There is an established process through which these areas can be covered by the plan, but presently these areas have not gone through this process.

Additionally, projects that are on lands that meet the definition of critical habitat, but are outside the PAMA (preserve areas) must meet the narrow endemic requirements under the MSCP. Consistent with the narrow endemics requirements of the MSCP, the lands outside the PAMA boundaries will be surveyed for *Navarretia fossalis* prior to any development occurring on these lands. Under the County of San Diego's subarea plan, narrow endemic plants, including *N. fossalis,* are conserved under the Biological Mitigation Ordinance using a process that: (1) Requires avoidance to the maximum extent feasible; (2) allows for a maximum 20 percent encroachment into a population if total avoidance is not feasible; and (3) requires mitigation at the 1:1 to 3:1 (in kind) for impacts if avoidance and minimization of impacts would result in no reasonable use of the property (County of San Diego (BMO) 1997, p. 11; Service 1998b, p. 12). These measures help protect *N. fossalis* and its essential habitat whether the lands are located in the PAMA or not. The narrow endemic policy for the County of San Diego subarea plan requires in situ conservation of *N. fossalis* or mitigation to ameliorate any habitat loss. Therefore, although some losses may occur to this species within the lands that are not within the PAMA, the preservation, conservation, and management of *N. fossalis* provided by

the County of San Diego subarea plan under the MSCP promotes the long-term conservation of this species and its essential habitat within the lands covered by the subarea plan.

In summary, we are considering the exclusion of 86 ac (35 ha) that meet the definition of critical habitat for *Navarretia fossalis* within the County of San Diego's subarea plans under section 4(b)(2) of the Act. There are an additional 23 ac (9 ha) of Federal land at the San Diego National Wildlife Refuge included in Subunit 5A that are within the County of San Diego's subarea plan that meet the definition of critical habitat, but because these lands are federally owned we are not considering them for exclusion. The 1998 final listing rule for *N. fossalis* identified the following primary threats for this species: Habitat destruction and fragmentation from urban and agricultural development, pipeline construction, road construction, alteration of hydrology and flood plain dynamics, excessive flooding, channelization, off-road vehicle activity, trampling by cattle and sheep, weed abatement, fire suppression practices (including discing and plowing), and competition from nonnative plants (October 13, 1998, 63 FR 54938). The implementation of the County of San Diego MSCP subarea plan helps to address these threats through a regional planning effort rather than through a project-by-project approach, and outlines species-specific objectives and criteria for the conservation of *N. fossalis.* We will analyze the benefits of inclusion and exclusion of this area from critical habitat under section 4(b)(2) of the Act. We request comments on lands in major and minor amendment areas (Subunits 5B and 5I) under the County of San Diego's subarea plan under the MSCP and we encourage any public comment in relation to our consideration of the areas discussed above for inclusion or exclusion.

Western Riverside County Multiple Species Habitat Conservation Plan (Western Riverside County MSHCP)

The Western Riverside County MSHCP is a large-scale, multi-jurisdictional HCP encompassing about 1.26 million ac (510,000 ha) in western Riverside County (Unit 6). The Western Riverside County MSHCP addresses 146 listed and unlisted ''covered species,'' including *Navarretia fossalis.* Participants in the Western Riverside County MSHCP include 14 cities; the County of Riverside, including the Riverside County Flood Control and Water Conservation Agency (County Flood Control), Riverside County Transportation Commission, Riverside County Parks and Open Space District, and Riverside County Waste Department; California Department of Parks and Recreation; and the California Department of Transportation. The Western Riverside County MSHCP was designed to establish a multi-species conservation program that minimizes and mitigates the expected loss of habitat and the incidental take of covered species. On June 22, 2004, the Service issued a single incidental take permit (Service 2004b) under section 10(a)(1)(B) of the Act to 22 permittees under the Western Riverside County MSHCP for a period of 75 years.

The Western Riverside County MSHCP will establish approximately 153,000 ac (61,917 ha) of new conservation lands (Additional Reserve Lands) to complement the approximate 347,000 ac (140,426 ha) of pre-existing natural and open space areas (Public/Quasi-Public (PQP) lands). These PQP lands include those under Federal ownership, primarily managed by the USFS and BLM, and also permittee-owned or controlled open-space areas, primarily managed by the State and Riverside County. Collectively, the Additional Reserve Lands and PQP lands form the overall Western Riverside County MSHCP Conservation Area. The configuration of the 153,000 ac (61,916 ha) of Additional Reserve Lands is not mapped or precisely identified (''hard-lined'') in the Western Riverside County MSHCP. Rather, it is based on textual descriptions of habitat conservation necessary to meet the conservation goals for all covered species within the bounds of the approximately 310,000-ac (125,453-ha) Criteria Area and is interpreted as implementation of the Western Riverside County MSHCP takes place.

Specific conservation objectives in the Western Riverside County MSHCP for *Navarretia fossalis* include providing 6,900 ac (2,792 ha) of occupied or suitable habitat for the species in the MSHCP Conservation Area. This acreage goal can be attained through acquisition or other dedications of land assembled from within the Criteria Area (i.e., the Additional Reserve Lands) or Narrow Endemic Plan Species Survey Area and through coordinated management of existing PQP lands. We internally mapped a ''Conceptual Reserve Design,'' which illustrates existing PQP lands and predicts the geographic distribution of the Additional Reserve Lands based on our interpretation of the textual descriptions of habitat conservation necessary to meet conservation goals. Our Conceptual Reserve Design was intended to predict one possible future configuration of the eventual approximately 153,000 ac (61,916 ha) of Additional Reserve Lands in conjunction with the existing PQP lands, including approximately 6,900 ac (2,792 ha) of ''suitable'' *N. fossalis* habitat, that will be conserved to meet the goals and objectives of the plan (Service 2004b, p. 73).

Preservation and management of approximately 6,900 ac (2,792 ha) of *Navarretia fossalis* habitat under the Western Riverside County MSHCP will contribute to conservation and ultimate recovery of this species. *Navarretia fossalis* is threatened primarily by agricultural activities, development, and fuel modification actions within the plan area (Service 2004b, pp. 369–378). The Western Riverside County MSHCP will remove and reduce threats to this species and its PCEs as the plan is implemented by placing large blocks of occupied and unoccupied habitat into preservation throughout the Conservation Area. Areas identified for preservation and conservation include 13 of the known locations of the species at Skunk Hollow, the Santa Rosa Plateau, the San Jacinto Wildlife Area, floodplains of the San Jacinto River from the Ramona Expressway to Railroad Canyon, and upper Salt Creek west of Hemet. Areas targeted for conservation include the floodplains of the San Jacinto River, the area along Salt Creek from Warren Road to Newport Road, and the vernal pools in Upper Salt Creek west of Hemet.

The Western Riverside County MSHCP Conservation Area will maintain floodplain processes along the San Jacinto River and along Salt Creek to provide for the distribution of the species to shift over time as hydrologic conditions and seed bank sources change. Additionally, the Western Riverside County MSHCP requires surveys for *Navarretia fossalis* as part of the project review process for public and private projects where suitable habitat is present within a defined narrow endemic species survey area (see Narrow Endemic Species Survey Area Map, Figure 6–1 of the Western Riverside County MSHCP, Volume I, in Dudek and Associates, Inc. 2003). For locations with positive survey results, 90 percent of those portions of the property that provide long-term conservation value for the species will be avoided until it is demonstrated that the conservation objectives for the species are met (see Protection of Narrow Endemic Plant Species; Western Riverside County MSHCP, Volume 1, section 6.1.3, in Dudek and Associates, Inc. 2003).

The survey requirements, the avoidance and minimization measures, and the management for *Navarretia fossalis* (and its PCEs) provided for in the Western Riverside County MSHCP are expected to benefit this species on public and private lands covered by the plan. We are considering the exclusion of approximately 5,675 ac (2,297 ha) of private lands and permittee-owned or controlled PQP lands in Unit 6 (Subunits 6A–6E), within the Western Riverside County MSHCP Plan Area, from the final revised critical habitat designation under section 4(b)(2) of the Act. Projects in the areas proposed as critical habitat conducted or approved by Western Riverside County MSHCP permittees are subject to the conservation requirements of the MSHCP. For projects that may impact *N. fossalis,* various policies (i.e., Narrow Endemic Plant Species Policy, and the Riparian/Riverine and Vernal Pool Policy in Dudek and Associates, Inc. 2003) provide additional conservation requirements.

The Western Riverside County MSHCP incorporates several processes that allow for Service oversight and participation in program implementation. These processes include: (1) Consultation with the Service on a long-term management and monitoring plan; (2) submission of annual monitoring reports; (3) annual status meetings with the Service; and (4) submission of annual implementation reports to the Service (Service 2004b, pp. 9–10). Below we provide a brief analysis of the lands in Unit 6 that we are considering for exclusion and how each area is covered by the Western Riverside County MSHCP or other conservation measures.

The Western Riverside County MSHCP has several measures in place to ensure the plan is implemented in a way that conserves *Navarretia fossalis* in accordance with the species-specific criteria and objectives for this species. Projects in the areas proposed as critical habitat conducted or approved by Western Riverside County MSHCP permittees are subject to the conservation requirements of the MSHCP. For projects that may impact *N. fossalis,* various policies (including the Narrow Endemic Plant Species Policy, and the Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools Policy (in Dudek 2003) may provide additional conservation. We are proposing five subunits within Unit 6, all of which are within the boundaries of the Western Riverside County MSHCP. Each subunit has land in different mapping categories (some of which overlap) as they relate to different polices and review processes under the Western Riverside County MSHCP. The breakdown for each subunit, in terms of how much land is considered ''Public/Quasi Public,'' within the ''Criteria Area,'' or in one of the ''Narrow Endemic Plant Species Survey Areas,'' is presented in Table 5.

TABLE 5—AREAS PROPOSED FOR CRITICAL HABITAT WITHIN THE WESTERN RIVERSIDE COUNTY MSHCP

Location	Public/quasi public lands	Lands within the criteria area	Lands within the narrow endemic plant species survey area	Total area proposed as critical habitat
6A. San Jacinto River	1,504 ac (608 ha)	2,264 ac (619 ha)	3,524 ac (1,426 ha)	3,550 ac (1,437 ha).
6B. Salt Creek Seasonally Flooded Alkali Plain.	1 ac (<1 ha)	1,030 ac (417 ha)	1,054 ac (427 ha)	1,054 ac (427 ha).
6C. Wickerd Pool and Scott Road Pool.	0 ac (0 ha)	0 ac (0 ha)	205 ac (83 ha)	205 ac (83 ha).
6D. Skunk Hollow	21 ac (8 ha)	0 ac (0 ha)	145 ac (59 ha)	158 ac (64 ha).
6E. Mesa de Burro	708 ac (287 ha)	0 ac (0 ha)	708 ac (287 ha)	708 ac (287 ha).

Two of the subunits, Subunit 6D (Skunk Hollow) and Subunit 6E (Mesa de Burro), primarily consist of lands already in permanent conservation. The majority of Subunit 6D was conserved as a result of the Rancho Bella Vista HCP (Rancho Bella Vista 1999, p. 2; CNLM 2009a, p. 1) and the remainder of the land in Subunit 6D was conserved as a result of the ADA 161 HCP (CNLM 2009b, p. 1). In total, 100 percent of the lands in Subunit 6D are conserved and managed specifically for the purpose of preserving the vernal pool habitat. Subunit 6E is within the Santa Rosa Plateau Ecological Reserve. This Reserve has four landowners: the California Department of Fish and Game, County of Riverside, Metropolitan Water District of Southern California, and The Nature Conservancy. The landowners and the Service (which owns no land on the Plateau) signed a cooperative management agreement on April 16, 1991 (Dangermond and Associates, Inc. 1991), and meet regularly to work on the management of the Reserve (Riverside County Parks 2009, p. 2). The vernal pools within this Subunit 6E are managed and monitored to preserve the unique vernal pool plants and animals that occur on the Santa Rosa Plateau, including Mesa de Burro.

The other three units (Subunit 6A, 6B, and 6C) are not conserved at this time; however, we anticipate that these areas will be conserved over time as the Western Riverside County MSHCP is implemented. Subunit 6A is 99 percent within the Narrow Endemic Plant Species Survey Area (NEPSSA), and Subunits 6B and 6C are entirely within the NEPSSA. Because these areas are within the NEPSSA, biological surveys for *Navarretia fossalis* will occur prior to the development of any areas within these subunits. Furthermore, Subunits 6A and 6B have additional protections in place either from past conservation efforts or because they are within the Criteria Area.

A large portion of Subunit 6A (1,504 ac (608 ha), or approximately 42 percent) is within the San Jacinto Wildlife Area, a wildlife area owned and operated by the California Department of Fish and Game (CDFG). This area consists of restored wetlands that provide habitat for waterfowl and wading birds, as well as seasonally flooded vernal plain habitat along the San Jacinto River north of the Ramona Expressway that supports *Navarretia fossalis.* The Service regularly works with the CDFG to ensure that the seasonally flooded alkali vernal plain habitat at the San Jacinto Wildlife Area continues to function and provide a benefit for *N. fossalis* and other sensitive species that use this habitat. In addition to the portion of Subunit 6A owned by CDFG, 98 percent of the remaining land (2,006 ac (812 ha)) is within the Criteria Area. Projects in this area will be implemented through the Joint Project Review Process to ensure that the requirements of the MSHCP permit and the Implementing Agreement are properly met (Western Riverside County MSHCP, Volume 1,

section 6.6.2 in Dudek and Associates, Inc. 2003, p. 6–82).

Additionally, the majority of Subunit 6B is within the Criteria Area (98 percent; 1,030 ac (417 ha) out of a total 1,054 ac (427 ha)) and projects in this area will be implemented through the Joint Project Review Process. This subunit is in the area referred to as West Hemet, under the jurisdiction of the City of Hemet. The City of Hemet is currently in the process of updating their General Plan, including addressing the sensitive vernal pool resources. Subunit 6C is not within the Criteria Area for the Western Riverside County MSHCP; however, impacts to the pools in this subunit should be avoided, minimized, or offset through implementation of the Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools Policy and NEPSSA Policy.

In summary, we are considering exclusion of 5,675 ac (2,297 ha) of *Navarretia fossalis* habitat on permittee-owned or controlled lands in Unit 6 that meets the definition of critical habitat for *N. fossalis* within the Western Riverside County MSHCP under section 4(b)(2) of the Act. The 1998 final listing rule for *N. fossalis* identified the following primary threats to *N. fossalis:* Habitat destruction and fragmentation from urban and agricultural development, pipeline construction, road construction, alteration of hydrology and flood plain dynamics, excessive flooding, channelization, off-road vehicle activity, trampling by cattle and sheep, weed abatement, fire suppression practices (including discing and plowing), and competition from nonnative plant species (October 13, 1998, 63 FR 54938). The implementation of the Western Riverside County MSHCP helps to address these threats through a regional planning effort, and outlines species-specific objectives and criteria for the conservation of *N. fossalis.* We will analyze the benefits of inclusion and exclusion of this area from critical habitat under section 4(b)(2) of the Act. We encourage any public comment in relation to our consideration of the areas in Unit 6 for inclusion or exclusion (see Public Comments section above).

Economics

An analysis of the economic impacts for the previous proposed critical habitat designation was conducted and made available to the public on August 31, 2005 (70 FR 51742). That economic analysis was finalized for the final rule to designate critical habitat for *Navarretia fossalis* published in the **Federal Register** on October 18, 2005 (70 FR 60658). The analysis determined that the costs associated with critical habitat for *N. fossalis,* across the entire area considered for designation (across designated and excluded areas), were primarily a result of the potential effect of critical habitat on land development, flood control, and transportation. After excluding land in Riverside County and San Diego County from the proposed critical habitat, the economic impact was estimated to be between $13.9 and $32.1 million over the next 20 years. Based on the 2005 economic analysis, we concluded that the designation of critical habitat for *N. fossalis,* as proposed in 2004, would not result in significant small business impacts. This analysis is presented in the notice of availability for the economic analysis published in the **Federal Register** on August 31, 2005 (70 FR 51742).

We are preparing a new analysis of the economic impacts of this proposed revision to critical habitat for *Navarretia fossalis.* Because no new geographic areas will need to be analyzed, we will use the basic framework of the previous analysis, primarily updating economic figures. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2009–0038, or by contacting the Carlsbad Fish and Wildlife Office directly (see **FOR FURTHER INFORMATION CONTACT** section). During the development of a final designation, we will consider economic impacts, public comments, and other new information, and areas may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we are soliciting the expert opinions of at least three appropriate independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during this public comment period on our specific assumptions and conclusions in this proposed revised designation of critical habitat. We will consider all comments and information we receive during this comment period on this proposed rule during our preparation of a final determination. Accordingly, our final decision may differ from this proposal.

Public Hearings

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if we receive any requests for hearings. We must receive your request for a public hearing within 45 days after the date of this **Federal Register** publication. Send your request to Jim Bartel, Field Supervisor of the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section). We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the first hearing.

Required Determinations

Regulatory Planning and Review—Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this proposed rule under Executive Order 12866 (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.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the 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. SBREFA amended the RFA to

require Federal agencies to provide a statement of factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

An analysis of the economic impacts for our previous proposed critical habitat designation was conducted and made available to the public on August 31, 2005 (70 FR 51742). This economic analysis was finalized for the final rule to designate critical habitat for *Navarretia fossalis* as published in the **Federal Register** on October 18, 2005 (70 FR 60658). The costs associated with critical habitat for *N. fossalis,* across the entire area considered for designation (across designated and excluded areas), were primarily a result of the potential effect of critical habitat on land development, flood control, and transportation. After excluding land in Riverside County and San Diego County from the proposed critical habitat, the economic impact was estimated to be between $13.9 and $32.1 million over the next 20 years. Based on the 2005 economic analysis, we concluded that the designation of critical habitat for *N. fossalis,* as proposed in 2004, would not result in significant small business impacts. This analysis is presented in the notice of availability for the economic analysis as published in the **Federal Register** on August 31, 2005 (70 FR 51742).

While we do not believe our revised designation, as proposed, will result in a significant impact on a substantial number of small business entities based on the previous designation, we are initiating new analyses to more thoroughly evaluate potential economic impacts of this revision to critical habitat. Therefore, we defer the RFA finding until completion of the draft economic analysis prepared under section 4(b)(2) of the Act and E.O. 12866. The draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, we will announce its availability in the **Federal Register** and reopen the public comment period for the proposed designation. We will include with this announcement, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. We concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that we make a sufficiently informed determination based on adequate economic information and provide the necessary opportunity for public comment.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act, we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or [T]ribal 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 [T]ribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, permits, or otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) Based in part on an analysis conducted for the previous designation of critical habitat and extrapolated to this designation, we do not expect this rule to significantly or uniquely affect small governments. Small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. Therefore, a Small Government Agency Plan is not required. However, as we conduct our economic analysis for the revised rule, we will further evaluate this issue and revise this assessment if appropriate.

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 *Navarretia fossalis* in a takings implications assessment. The takings implications assessment concludes that this designation of critical habitat for *N. fossalis* does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this proposed critical habitat designation with, appropriate State resource agencies in California. The designation may have some benefit to these governments because 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 necessary 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 these local governments in long-range planning (because these local governments no longer have to wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), it has been determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed to revise critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Navarretia fossalis.*

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 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et. seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied, 516 U.S. 1042 (1996)).

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we have a responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes.

We determined that there are no tribal lands occupied at the time of listing that contain the features essential for the conservation of the species, nor are there any unoccupied tribal lands that are essential for the conservation of *Navarretia fossalis.* Therefore, critical habitat for *N. fossalis* is not being proposed on tribal lands. We will continue to coordinate with Tribal governments as applicable during the designation process.

Energy Supply, Distribution, or Use—Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211; Actions Significantly Affect Energy Supply, Distribution, or Use) on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Based on an analysis conducted for the previous designation of critical habitat and extrapolated to this designation, along with a further analysis of the additional areas included in this revision, we determined that this proposed rule to designate critical habitat for *Navarretia fossalis* is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our economic analysis, and we will review and revise this assessment as warranted.

References Cited

A complete list of all references cited in this rulemaking is available on *http://www.regulations.gov* and upon request from the Field Supervisor, Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

Author(s)

The primary author of this notice is the staff from the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to 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 § 17.96(a), revise the entry for ''*Navarretia fossalis* (spreading navarretia)'' under family Polemoniaceae to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Polemoniaceae: *Navarretia fossalis* (spreading navarretia)

(1) Critical habitat units are depicted for Los Angeles, Riverside, and San Diego Counties, California, on the maps below.

(2) Within these areas, the primary constituent elements (PCE) for *Navarretia fossalis* consist of three components:

(i) PCE 1—*Ephemeral wetland habitat.* Vernal pools (up to 10 ac (4 ha)) and seasonally flooded alkali vernal plains that become inundated by the winter rains and hold water or have saturated soils for 2 weeks to 6 months during a year with average rainfall. This period of inundation is long enough to promote germination, flowering, and seed production for *N. fossalis* and other native species typical of vernal pool and seasonally flooded alkali vernal plain habitat, but not so long that true wetland species inhabit the areas.

(ii) PCE 2—*Intermixed wetland and upland habitats that act as the local watershed.* Areas characterized by mounds, swales, and depressions within a matrix of upland habitat that result in intermittently flowing surface and subsurface water in swales, drainages, and pools that support the habitat described in PCE 1, and provide the water that allows for the inundation described in PCE 1.

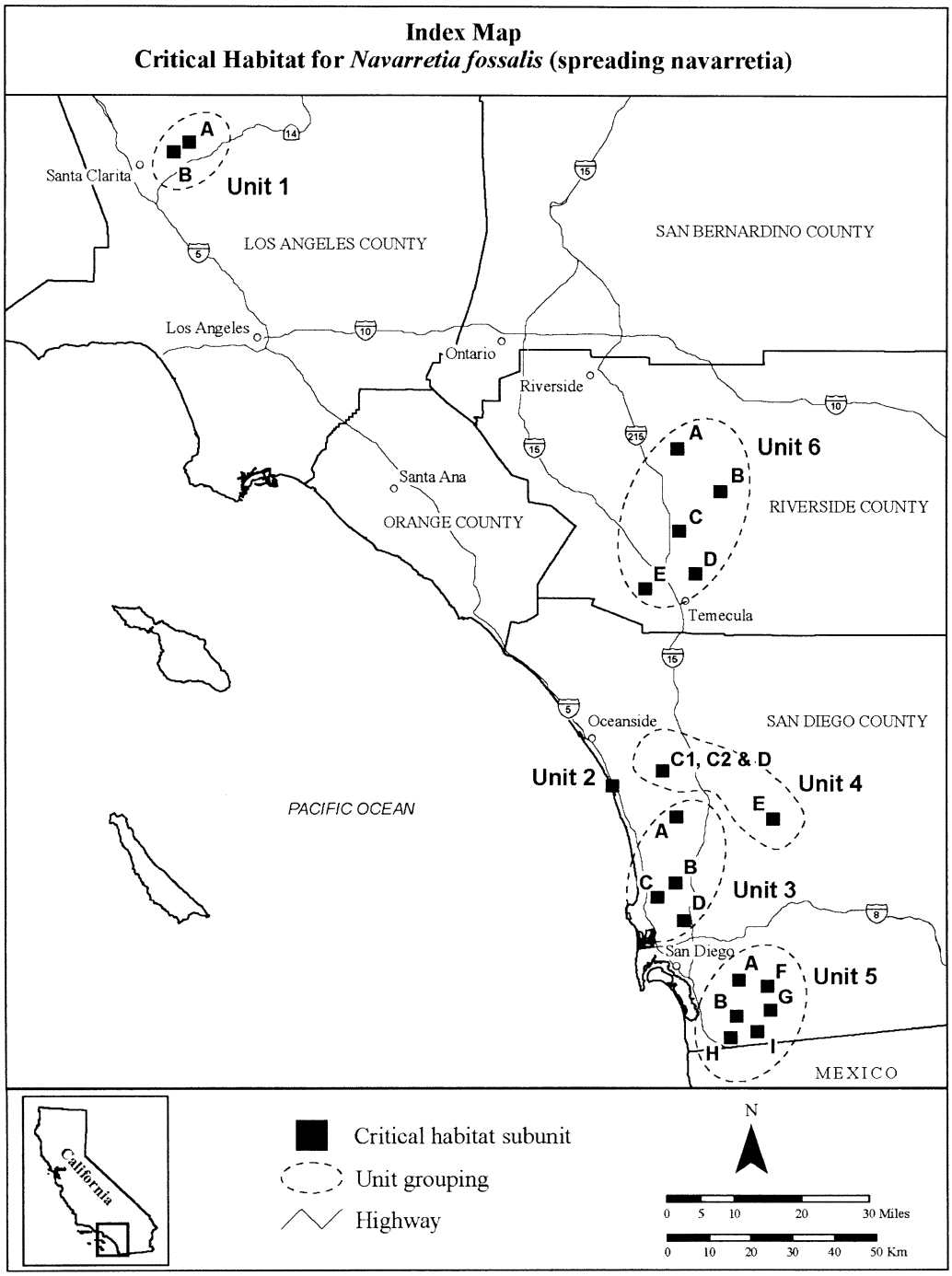
(iii) PCE3—*Soils that support ponding during winter and spring.* Soils found in areas characterized in PCE 2 that allow for ponding of water because they have a clay component or other property that creates an impermeable surface or subsurface layer. The properties of these soils contribute to reduced percolation and minimal run-off of water, all of which lead to supporting the habitat and period of inundation described in PCE 1. These soil types are known to include, but are not limited to: Cieneba-Pismo-Caperton soils in Los Angeles County; Domino, Traver, and Willows soils in Riverside County; and Huerhuero, Placentia, Olivenhain, Stockpen, and Redding soils in San Diego County.

(3) Critical habitat does not include manmade structures existing on the effective date of this rule and not containing one of more of the primary constituent elements, such as buildings, aqueducts, airports, and roads, and the land on which such structures are located.

(4) *Critical habitat map units.* Data layers defining map units were created using a base of U.S. Geological Survey 7.5′ quadrangle maps. Critical habitat units were then mapped using Universal Transverse Mercator (UTM) zone 11, North American Datum (NAD) 1983 coordinates.

(5) *Note:* Index Map of critical habitat units for *Navarretia fossalis* (spreading navarretia) follows:

BILLING CODE 4310–55–P



(6) Unit 1: Los Angeles Basin—Orange Management Area, Los Angeles County, CA. Subunit 1A: Cruzan Mesa.

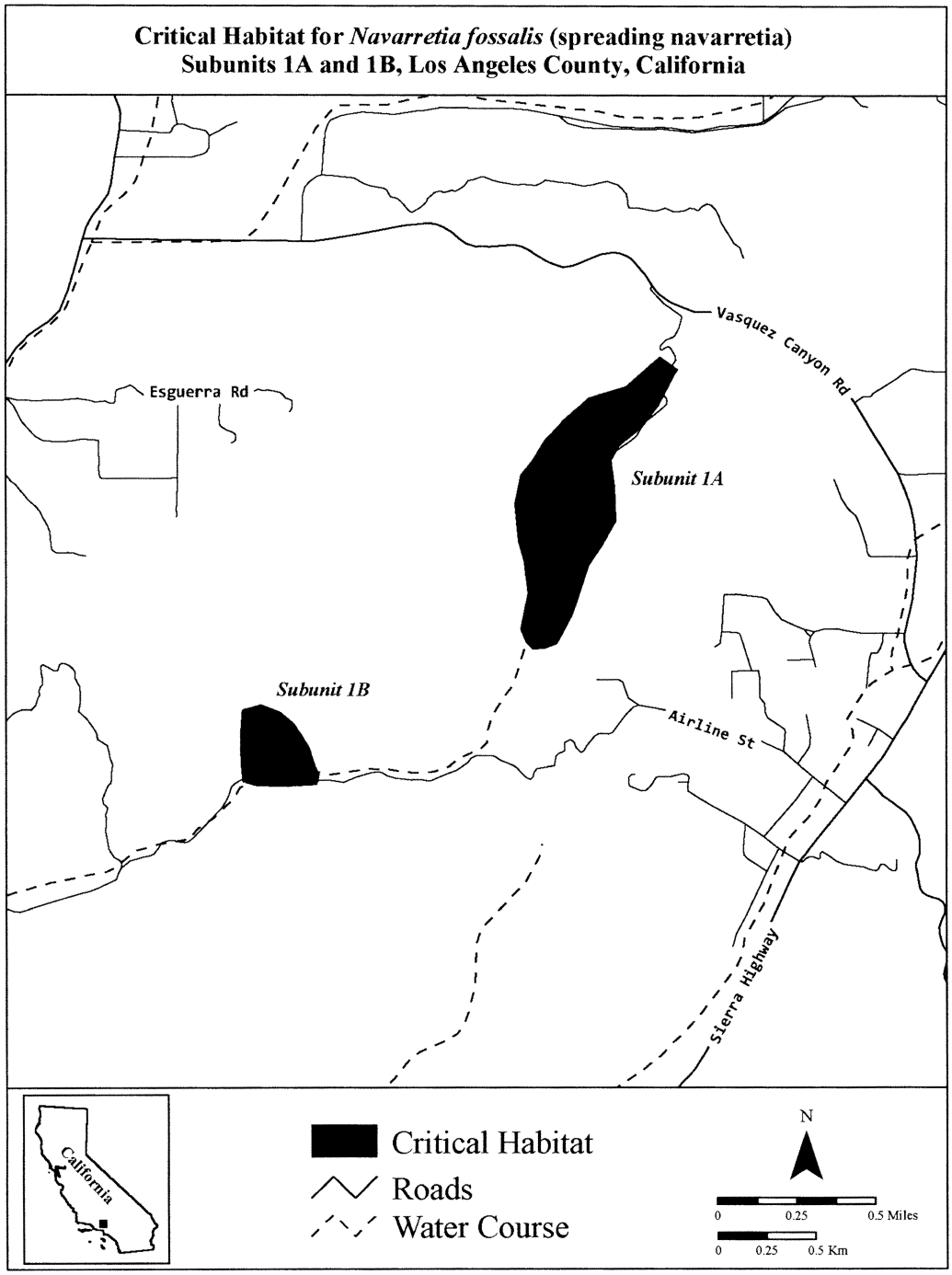
(i) [Reserved for textual description of Subunit 1A.]

(ii) *Note:* Map of Subunit 1A (Cruzan Mesa) is at paragraph (7)(ii) of this entry.

(7) Unit 1: Los Angeles Basin—Orange Management Area, Los Angeles County, CA. Subunit 1B: Plum Canyon.

(i) [Reserved for textual description of Subunit 1B.]

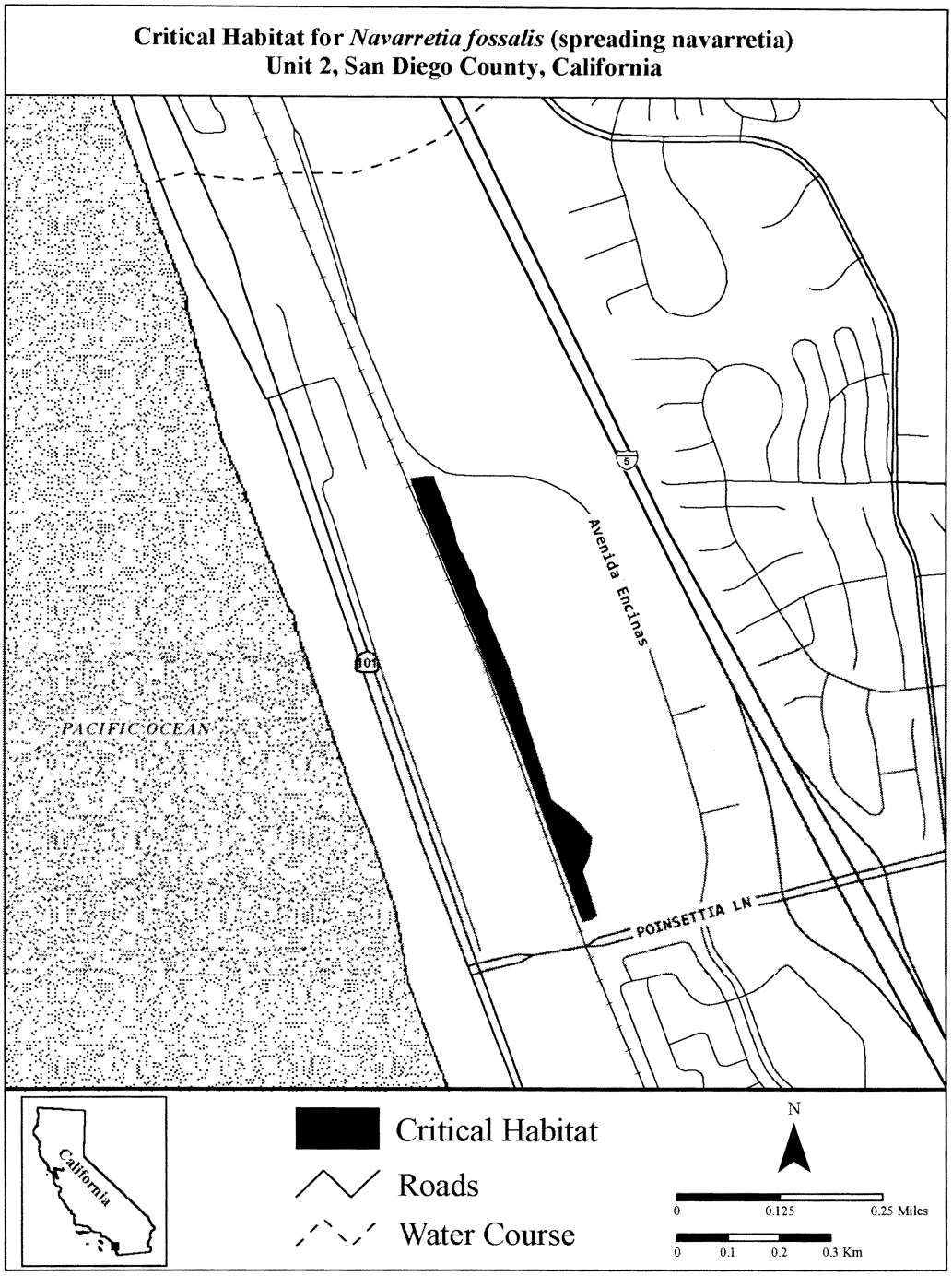
(ii) *Note:* Map of Los Angeles Basin—Orange Management Area Subunits 1A (Cruzan Mesa) and 1B (Plum Canyon) follows:



(8) Unit 2: San Diego: Northern Coastal Mesa Management Area—Poinsettia Lane Commuter Station, San Diego County, CA.

(i) [Reserved for textual description of Unit 2.]

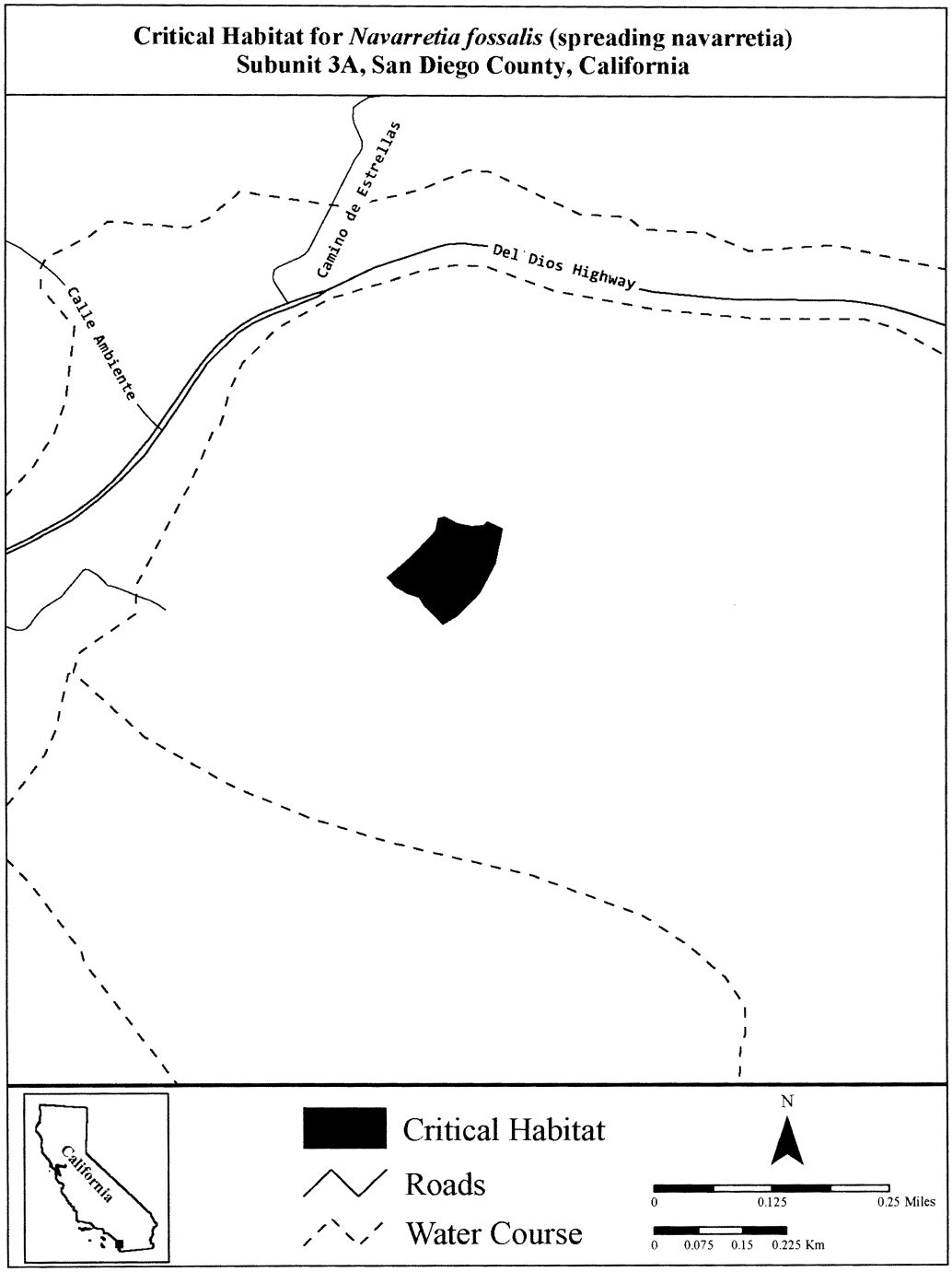
(ii) *Note:* Map of Unit 2 (Poinsettia Lane Commuter Station) follows:



(9) Unit 3: San Diego: Central Coastal Mesa Management Area, San Diego County, CA. Subunit 3A: Santa Fe Valley: Crosby Estates.

(i) [Reserved for textual description of Subunit 3A.]

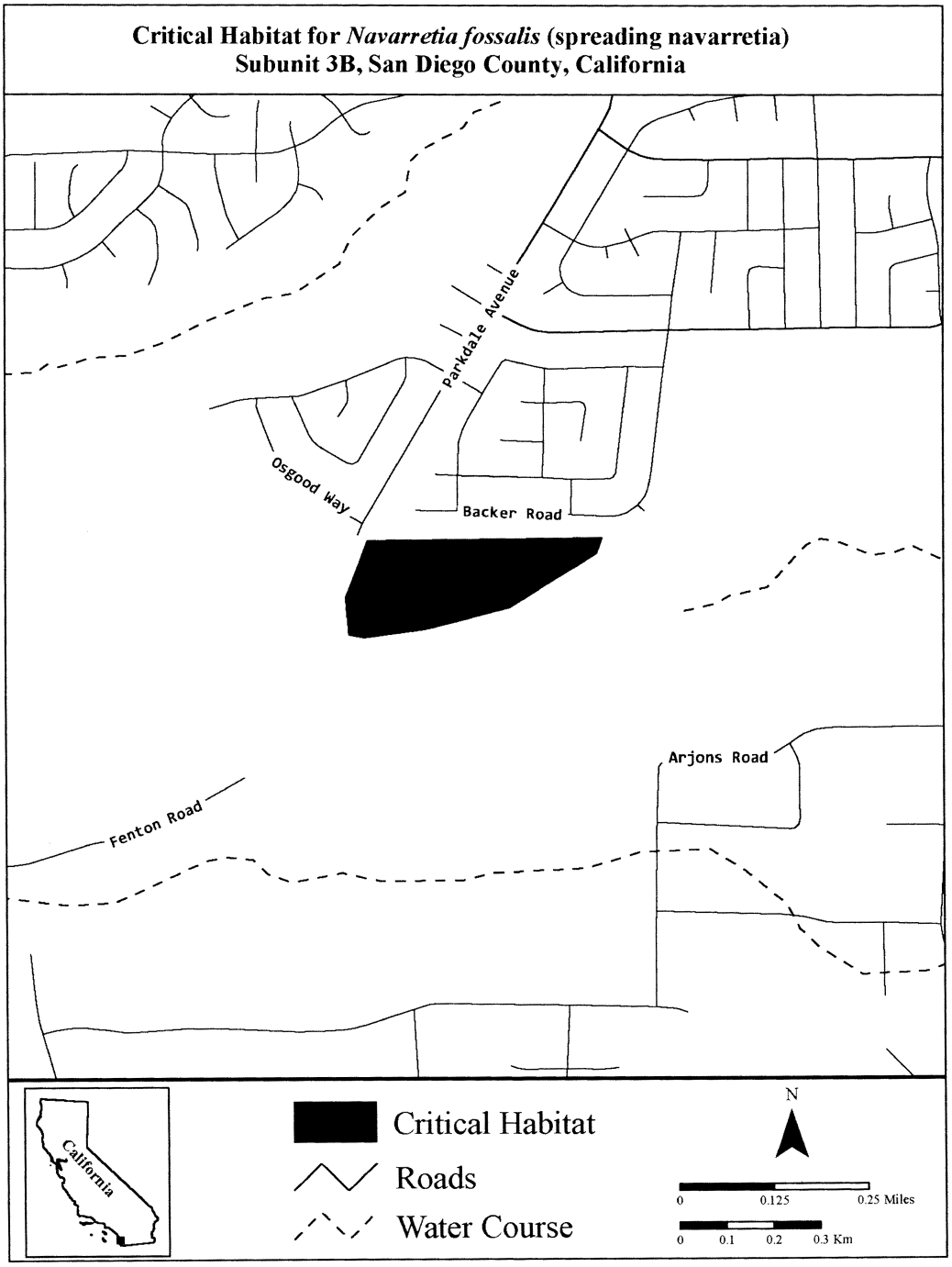
(ii) *Note:* Map of Unit 3, Subunit 3A (Santa Fe Valley: Crosby Estates) follows:



(10) Unit 3: San Diego: Central Coastal Mesa Management Area, San Diego County, CA. Subunit 3B: Carroll Canyon.

(i) [Reserved for textual description of Subunit 3B.]

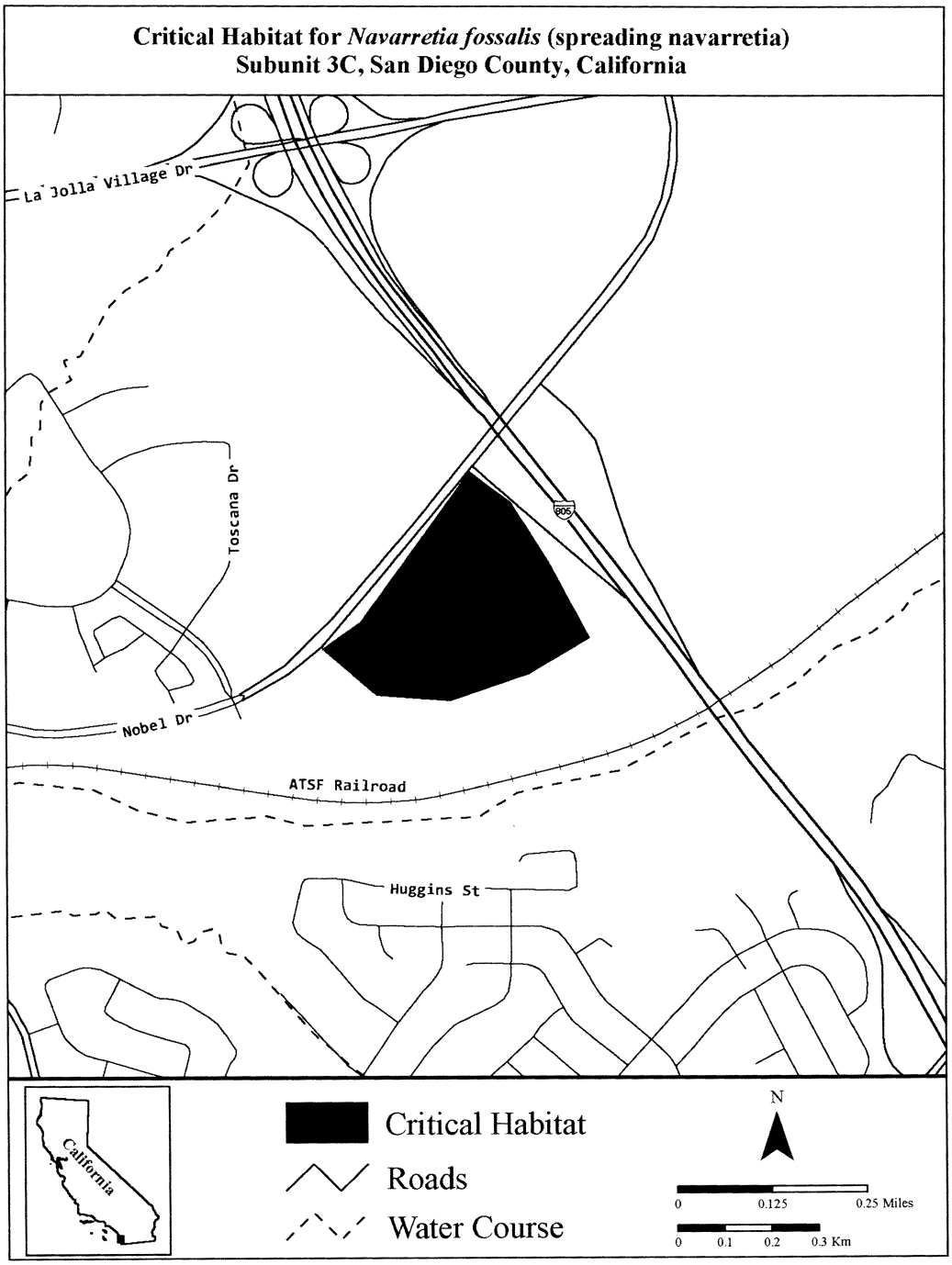
(ii) *Note:* Map of Unit 3, Subunit 3B (Carroll Canyon) follows:



(11) Unit 3: San Diego: Central Coastal Mesa Management Area, San Diego County, CA. Subunit 3C: Nobel Drive.

(i) [Reserved for textual description of Subunit 3C.]

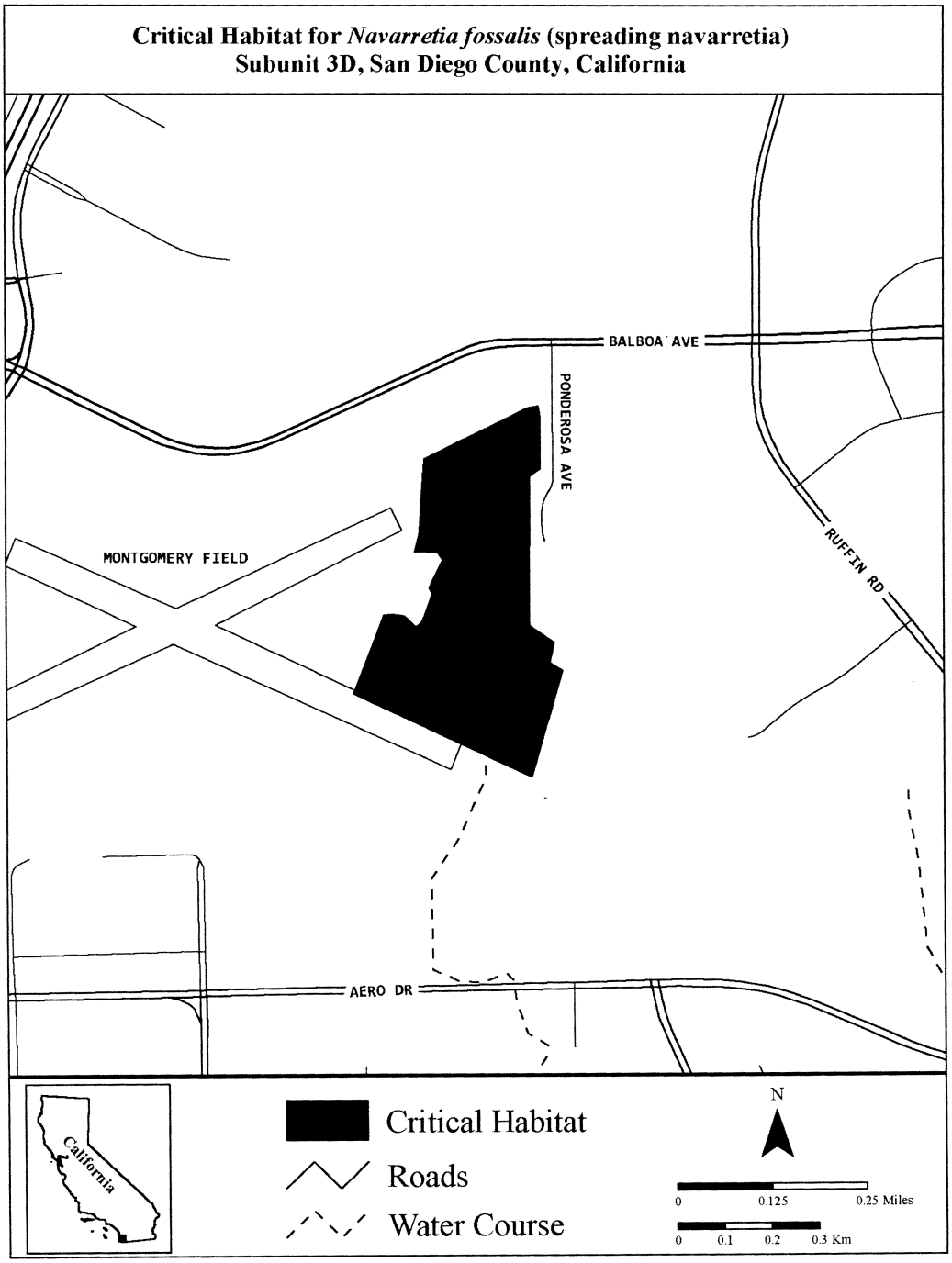
(ii) *Note:* Map of Unit 3, Subunit 3C (Nobel Drive) follows:



(12) Unit 3: San Diego: Central Coastal Mesa Management Area, San Diego County, CA. Subunit 3D: Montgomery Field.

(i) [Reserved for textual description of Subunit 3D.]

(ii) *Note:* Map of Unit 3, Subunit 3D (Montgomery Field) follows:



(13) Unit 4: San Diego: Inland Management Area, San Diego County, CA. Subunit 4C1: San Marcos (Upham).

(i) [Reserved for textual description of Subunit 4C1.]

(ii) *Note:* Map of Unit 4, Subunit 4C1 is at paragraph (15)(ii) of this entry.

(14) Unit 4: San Diego: Inland Management Area, San Diego County, CA. Subunit 4C2: San Marcos (Universal Boot).

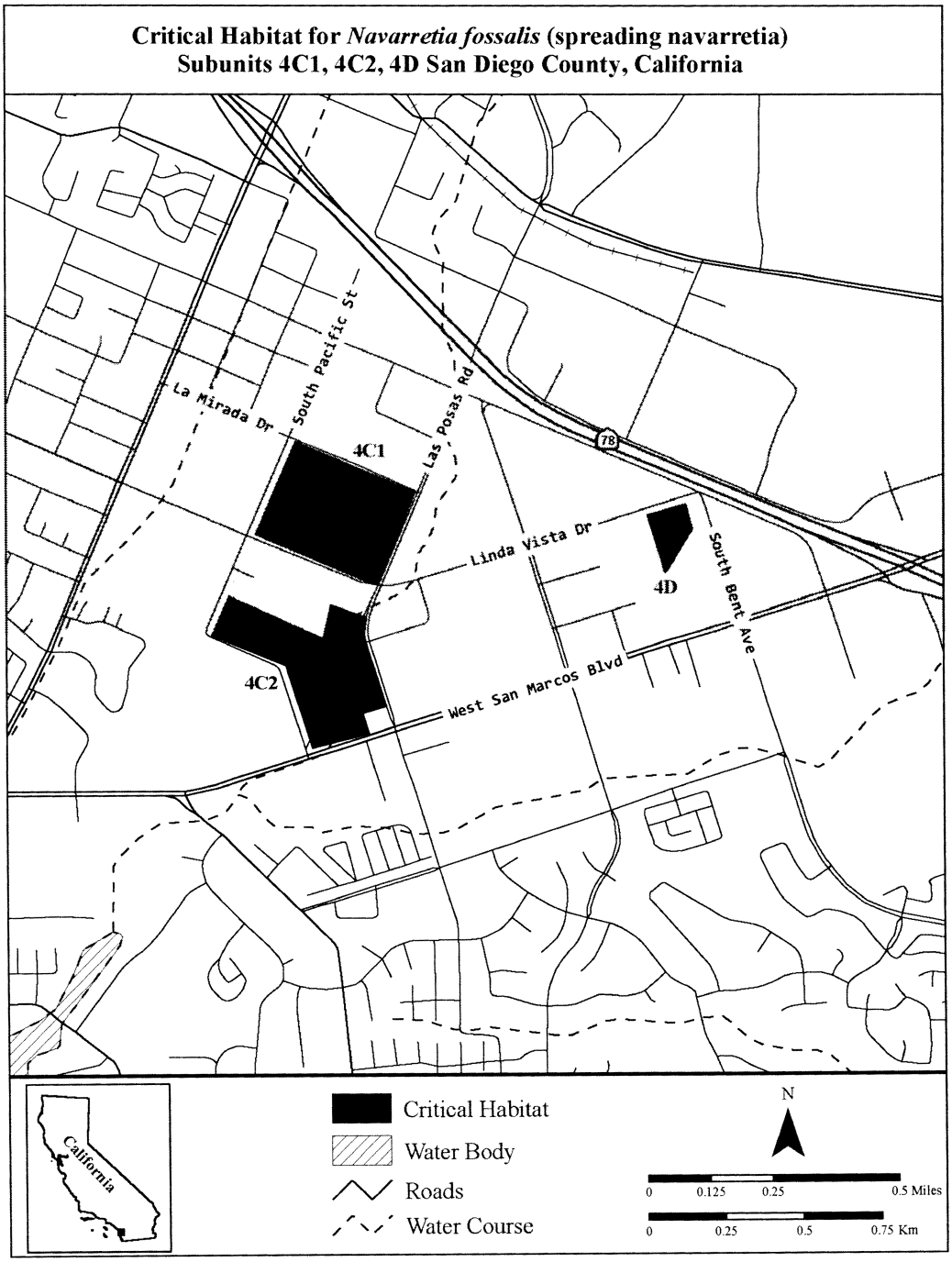
(i) [Reserved for textual description of Subunit 4C2.]

(ii) *Note:* Map of Unit 4, Subunit 4C2 is at paragraph (15)(ii) of this entry.

(15) Unit 4: San Diego: Inland Management Area, San Diego County, CA. Subunit 4D: San Marcos (Bent Avenue).

(i) [Reserved for textual description of Subunit 4D.]

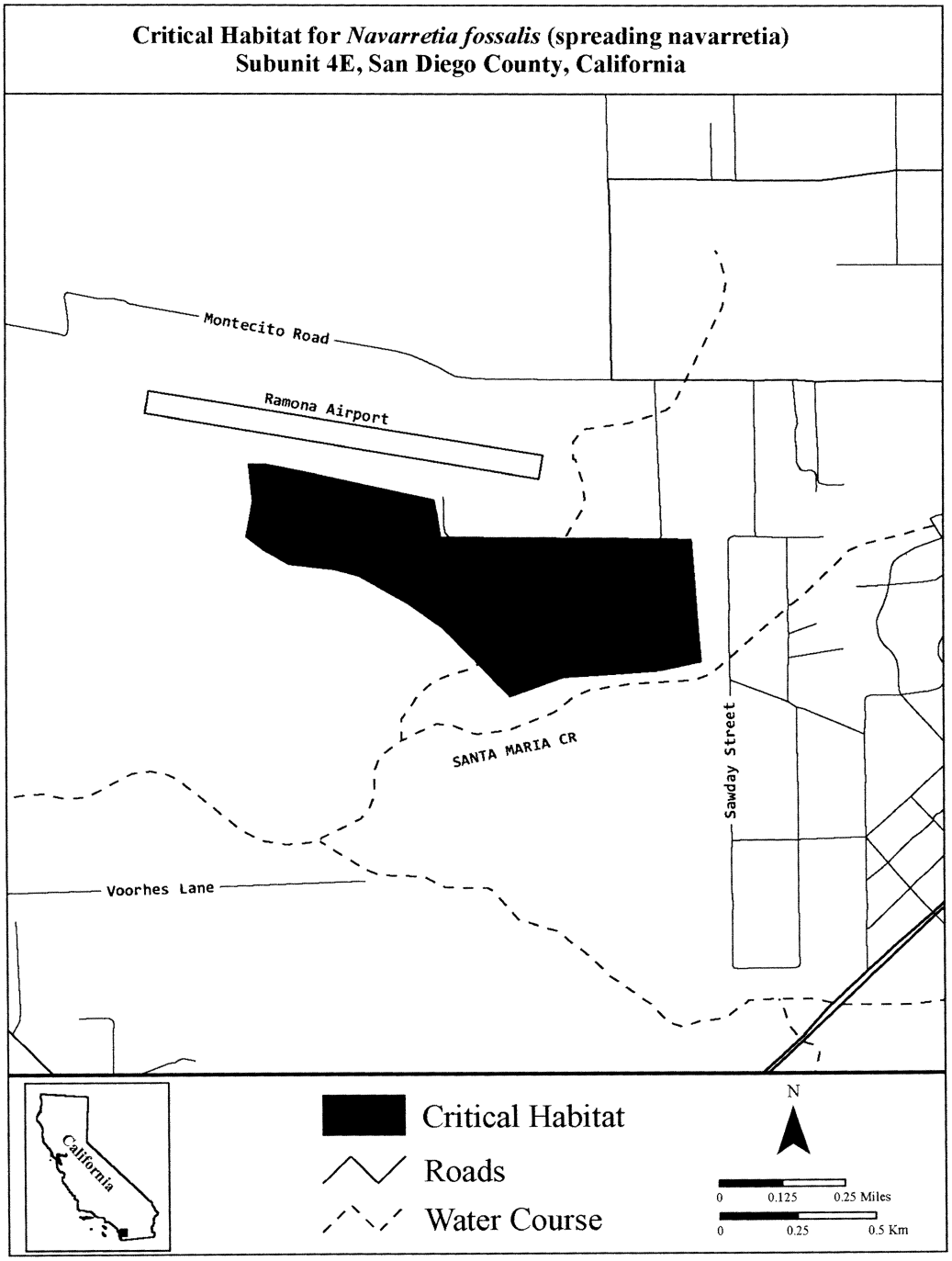
(ii) *Note:* Map of Unit 4, Subunits 4C1, 4C2, and 4D (San Marcos) follows:



(16) Unit 4: San Diego: Inland Management Area, San Diego County, CA. Subunit 4E: Ramona.

(i) [Reserved for textual description of Subunit 4E.]

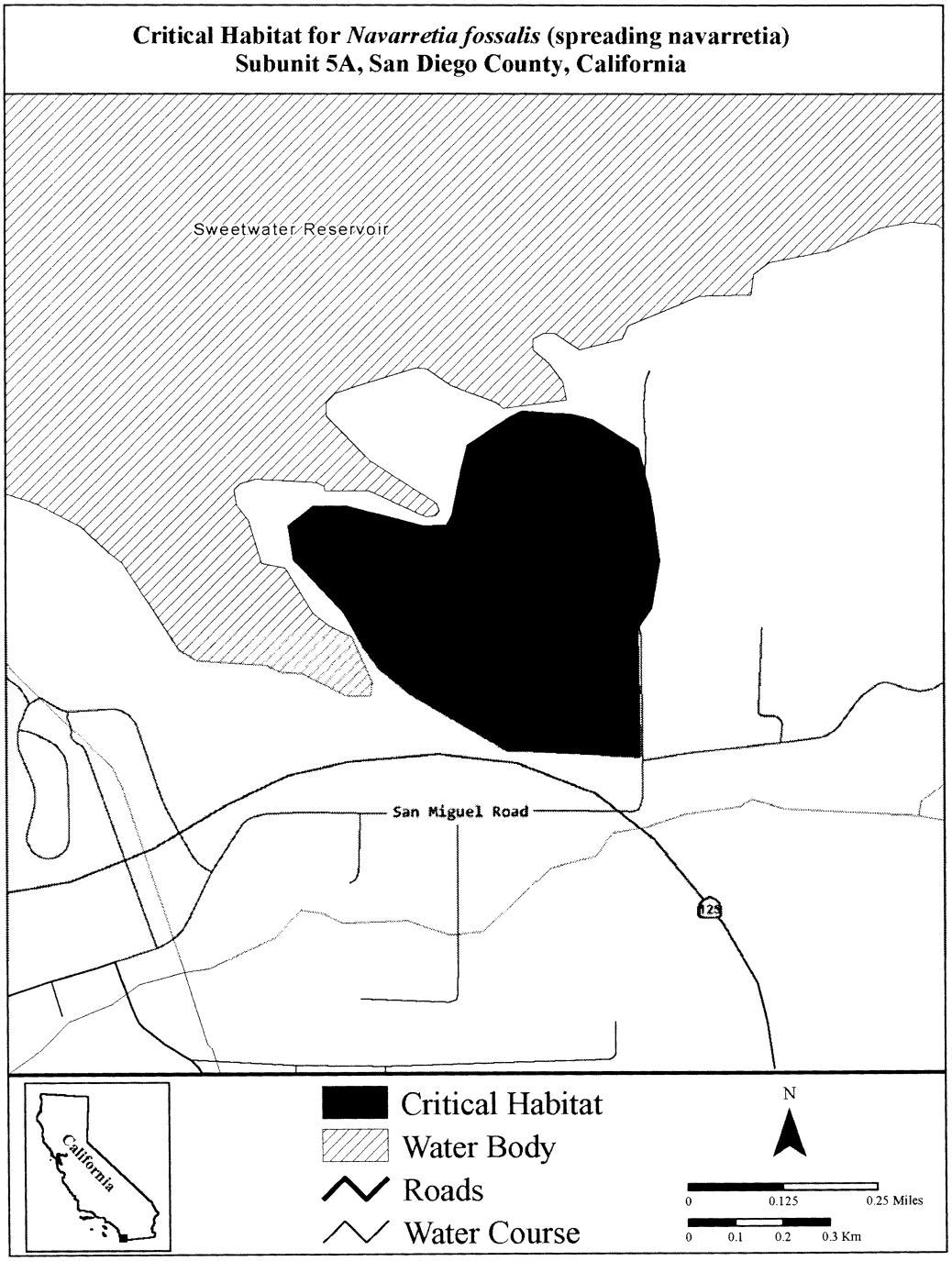
(ii) *Note:* Map of Unit 4, Subunit 4E (Ramona) follows:



(17) Unit 5: San Diego: Southern Coastal Mesa Management Area, San Diego County, CA. Subunit 5A: Sweetwater Vernal Pools.

(i) [Reserved for textual description of Subunit 5A.]

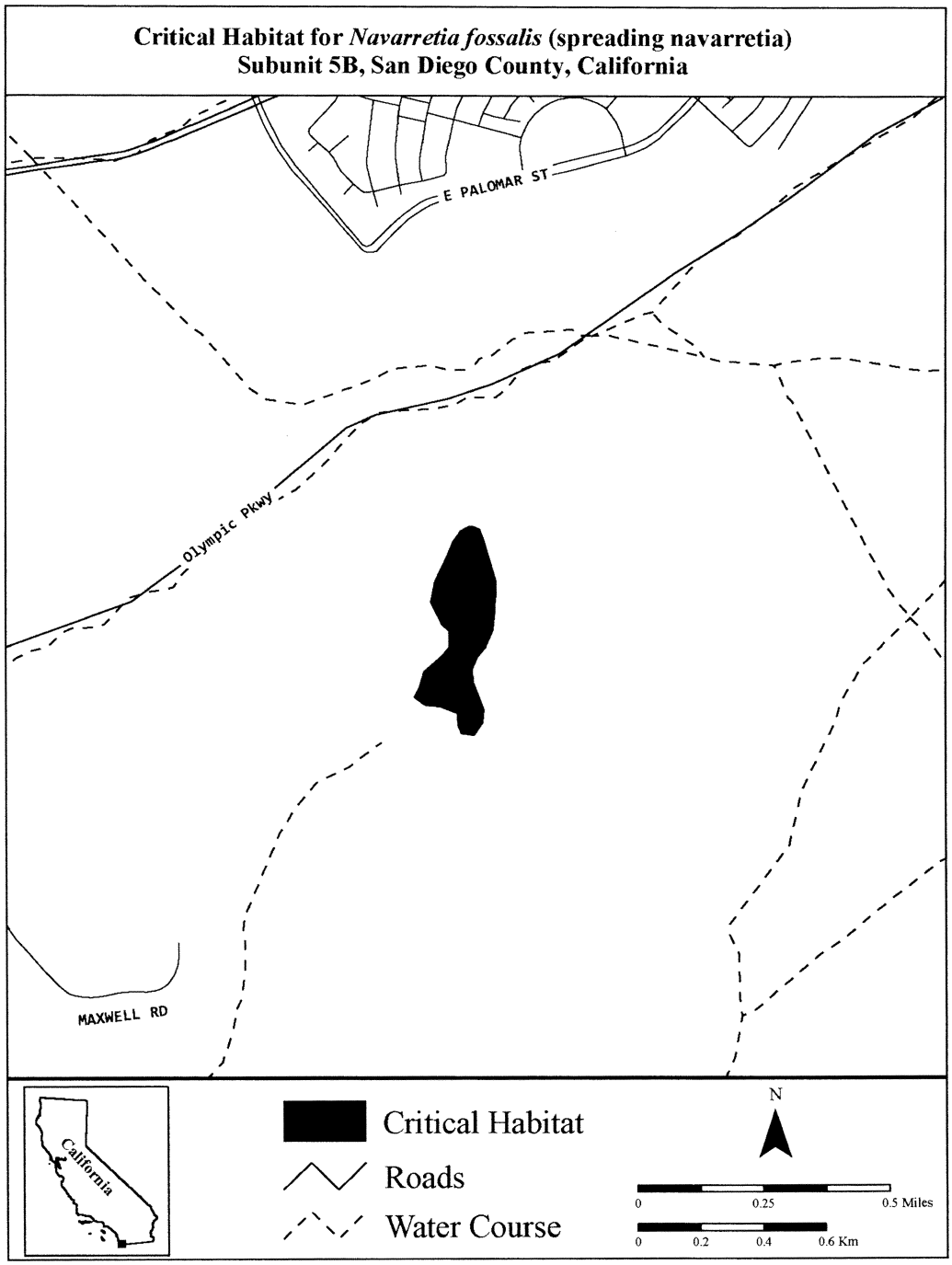
(ii) *Note:* Map of Unit 5, Subunit 5A (Sweetwater Vernal Pools) follows:



(18) Unit 5: San Diego: Southern Coastal Mesa Management Area, San Diego County, CA. Subunit 5B: Otay River Valley.

(i) [Reserved for textual description of Subunit 5B.]

(ii) *Note:* Map of Unit 5, Subunit 5B (Otay River Valley) follows:



(19) Unit 5: San Diego: Southern Coastal Mesa Management Area, San Diego County, CA. Subunit 5F: Proctor Valley.

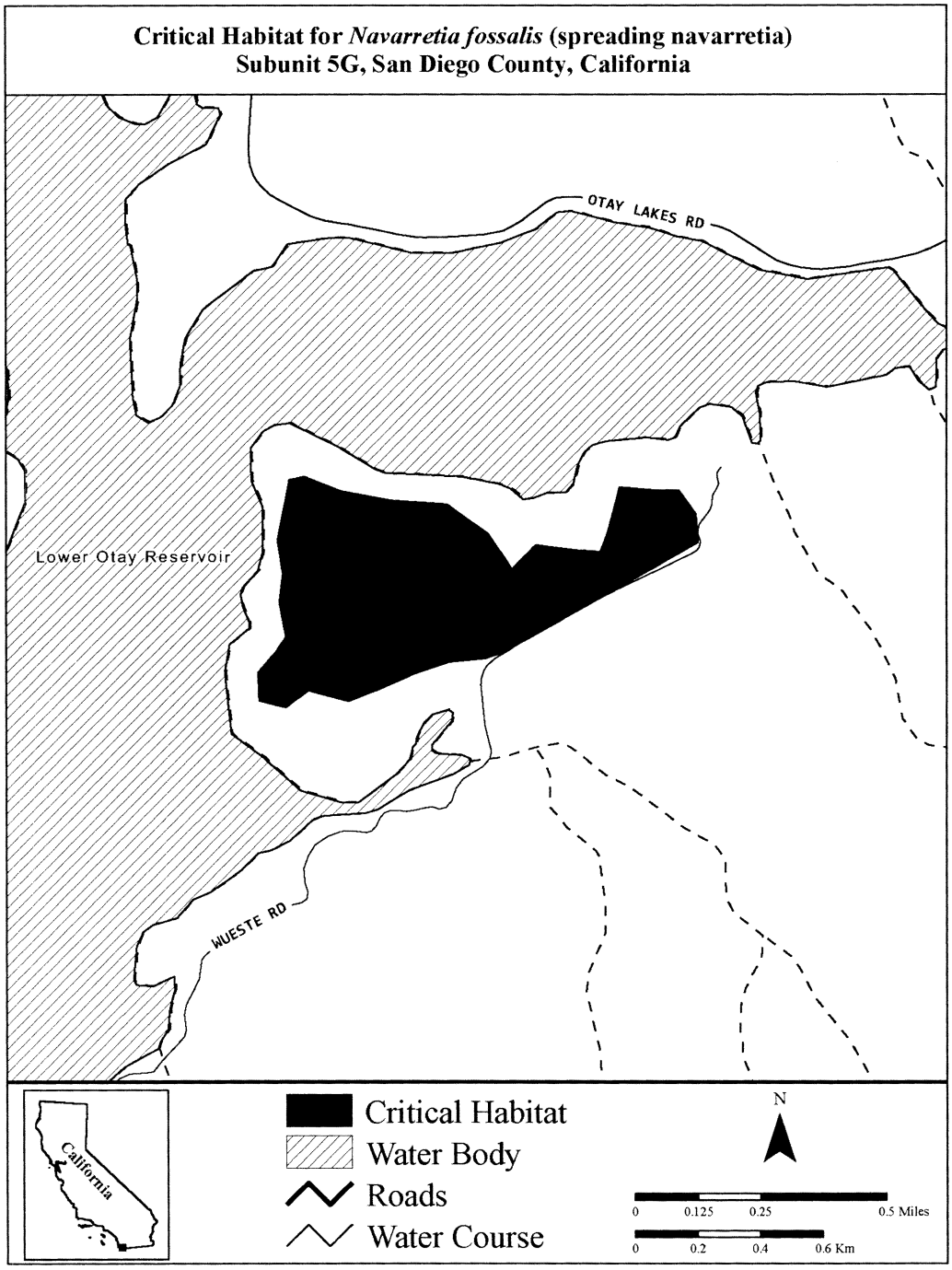
(i) [Reserved for textual description of Subunit 5F.]

(ii) *Note:* Map of Unit 5, Subunit 5F (Proctor Valley) follows:

(20) Unit 5: San Diego: Southern Coastal Mesa Management Area, San Diego County, CA. Subunit 5G: Otay Lakes.

(i) [Reserved for textual description of Subunit 5G.]

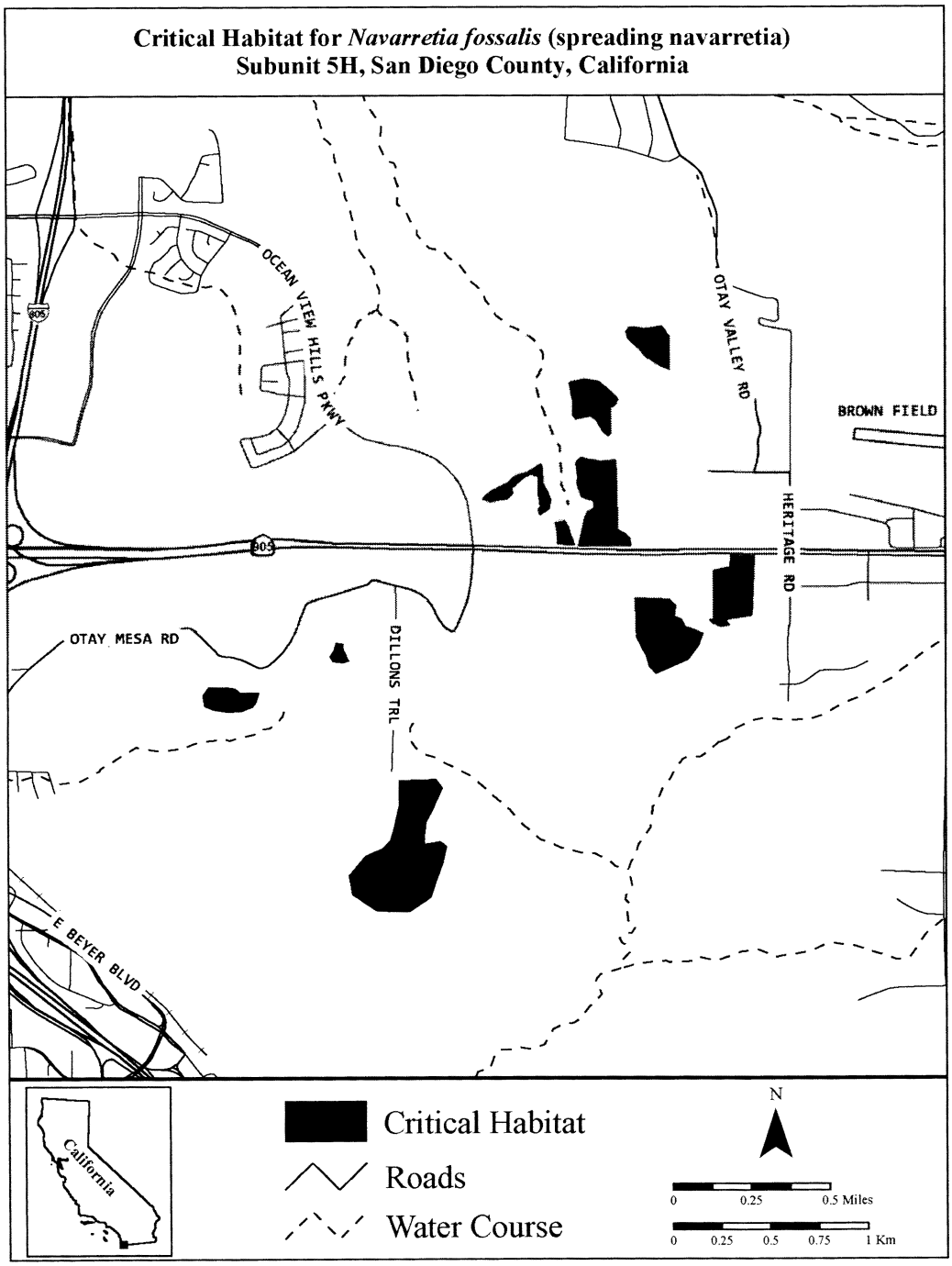
(ii) *Note:* Map of Unit 5, Subunit 5G (Otay Lakes) follows:



(21) Unit 5: San Diego: Southern Coastal Mesa Management Area, San Diego County, CA. Subunit 5H: Western Otay Mesa Vernal Pool Complexes.

(i) [Reserved for textual description of Subunit 5H.]

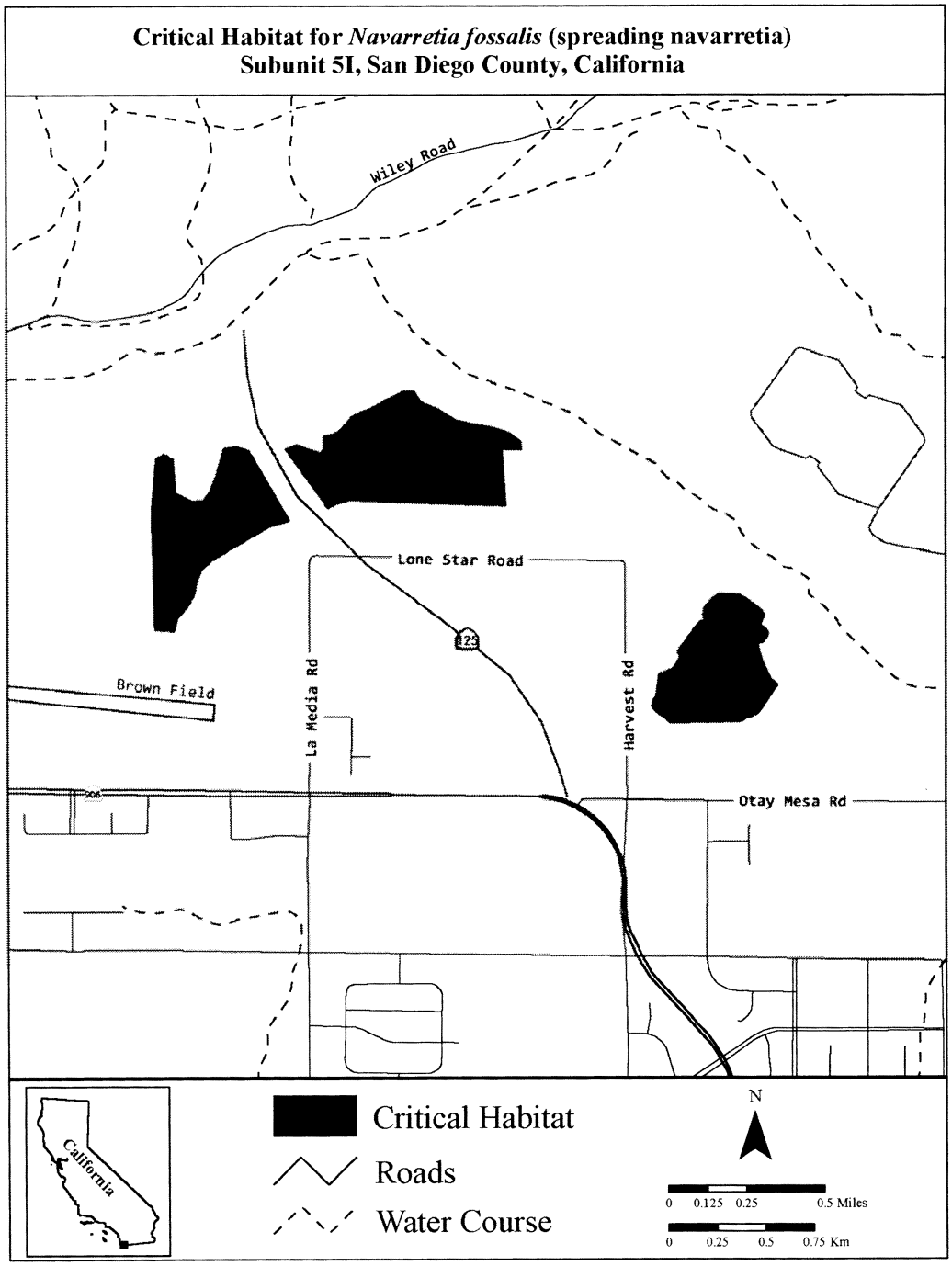
(ii) *Note:* Map of Unit 5, Subunit 5H (Western Otay Mesa Vernal Pool Complexes) follows:



(22) Unit 5: San Diego: Southern Coastal Mesa Management Area, San Diego County, CA. Subunit 5I: Eastern Otay Mesa Vernal Pool Complexes.

(i) [Reserved for textual description of Subunit 5I.]

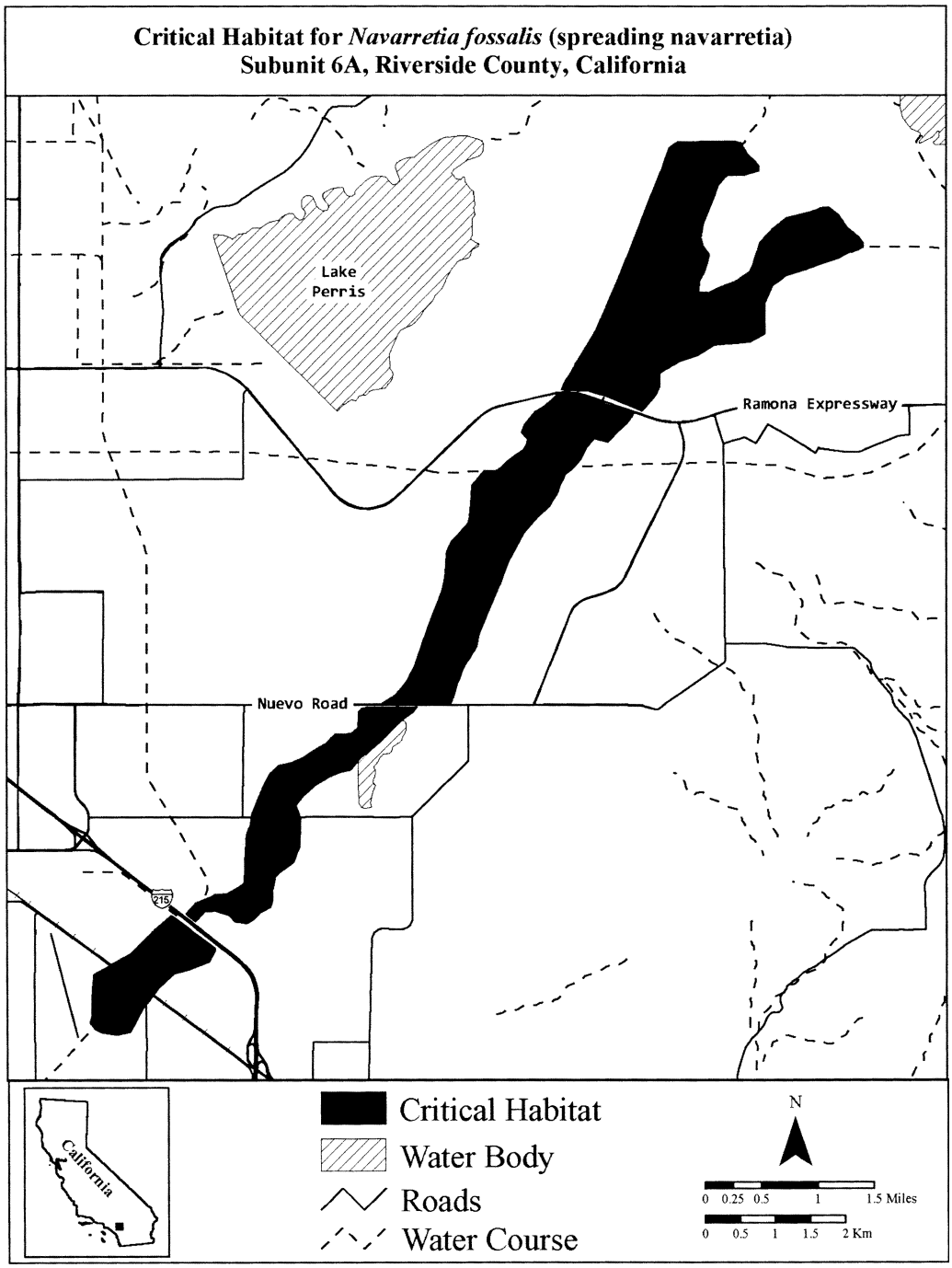
(ii) *Note:* Map of Unit 5, Subunit 5I (Eastern Otay Mesa Vernal Pool Complexes) follows:



(23) Unit 6: Riverside Management Area, Riverside County, CA. Subunit 6A: San Jacinto River.

(i) [Reserved for textual description of Subunit 6A.]

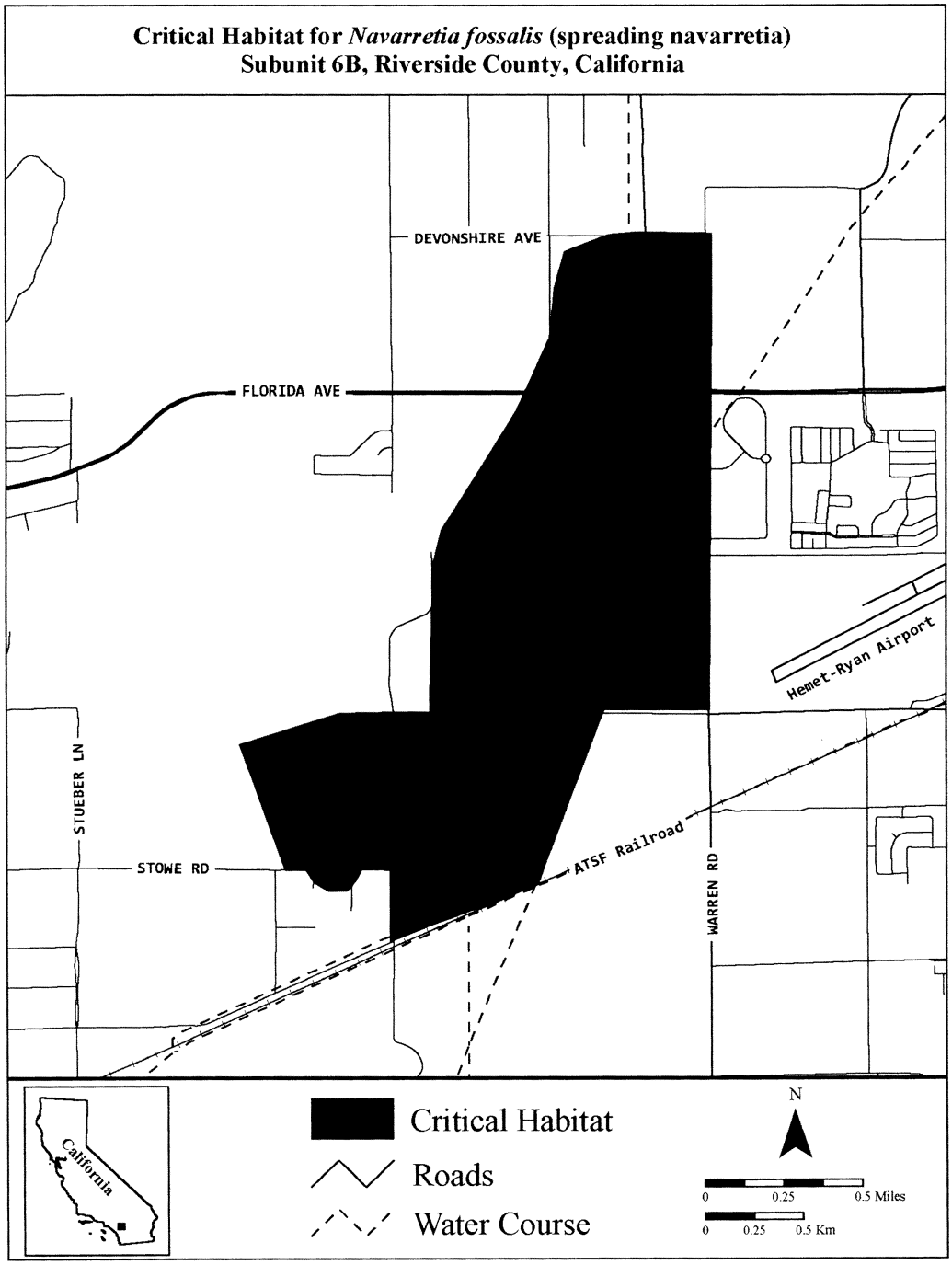
(ii) *Note:* Map of Unit 6, Subunit 6A (San Jacinto River) follows:



(24) Unit 6: Riverside Management Area, Riverside County, CA. Subunit 6B: Salt Creek Seasonally Flooded Alkali Plain.

(i) [Reserved for textual description of Subunit 6B.]

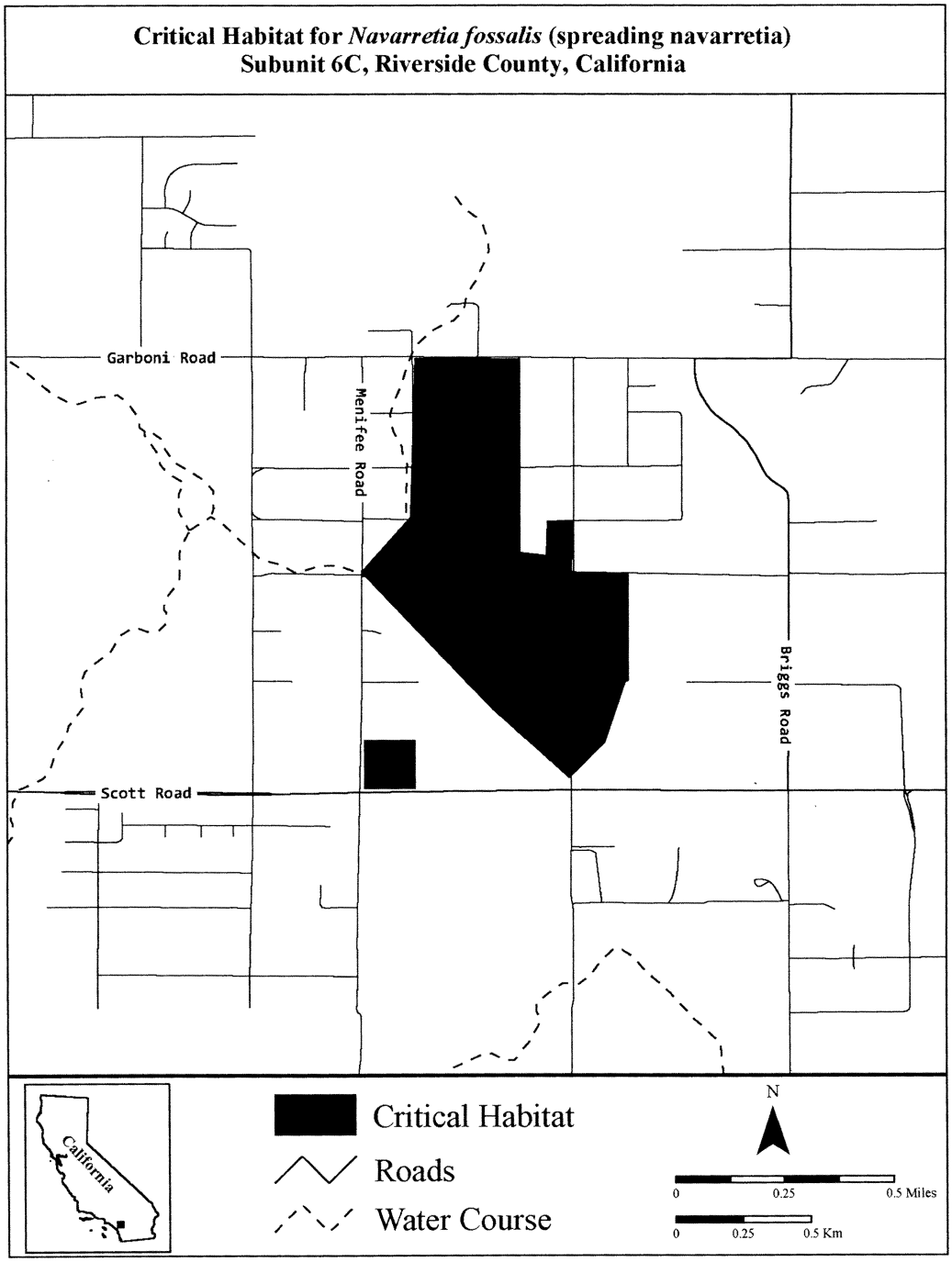
(ii) *Note:* Map of Unit 6, Subunit 6B (Salt Creek Seasonally Flooded Alkali Plain) follows:



(25) Unit 6: Riverside Management Area, Riverside County, CA. Subunit 6C: Wickerd and Scott Road Pools.

(i) [Reserved for textual description of Subunit 6C.]

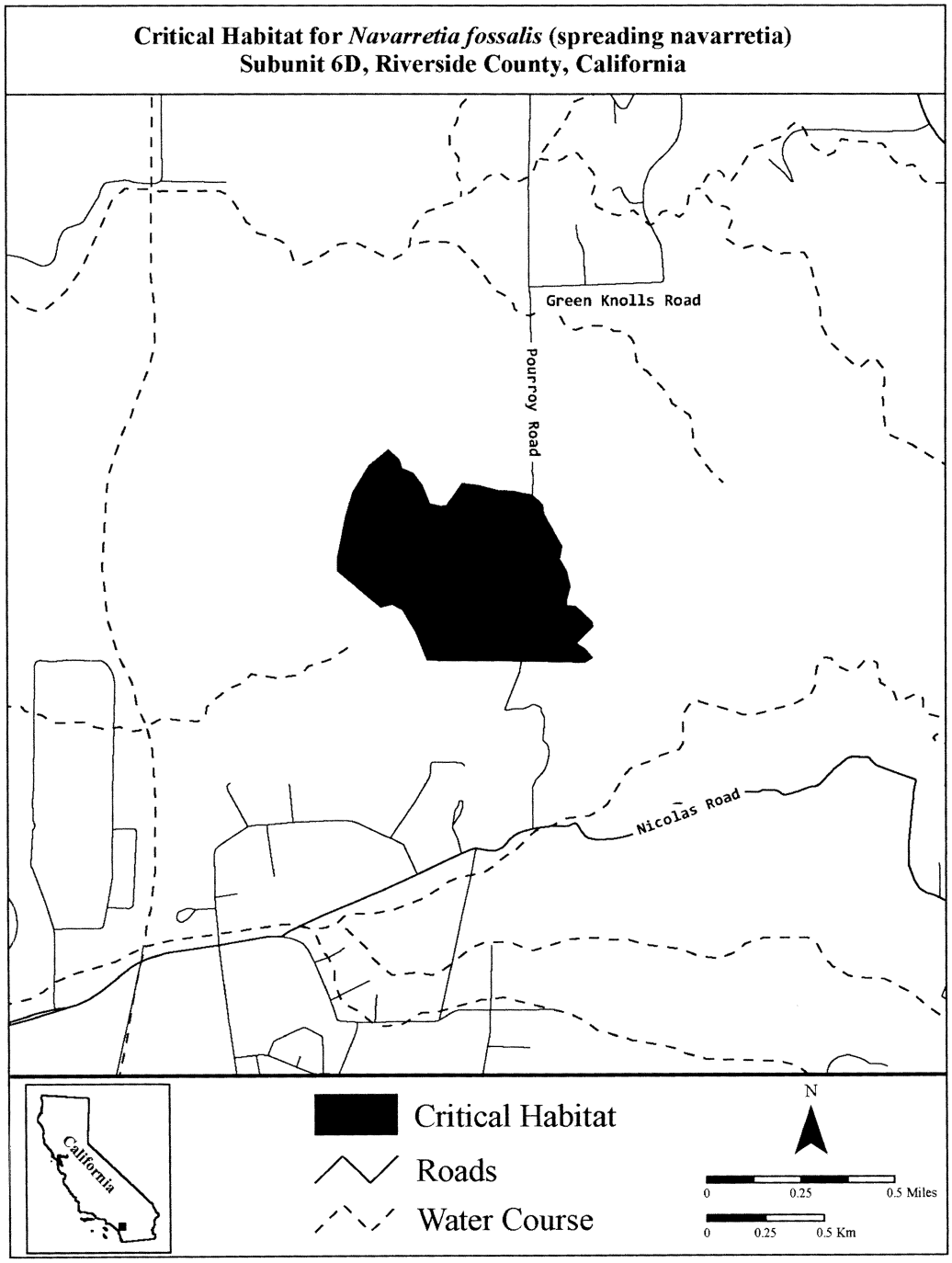
(ii) *Note:* Map of Unit 6, Subunit 6C (Wickerd and Scott Road Pools) follows:



(26) Unit 6: Riverside Management Area, Riverside County, CA. Subunit 6D: Skunk Hollow.

(i) [Reserved for textual description of Subunit 6D.]

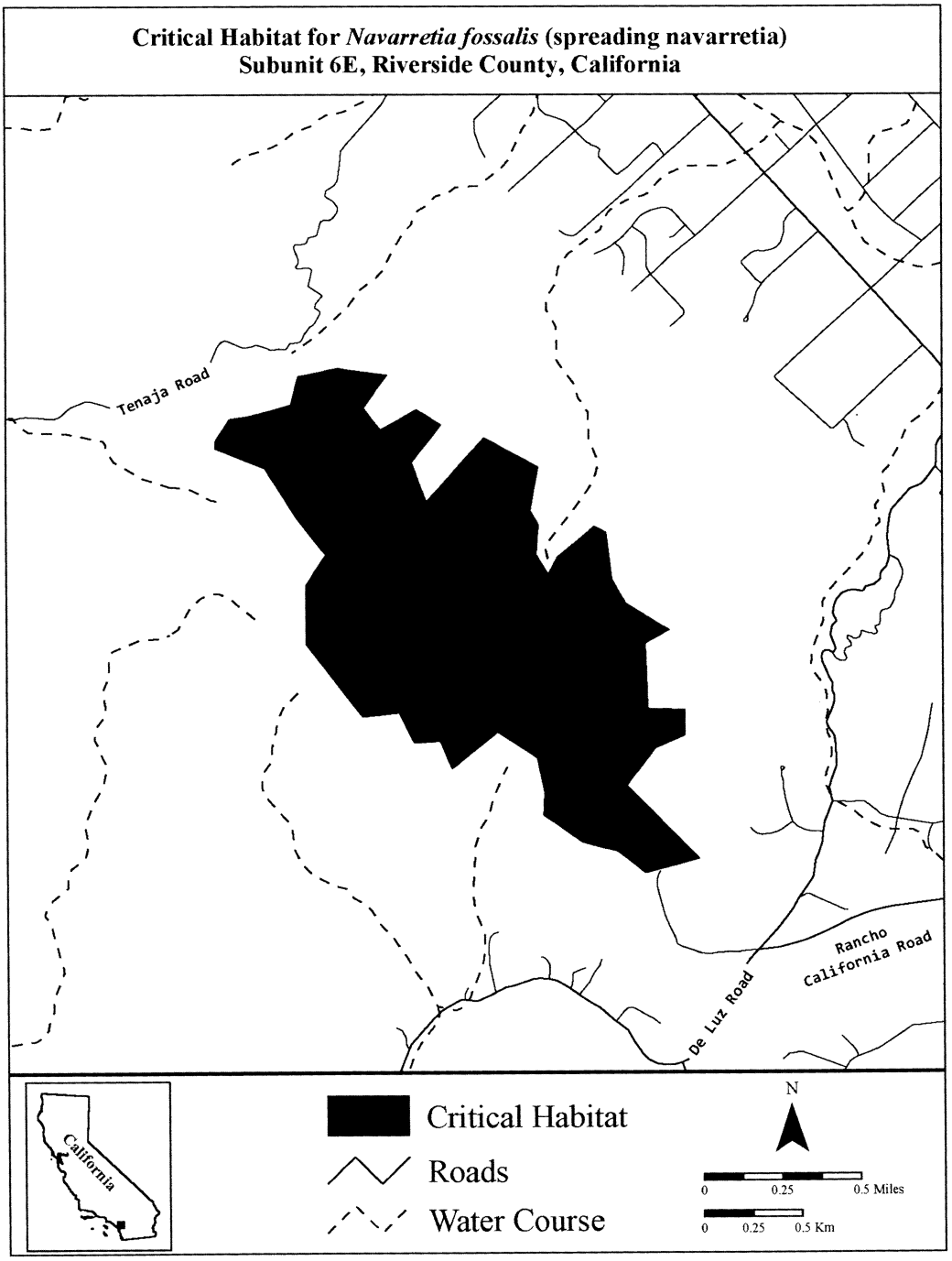
(ii) *Note:* Map of Unit 6, Subunit 6D (Skunk Hollow) follows:



(27) Unit 6: Riverside Management Area, Riverside County, CA. Subunit 6E: Mesa de Burro.

(i) [Reserved for textual description of Subunit 6E.]

(ii) *Note:* Map of Unit 6, Subunit 6E (Mesa de Burro) follows:



* * * * *

Dated: May 27, 2009.

Jane Lyder,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E9–13013 Filed 6–9–09; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Wednesday,
June 10, 2009

Part III

Nuclear Regulatory Commission

10 CFR Parts 170 and 171

Revision of Fee Schedules; Fee Recovery for FY 2009; Final Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

[NRC–2008–0620]

RIN 3150–AI52

Revision of Fee Schedules; Fee Recovery for FY 2009

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending the licensing, inspection, and annual fees charged to its applicants and licensees. The amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), as amended, which requires the NRC to recover through fees approximately 90 percent of its budget authority in fiscal year (FY) 2009, not including amounts appropriated from the Nuclear Waste Fund (NWF), amounts appropriated for Waste Incidental to Reprocessing (WIR), and amounts appropriated for generic homeland security activities. The NRC's required fee recovery amount for the FY 2009 budget is approximately $870.6 million. After accounting for billing adjustments, the total amount to be billed as fees is approximately $866.5 million.

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

ADDRESSES: The comments received on the proposed rule and the NRC's work papers that support these final changes to 10 CFR parts 170 and 171 are available from the following locations:

Federal e-Rulemaking Portal: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2008–0620. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov*.

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 O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC after November 1, 1999, 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, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Rebecca I. Erickson, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 301–415–7126, e-mail *Rebecca.Erickson@NRC.gov*.

SUPPLEMENTARY INFORMATION:

I. Background
II. Response to Comments
III. Final Action
A. Amendments to 10 CFR Part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, As Amended
B. Amendments to 10 CFR Part 171: Annual Fees for Reactor Licenses and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by the NRC
IV. Voluntary Consensus Standards
V. Environmental Impact: Categorical Exclusion
VI. Paperwork Reduction Act Statement
VII. Regulatory Analysis
VIII. Regulatory Flexibility Analysis
IX. Backfit Analysis
X. Congressional Review Act

I. Background

The NRC is required each year, under OBRA–90 (42 U.S.C. 2214), as amended, to recover approximately 90 percent of its budget authority, not including amounts appropriated from the NWF, amounts appropriated for WIR, and amounts appropriated for generic homeland security activities (non-fee items), through fees to NRC licensees and applicants. The NRC receives 10 percent of its budget authority (not including non-fee items) from the general fund each year to pay for the cost of agency activities that do not provide a direct benefit to NRC licensees, such as international assistance and Agreement State activities (as defined under section 274 of the Atomic Energy Act of 1954, as amended).

The NRC assesses two types of fees to meet the requirements of OBRA–90. First, user fees, set forth in 10 CFR part 170 under the authority of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701), recover the NRC's cost of providing special benefits to identifiable applicants and licensees. For example, the NRC assesses these fees to cover the cost of inspections, applications for new licenses and license renewals, and requests for license amendments. Second, annual fees, set forth in 10 CFR part 171 under the authority of OBRA–90, recover generic regulatory costs not otherwise recovered through 10 CFR part 170 fees.

In accordance with OBRA–90, $27.1 million of the agency's budgeted resources for generic homeland security activities are excluded from the NRC's fee base in FY 2009. These funds cover generic activities, such as rulemakings and the development of guidance documents, that support entire license fee classes or classes of licensees. Under its IOAA authority, the NRC will continue to charge part 170 fees for all licensee-specific homeland security-related services provided, including security inspections and security plan reviews.

On March 11, 2009, the President signed the Omnibus Appropriations Act, 2009 (Pub. L. 111–8). This Act appropriated $1,045,516,000 to the NRC to carry out its mission in FY 2009. This amount is $24.3 million lower than the estimate used to develop the FY 2009 proposed rule (74 FR 9129; March 2, 2009). The FY 2009 proposed rule was based on the FY 2009 Energy and Water Development Appropriations Bill (H.R. 7324), reported by the U.S. House of Representatives Appropriations Committee. As discussed in the Statement of Consideration of the FY 2009 proposed rule, the NRC's FY 2009 final fee rule has been adjusted to reflect the enacted budget. However, because the $24.3 million decrease only affected the amount appropriated from the NWF, which is a non-fee item, the NRC's required fee recovery amount for the FY 2009 budget has not changed from the proposed fee rule.

The amount of the NRC's required fee collections is set by law, and is, therefore, outside the scope of this rulemaking. In FY 2009, the NRC's total fee recovery amount has increased by $91.5 million from FY 2008, mostly in response to an increased regulatory and infrastructure support workload for reactor renewal activities, new uranium recovery facility applications, new uranium enrichment facilities, and materials licensing. The FY 2009 budget was allocated to the fee classes that the budgeted activities support. As such, the annual fees for reactor, fuel facility, most uranium recovery, and small materials licensees have increased. Another factor affecting the amount of annual fees for each fee class is the estimated collection under part 170. The

annual fee amounts in the FY 2009 final fee rule are lower for most fee categories than those in the proposed rule primarily due to the increase in part 170 revenue estimates.

II. Response to Comments

The NRC published the FY 2009 proposed fee rule on March 2, 2009 (74 FR 9129) to solicit public comment on its proposed revisions to 10 CFR parts 170 and 171. The NRC received eight comments by the close of the comment period (April 1, 2009) and two comments thereafter, for a total of 10 comments that were considered in this fee rulemaking. The comments have been grouped by issue and are addressed in a collective response.

A. Specific Part 170 Issue

1. Hourly Rate Increase

Comment. Several commenters were concerned about the increase in the NRC's hourly rate. These commenters requested a better explanation for the 19 percent increase in the cost of agency administrative overhead and the 10 percent increase in the cost of salaries and benefits for mission direct full-time equivalents (FTE) from FY 2008 to FY 2009. Some commenters also noted that NRC's hourly rates have always exceeded those charged by private firms for similar work.

Response. The NRC's hourly rate is based on budgeted costs and must be established each year to meet the NRC's fee recovery requirements. As discussed in the proposed rule, the increase in the hourly rate is due to the higher budget necessary for an increased regulatory and infrastructure support workload for reactor license renewals and applications from new uranium recovery and enrichment facilities. The increase in the agency's regulatory activities requires a comparable increase in agency administrative support (*e.g.,* rent, supplies, and information technology). The 10 percent increase in the cost of salaries and benefits is primarily due to an increase of 101 mission direct FTEs in FY 2009 as compared with FY 2008 along with Government-wide pay raises. The FTE increase reflects additional support for new facility applications.

In response to comments that the NRC hourly rate is significantly higher than private industry rates, the NRC's rate is calculated to recover all of the budgeted costs supporting the services provided under part 170, including all programmatic and agency overhead, which is consistent with the full cost recovery concept emphasized in the Office of Management and Budget's Circular No. A–25, ''User Charges.'' The NRC did not receive any comments suggesting ways to revise its hourly rate calculation methodology, and comments on this fee rule and other rulemakings have consistently supported the NRC's efforts to collect more of its budget through part 170 fees-for-services rather than part 171 annual fees. Therefore, the NRC is retaining the hourly rate formula as presented in the FY 2009 proposed rule.

2. Multiple Hourly Rates

Comment. One commenter requested that the NRC consider developing different hourly rates to account for the more complex licensing tasks of new licensed facilities as opposed to the routine work required for well-established programs.

Response. From FY 1988 through FY 1994, the NRC used one agency-wide professional hourly rate. In the FY 1995 fee rule (60 FR 32218; June 20, 1995), the NRC replaced the single rate with two professional hourly rates based on ''cost center concepts'' used for budgeting purposes to separately, and more equitably, allocate the costs associated with the reactor and materials programs. In the FY 2007 fee rule (72 FR 31401; June 6, 2007), the NRC returned to the use of one hourly rate. The NRC found that there was no longer a significant difference in the two hourly rates. Also, the NRC incurs administrative burden in calculating and billing two different hourly rates.

As stated in the previous response, the NRC's hourly rate is based on budgeted costs and must be calculated each year to meet the agency's fee recovery requirements. The NRC believes that the added burden from requiring both mission direct and administrative staff to develop and provide annual review and oversight of a multiple hourly rate schedule would be counterproductive. In addition, there is not a significant difference in the NRC budget for the various programs that would result in different hourly rates. Therefore, the NRC is retaining the single hourly rate as presented in the FY 2009 proposed rule.

3. Fee Category 17 Description Revisions

Comment. One commenter requested that NRC rescind the revision to the description of fee category 17, ''master materials licenses of broad scope issued to Government agencies and other entities,'' as stated in the proposed rule. This commenter stated that it understands and supports the NRC's need to meet its fee recovery responsibilities, but believes adequate notice should be given to impacted licensees as required under the Administrative Procedure Act. This commenter also noted that the addition of the phrase ''and other entities'' to the description of fee category 17 and further elaboration that this category is being expanded to include non-governmental entities with multi-site licenses did not clearly indicate that certain fee category 3.C. entities would now fall under fee category 17.

Response. The NRC's intent in revising the description of fee category 17 was to enhance the fairness and equity of its fee schedule. The data gathered for the FY 2009 biennial review of fees showed that the NRC's review efforts for large non-Federal multi-site, multi-region licenses under fee category 3.C. were similar to efforts for a Master Materials License (MML) (fee category 17) and, thus, there should be similar fees. However, NRC appreciates the concerns raised by this commenter. To address these concerns, NRC will rescind the proposed revision to the description for fee category 17 (MML). The NRC believes it is necessary to perform additional studies of the best way to equitably recover the costs of providing the regulatory oversight for multi-site licenses and such review will be addressed in a future rulemaking. The impact of removing the revised description from this final rule on fee categories 3.C. and 17 is discussed in Sections III.A.2, of this document, Flat Application Fee Changes, and III.B.3.g, Materials Users.

B. Specific Part 171 Issues

1. Increase in Annual Fee Base

Comment. Some commenters requested a more detailed explanation for the bases for the increase in annual fees as opposed to an increase in the NRC hourly fee charges. The commenters recognized that additional fees are necessary to support increases in NRC staffing levels and the agency infrastructure required to license new facilities, but the commenters expected a larger percentage of the increase to be recovered through hourly fee charges.

Response. As a matter of policy, the NRC strives to maximize its fee collections under part 170, and this has been addressed in previous fee rules. The NRC is rebaselining its fees in FY 2009, as noted in the proposed fee rule. Under this methodology, the agency's annual fee amounts are calculated based on budgeted resources allocated to the fee class and may fluctuate from one year to the next. In FY 2009 the NRC budget amount to be recovered increased by 14 percent. This is

reflected in the increase in annual fees for most licensees.

Because NRC's annual fees must recover all fee class resources not collected through part 170 fees, the annual fees are also affected by the part 170 fees collected from that fee class. The NRC prepares its budget using the best information available at the time, including scheduled application and licensing activities. However, part 170 revenue from a fee class is particularly difficult to predict in advance. Although the total part 170 revenue in FY 2009 is greater than FY 2008, fact-of-life issues, such as delays in application activities and restrictions in a six-month continuing resolution, resulted in lower than expected part 170 estimated revenues for some classes of licensees like fuel facilities. In addition, most of the FY 2009 part 170 revenue is billed at the lower FY 2008 professional hourly rate of $238 because the higher FY 2009 rate of $257 is not effective until 60 days after the publication of this final rule in the **Federal Register**. This has resulted in annual fee increases higher than the increase in total budget to be recovered for some licensees.

2. Fuel Facilities Annual Fees

Comment. One commenter was concerned about the increase in annual fees for fee category 1.A.(1)(a), High Enriched Uranium Fuel (HEU), and requested that NRC re-evaluate the matrix used in determining the Fuel Facilities annual fees. In particular, this commenter believes that the annual fee for fee category 1.E., Uranium Enrichment, should have a higher percentage increase because the NRC stated that the primary reason for the Fuel Facilities budget increase was for new uranium enrichment facility licensing activities. The commenter then asserted that the proposed annual fee increase for an HEU facility was unjustified because the NRC said that the effort factors for the HEU fee category have decreased from FY 2008. Another commenter did not believe that the annual fee increase for a Low-Enriched Uranium Fuel Facility was justified and wanted the NRC to provide further explanation.

Response. Annual fees fluctuate from year to year based on a number of factors, including the budgeted resources for a license fee class. The NRC acknowledges that the annual fees for fuel facilities increased by a large percentage (between 56 percent and 124 percent) from FY 2008 to FY 2009. However, the annual fees decreased approximately 27 percent from FY 2007 to FY 2008. The licensing activities for the new uranium enrichment facility are not included in the annual fee for a specific facility licensed by the NRC. The NRC bills the applicant for these activities as part 170 hourly charges. The delay in the submission of the license application impacted the part 170 fee estimate for fuel facilities. Because annual fees must recover all budgeted resources for a fee class not recovered through part 170 fees, annual fees for all facilities in the fee class are impacted by the lower part 170 fee estimate, as explained in the answer to the previous comment.

In response to the request to re-evaluate the matrix used for calculating annual fees for individual fuel facilities, the NRC established its methodology through public notice and comment rulemaking (64 FR 31448; June 10, 1999). Under this methodology the total budgeted resources for fuel facilities are allocated to individual fuel facility fee categories based on the effort/fee determination matrix, which was described in detail in the FY 2009 proposed fee rule. As stated in the FY 1999 rulemaking, this methodology is adaptable to changes in the number of licensees or certificate holders, licensed or certified material and/or activities, and total programmatic resources to be recovered through annual fees. The NRC continues to believe that an effort/fee determination matrix, based on the commensurate level of regulatory effort related to the various fuel facility categories from a safety and safeguards perspective, results in annual fees that accurately reflect the current costs of providing generic and other regulatory services to each fuel facility type. In response to the comment on the decrease in effort factors for HEU fee category, the 2.6 percent decrease in the total safety and safeguards effort factor change is relatively small, as noted in the proposed rule. The primary reason for the increase in annual fees is the higher budget without a proportionate increase in part 170 revenue. The decrease in total effort factors for HEU fee category did not have a large impact on the annual fee. Therefore, the NRC is retaining the effort/fee determination matrix as outlined in the proposed rule.

3. Uranium Recovery Annual Fees

Comment: One commenter, representing various stakeholders, stated that the proposed rule did not adequately explain the substantial increase in FY 2009 annual fees for in-situ recovery (ISR) operations and conventional mills from the $10,300 [corrected] annual fee in FY 2008. This commenter was also concerned that contrary to the uranium recovery industry's expectations, the preparation of the Generic Environmental Impact Statement (GEIS) for in-situ uranium recovery has not decreased NRC staff effort. This commenter supported the creation of three new classes of uranium recovery licenses as presented in the proposed rule, but requested the addition of a statement in the final rule to clarify that conventional mills will not be double-billed as a resin toll milling facility under fee category 2.A.(2)(e) if their license allows them to process uranium bearing resins from other sites and sources. Another commenter stated that the proposed fee rule did not adequately explain the basis for the Uranium Mill Tailings Radiation Control Act (UMTRCA) Title I budgeted costs. This commenter worried that reductions in generic fees would result in reduced NRC support for UMTRCA license actions and requested site-specific budget details in the final rule and supporting documents.

Response. The NRC acknowledges that the FY 2009 uranium recovery annual fees for in-situ recovery operations and conventional mills fee classes of $29,700 and $31,200, respectively, are significantly higher than the FY 2008 annual fee of $10,300 charged to these facilities. However, the annual fees charged to these facilities have decreased substantially since FY 2006 when the annual fee was $65,900. Annual fees fluctuate from year to year based on a number of factors, including the budgeted resources for a license fee class. The increase in the total required annual fee recovery is mainly due to an increase in uranium recovery licensing and inspection budget resources for the existing licensees, as stated in the proposed rule. The NRC's annual fees reflect the budgeted cost of its regulatory services to the class.

In response to the request for clarification in the fee schedule to avoid the possibility of double-billing, most NRC materials licenses that authorize more than one activity on a single license will be assessed annual fees for each category applicable to the license (see § 171.16, footnote 1, of this document). Thus, if an NRC license authorizes the operation of both a conventional mill and a resin toll milling facility then annual fees will be assessed for both fee category 2.A.(2)(a), Conventional Mills, and 2.A.(2)(e), Resin Toll Milling Facilities. As described in the proposed rule, each fee category for uranium recovery facilities reflects the NRC's regulatory effort expended for the different types of facilities, both existing and planned. Consistent with requirements under OBRA–90, the NRC believes the annual

fees have a reasonable relationship to the cost of its regulatory services to each fee category. Therefore, the final rule provides no exceptions.

In response to comments on budgeted resources for specific uranium recovery activities, the NRC determines the budgeted costs to be allocated to each class of licensee through a comprehensive review of every planned activity in each of the agency's major program areas. The NRC's Performance Budget submitted to the Congress for review provides the objectives of the budget and how it supports the agency's Strategic Plan goals and strategies. Nonetheless, the NRC's budget and the manner in which the NRC carries out its activities are not within the scope of this rulemaking. Therefore, this final rule does not address the commenters' concerns regarding the NRC's budget and the use of NRC resources for specific activities, such as the GEIS and UMTRCA.

4. Agreement State Activities

Comment. Some commenters requested more discussion of the fee impact on NRC licensees once additional states beyond the Commonwealth of Virginia and the State of New Jersey become Agreement States. One commenter worried that they would be required to pay fees to both the NRC and the Commonwealth of Virginia. This commenter also suggested that NRC consider implementing monthly billing for seasonal usage whereby the licensee would only be charged for the months during which the equipment was used.

Response. In response to concerns about decreasing numbers of NRC licensees as more states become Agreement States, the NRC notes that the fee calculation methodology considers the percentage of licensees in Agreement States in establishing fees for the materials users fee class. As explained in the proposed fee rule, the budgeted resources providing support to Agreement States or their licensees are included in total fee-relief costs, which are offset by non-fee recovery funding provided by Congress. For example, if the NRC develops a rule, guidance document, or a tracking system that is associated with or otherwise benefits Agreement State licensees, the costs of these activities are prorated to the fee-relief activities according to the percentage of licensees in that fee class in Agreement States (*e.g.,* if 85 percent of materials users licensees are in Agreement States, 85 percent of these regulatory infrastructure costs are included in the fee-relief category). To address fairness and equity concerns associated with licensees paying for the cost of activities that do not directly benefit them, the FY 2001 Energy and Water Development Appropriations Act amended OBRA–90 to decrease the NRC's fee recovery amount to 90 percent beginning in FY 2005. To the extent that the 10 percent of NRC's budget authority which is not fee recoverable is insufficient to cover the total cost of all fee-relief activities, these remaining costs are spread to all licensees based on their percentage of the budget. In FY 2009, the NRC's fee relief exceeds the total fee-relief activities cost. This excess fee relief is used to reduce licensees' annual fees, based on their percentage of the fee recoverable budget authority.

In response to the comment about paying fees to both NRC and the Commonwealth of Virginia, the proposed fee rule explained that, because of Virginia's effective Agreement date of March 31, 2009, the licensees transferring to Virginia are subject to one-half of their NRC annual fee for FY 2009. In response to the comment suggesting a monthly charge to account for seasonal usage, the NRC recognizes the assessment of fees to recover the agency's costs may result in a financial hardship for some licensees. However, the annual fees are based on the budgeted resources for activities such as licensing and inspection and the level of effort to perform these activities. The NRC does not believe that seasonal usage of equipment should be a factor in determining annual fees. Therefore, the NRC will continue to charge an annual fee to its licensees.

C. Other Issues

1. The NRC Budget and Explanation of Increases

Comment. Several commenters stated that the proposed rule did not adequately explain the increase in NRC's total fee recovery for FY 2009 and they felt that the NRC should provide a plan for controlling and limiting the rate of future budget increases. While the commenters recognized and supported NRC's hiring effort in the past five years in response to an increase of new licensees in several fee categories, they believe the proposed rule should have provided a more detailed explanation and justification for the fee increases.

Response. The NRC appreciates the importance of developing cost-efficient budgets. NRC offices conduct process reviews every year and rely on risk-informed practices to develop cost-efficient budgets that allow them to achieve the NRC's Strategic Plan mission objectives. As discussed previously, the NRC's budget is submitted to OMB and Congress for review and approval. The Congressionally-approved budget resulting from this process reflects the resources deemed necessary for the NRC to carry out its statutory obligations. In compliance with OBRA–90, NRC's fees are calculated to recover the required percentage of its approved budget. The NRC will continue efforts to ensure that the NRC carries out its statutory obligations in an efficient manner.

2. Need for Timely Budget Estimate

Comment. Some commenters raised concerns that the timing of the fee rule makes it difficult for licensees to plan for regulatory expenses within the framework of their normal budget cycles. To address this issue, these commenters suggested that the NRC hold an annual public meeting for the purpose of sharing fee projection information. The commenters recognized NRC's efforts in providing information to the industry through an October 2008 public meeting but requested that an annual public meeting be held earlier in the year to align with their budget planning cycle. In addition, some commenters worried about the unpredictability of estimating proposed fee increases. One commenter recommended NRC publish advance notice of the NRC's next fiscal year budget during the first half of the current calendar year. Another commenter did not believe the NRC adequately communicated the impact of its budget increases to NRC licensees when the proposed FY 2009 budget was released to Congress. Some commenters recommended that the NRC improve its methods of communicating monthly inspection costs.

Response. The NRC appreciates the concerns about fee predictability and stability, and strives to notify licensees of proposed fee changes as early as possible. The Commission also makes every effort to issue the proposed fee rule as soon as possible. Unfortunately, the NRC cannot precisely estimate its budget in advance, as much of the process is out of the agency's direct control. The NRC's proposed budget is submitted to the Office of Management and Budget for executive review before the President submits a budget to Congress, which often makes changes before approving the final budget for the President's signature. As was noted at the October 2008 public meeting, the NRC is committed to open communication within the confines of the rulemaking process, but the agency cannot provide predecisional policies or certain administrative fee-related

information until the proposed fee rule is published. However, the NRC agrees to hold an annual public meeting with interested licensees to share projected fee information as the commenters suggested. The date of the meeting will be determined annually, taking into consideration the timing of the budget process and NRC staff availability.

In response to suggestions that the agency improve its methods of communicating monthly inspection costs, the NRC appreciates the concerns regarding invoice predictability. Nonetheless, providing estimated monthly inspection costs before invoicing is not within the scope of this rulemaking and will not be addressed in this final rule.

III. Final Action

The NRC is amending its licensing, inspection, and annual fees to recover approximately 90 percent of its FY 2009 budget authority minus the appropriations for non-fee items. The NRC's total budget authority for FY 2009 is $1,045.5 million. The non-fee items include $49 million appropriated from the NWF, $2 million for WIR activities, and $27.1 million for generic homeland security activities. Based on the 90 percent fee-recovery requirement, the NRC must recover approximately $870.6 million in FY 2009 through part 170 licensing and inspection fees and part 171 annual fees. The amount required by law to be recovered through fees for FY 2009 is $91.5 million more than the amount estimated for recovery in FY 2008, an increase of approximately 12 percent.

The FY 2009 fee recovery amount of $870.6 million is reduced by $4.1 million to account for billing adjustments (*i.e.,* for FY 2009 invoices that the NRC estimates will not be paid during the fiscal year, less payments received in FY 2009 for prior year invoices). This leaves approximately $866.5 million to be billed as fees in FY 2009 through part 170 licensing and inspection fees and part 171 annual fees.

Table I summarizes the budget and fee recovery amounts for FY 2009. (Individual values may not sum to totals due to rounding.)

TABLE I—BUDGET AND FEE RECOVERY AMOUNTS FOR FY 2009

[Dollars in millions]

Total Budget Authority	$1,045.5
Less Non-Fee Items	−78.1
Balance	$967.4
Fee Recovery Rate for FY 2009	× 90.0%
Total Amount to be Recovered for FY 2009	$870.6
Less Part 171 Billing Adjustments:	
Unpaid FY 2009 Invoices (estimated)	1.9
Less Payments Received in FY 2009 for Prior Year Invoices (estimated)	−6.0
Subtotal	−4.1
Amount to be Recovered Through Parts 170 and 171 Fees	$866.5
Less Estimated Part 170 Fees	−333.9
Part 171 Fee Collections Required	$532.6

The NRC added six updates to the FY 2009 fee calculations since the proposed rule. First, the agency updated the Part 171 Billing Adjustments based on the latest information available. The estimated payments received in FY 2009 for prior year invoices decreased by approximately $1.7 million, resulting in a greater amount to be recovered through fees. Second, the NRC updated the part 170 estimates based on the latest billing data available, adding adjustments to account for changes in the budget, as appropriate. In total, the part 170 estimates increased by approximately $13.7 million. The NRC estimates that $333.9 million will be recovered from part 170 fees in FY 2009, which represents an increase of approximately 20 percent compared to the $277.3 million in part 170 collections during FY 2008. Part 171 annual fees account for the remaining $532.6 million to be recovered in FY 2009, an increase of approximately 13 percent compared to the $472.9 million in part 171 collections during FY 2008. Third, the NRC lowered the amount of resources for generic decommissioning (fee-relief) and correspondingly increased resources for the uranium recovery fee class. These changes more accurately allocate budgeted resources. Fourth, in response to a commenter's concerns, the NRC has not changed the definition for fee category 17. Fifth, the NRC corrected the ''Flat'' application fee for fee category 17, Master Materials License (MML). The proposed rule listed an application fee of $29,900, which was incorrect. The correct amount is $60,100, as shown in the proposed rule work papers. Sixth, the NRC adjusted the average number of professional staff hours needed to complete inspection actions for fee categories 3C and 17, and to complete licensing actions for fee category 17. This adjustment takes into account the unchanged definition for fee category 17.

The impact of these updates on the FY 2009 fees is minimal. Fees for most licensees decreased between the FY 2009 proposed and final fee rules. The two most significant changes were: (1) A 30 percent decrease in the test and research reactor annual fee, which resulted from an increase in estimated part 170 fee collections for this fee class; and (2) a 144 percent increase in the ''Flat'' application fee for fee category 17, which resulted from a correction to the proposed fee amount and an adjustment to the average number of professional staff hours. Other fees decreased or increased by small amounts as a result of the changes listed in the preceding paragraph.

The FY 2009 final fee rule is a ''major rule'' as defined by the Congressional Review Act of 1996 (5 U.S.C. 801–808). Therefore, the NRC's fee schedules for FY 2009 will become effective 60 days after publication of the final rule in the **Federal Register**. The NRC will send an invoice for the amount of the annual fee to reactors, part 72 licensees, major fuel cycle facilities, and other licensees with annual fees of $100,000 or more, upon publication of the FY 2009 final rule. For these licensees, payment is due on the effective date of the FY 2009 final rule. Because these licensees are billed

quarterly, the payment due is the amount of the total FY 2009 annual fee, less payments made in the first three quarters of the fiscal year.

Materials licensees with annual fees of less than $100,000 are billed annually. Those materials licensees whose license anniversary date during FY 2009 falls before the effective date of the FY 2009 final rule will be billed for the annual fee during the anniversary month of the license at the FY 2008 annual fee rate. Those materials licensees whose license anniversary date falls on or after the effective date of the FY 2009 final rule will be billed for the annual fee at the FY 2009 annual fee rate during the anniversary month of the license, and payment will be due on the date of the invoice.

The NRC will not routinely mail the FY 2009 final fee rule or future final fee rules to applicants or licensees. The NRC will send the final rule to any licensee or other person upon specific request. To request a copy, contact the License Fee Team, Division of the Controller, Office of the Chief Financial Officer, at 301–415–7554, or e-mail *fees.resource@nrc.gov.* In addition to publication in the **Federal Register**, the final rule will be available on the Internet at *http://www.regulations.gov* [NRC Docket ID NRC–2008–0620].

The NRC is amending 10 CFR parts 170 and 171 as discussed in Sections III.A and III.B of this document.

A. Amendments to 10 CFR Part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, As Amended

The NRC is establishing a single hourly rate of $257 to recover the full cost of activities under part 170, and using this rate to calculate ''flat'' application fees. The rule also makes revisions to descriptions of some fee categories.

The NRC is making the following changes:

1. Hourly Rate

The NRC's hourly rate is used in assessing full cost fees for specific services provided, as well as flat fees for certain application reviews. The NRC is increasing the FY 2009 hourly rate to $257. This rate is applicable to all activities for which fees are assessed under §§ 170.21 and 170.31. The FY 2009 hourly rate is higher than the hourly rate of $238 in the FY 2008 final fee rule. The increase is primarily due to the higher FY 2009 budget, which accounts for an increased regulatory and infrastructure support workload for reactor license renewals and applications from new uranium recovery and enrichment facilities. The hourly rate calculation is described in further detail in the following paragraphs.

The NRC's hourly rate is derived by dividing the sum of recoverable budgeted resources for (1) mission direct program salaries and benefits; (2) mission indirect salaries and benefits and contract activity; and (3) agency management and support and Inspector General (IG), by mission direct FTE hours. The mission direct FTE hours are the product of the mission direct FTE times the hours per direct FTE. The only budgeted resources excluded from the hourly rate are those for mission direct contract activities.

In FY 2009, the NRC is using 1,371 hours per direct FTE, the same as in FY 2008, to calculate the hourly fees. The NRC has reviewed data from its time and labor system to determine if the annual direct hours worked per direct FTE estimate requires updates for the FY 2009 fee rule. Based on its review of the most recent data, the NRC determined that 1,371 hours is the best estimate of direct hours worked annually per direct FTE. This estimate excludes all non-direct activities, such as training, general administration, and leave.

Table II shows the results of the hourly rate calculation methodology. (Individual values may not sum to totals due to rounding.)

TABLE II—FY 2009 HOURLY RATE CALCULATION

Mission Direct Program Salaries & Benefits	$322.0
Mission Indirect Salaries & Benefits, and Contract Activity	129.2M
Agency Management and Support, and IG	316.5M
Subtotal	767.7M
Less Offsetting Receipts	−0.1M
Total Budget Included in Hourly Rate	$767.6M
Mission Direct FTEs	2,180
Professional Hourly Rate (Total Budget Included in Hourly Rate divided by Mission Direct FTE Hours)	$257

As shown in Table II, dividing the $767.6 million budgeted amount (rounded) included in the hourly rate by total mission direct FTE hours (2,180 FTE times 1,371 hours) results in an hourly rate of $257. The hourly rate is rounded to the nearest whole dollar.

2. ''Flat'' Application Fee Changes

As noted above, the NRC is adjusting the current flat application fees in §§ 170.21 and 170.31 to reflect the revised hourly rate of $257. These flat fees are calculated by multiplying the average professional staff hours needed to process the licensing actions by the professional hourly rate for FY 2009.

Biennially, the NRC evaluates historical professional staff hours used to process a new license application for materials users fee categories subject to flat application fees. This is in accordance with the requirements of the Chief Financial Officers Act of 1990. The NRC conducted this biennial review for the FY 2009 fee rule which also included license and amendment applications for import and export licenses.

Evaluation of the historical data in FY 2009 shows that the average number of professional staff hours required to complete licensing actions in the materials program should be increased in some fee categories and decreased in others to more accurately reflect current data for completing these licensing actions. The average number of professional staff hours needed to complete new licensing actions was last updated for the FY 2007 final fee rule. Thus, the revised average professional staff hours in this fee rule reflect the changes in the NRC licensing review program that have occurred since that time.

The higher hourly rate of $257 is the main reason for the increases in the application fees. Application fees for some fee categories (2.B., 3.G., 3.O., 3.R.1., 4.B., 5.A., 8.A., 9.C., and 17 under § 170.31) also increase because of the results of the biennial review, which

showed an increase in average time to process these types of license applications. The decrease in fees for six fee categories (3.C., 3.H., 3.S., 9.A., 9.B., and 10.B. under § 170.31) is due to a decrease in average time to process these types of applications. As noted earlier, the application fee for fee category 17, Master Materials License (MML) was incorrect in the proposed rule. The correct proposed rule amount is $60,100, as shown in the proposed rule work papers.

In light of concerns raised by a commenter, the proposed change to the definition for fee category 17 is rescinded in this final rule (see Section II.A.3., Response to Comments, of this document). Therefore, the NRC revised the biennial review resulting in a higher average number of professional staff hours needed to complete new MML licensing actions. This increased the MML application fee by approximately 22 percent compared to the proposed rule corrected fee amount. Additional discussion is provided in Section III.B.3.g, Materials Users, of this document.

The amounts of the materials licensing flat fees are rounded so that the fees would be convenient to the user and the effects of rounding would be minimal. Fees under $1,000 are rounded to the nearest $10, fees that are greater than $1,000 but less than $100,000 are rounded to the nearest $100, and fees that are greater than $100,000 are rounded to the nearest $1,000.

The licensing flat fees are applicable for fee categories K.1. through K.5. of § 170.21, and fee categories 1.C., 1.D., 2.B., 2.C., 3.A. through 3.S., 4.B. through 9.D., 10.B., 15.A. through 15.R., 16, and 17 of § 170.31. Applications filed on or after the effective date of the FY 2009 final fee rule will be subject to the revised fees in the final rule.

3. Fee Category Changes

The NRC is revising the fee categories for uranium recovery facilities in § 170.31. The new fee categories better reflect the NRC's regulatory effort expended for the different types of facilities, both existing and planned. A more detailed discussion follows in Section III.B.3.b. Uranium Recovery Facilities, of this document.

In addition, the NRC is revising the description for fee category 7.A. in § 170.31. The NRC is amending fee category 7.A., related to medical licenses, to more precisely state which medical devices it covers. Currently, the fee category applies to teletherapy devices. The NRC has historically included gamma stereotactic radiosurgery units (gamma knives) in this category in accordance with NUREG 1556, Volume 20, Appendix G. This amendment explicitly provides that fee category 7.A. include gamma knives and other similar beam therapy devices. The new fee category description does not represent any additions to the types of licenses regulated by NRC. The change clarifies the types of licenses covered under specific categories for NRC licensees.

In light of concerns raised by a commenter, the NRC is not revising the description for fee category 17 in § 170.31.

4. Administrative Amendments

In response to a number of questions on specific sub-sections related to fee exemptions for special projects, the NRC is simplifying § 170.11 for ease of reading. There is no change to the NRC's fee exemption policy.

In summary, the NRC is making the following changes to 10 CFR part 170:

1. Establish revised professional hourly rate to use in assessing fees for specific services;
2. Revise the license application fees to reflect the proposed FY 2009 hourly rate;
3. Revise some fee categories to better reflect NRC's regulatory effort; and
4. Make certain administrative changes for purposes of clarification.

B. Amendments to 10 CFR Part 171: Annual Fees for Reactor Licenses and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by the NRC

The NRC is using its fee relief to reduce all licensees' annual fees and changes in the number of NRC licensees. This rulemaking also establishes rebaselined annual fees based on the NRC's FY 2009 budget authority. The final amendments are described as follows:

1. Application of ''Fee-Relief/Surcharge''

The NRC is using its fee relief to reduce all licensees' annual fees, based on their percent of the budget.

The NRC applies the 10 percent of its budget that is excluded from fee recovery under OBRA–90 (fee relief), to offset the total budget allocated for activities which do not directly benefit current NRC licensees. The budget for these fee-relief activities are totaled, and then reduced by the amount of the NRC's fee relief. Any remaining fee-relief activities budget is allocated to all licensees' annual fees, based on their percent of the budget (*i.e.,* over 80 percent is allocated to power reactors each year).

In FY 2009, the NRC's 10 percent fee relief exceeds the total budget for fee-relief activities by $3.2 million. In FY 2008, the 10 percent fee relief exceeded the total budget by $8.9 million. The excess fee relief in FY 2009 is lower compared with FY 2008, primarily due to higher FY 2009 budget resources for Agreement States support and international activities.

The excess fee relief for the FY 2009 final rule increased by approximately $0.3 million compared with the proposed rule primarily due to a change in the costs not recovered from the small entities under 10 CFR 171.16(c) and generic decommissioning/reclamation fee-relief costs. The amounts in these fee-relief categories decreased from the proposed rule due to an increase in part 170 revenue estimate for the materials users fee class and a change resulting in a smaller budget resource allocation for generic decommissioning activities related to uranium recovery sites.

As in FY 2008, the NRC is using the $3.2 million fee relief to reduce all licensees' annual fees, based on their percent of the fee recoverable budget authority. This is consistent with the existing fee methodology, in that the benefits of the NRC's fee relief are allocated to licensees in the same manner as deficit was allocated as surcharge when the NRC did not receive enough fee relief to pay for fee-relief activities. In FY 2009, the power reactors class of licensees will receive approximately 88 percent of the fee relief based on their share of the NRC fee recoverable budget authority.

The FY 2009 budgeted resources for NRC's fee-relief activities are $93.5 million. The NRC's total fee relief in FY 2009 is $96.7 million, leaving $3.2 million in fee relief to be used to reduce all licensees' annual fees. These values are shown in Table III. (Individual values may not sum to totals due to rounding.)

TABLE III—FEE-RELIEF ACTIVITIES

[Dollars in millions]

	FY 2009 budgeted costs
1. Activities not attributable to an existing NRC licensee or class of licensee:	
a. International activities	$17.6
b. Agreement State oversight	11.2
c. Scholarships and Fellowships	15.0
2. Activities not assessed part 170 licensing and inspection fees or part 171 annual fees based on existing law or Commission policy:	
a. Fee exemption for nonprofit educational institutions	11.5
b. Costs not recovered from small entities under 10 CFR 171.16(c)	3.7
c. Regulatory support to Agreement States	17.5
d. Generic decommissioning/reclamation (not related to the power reactor and spent fuel storage fee classes)	13.6
e. In situ leach rulemaking and unregistered general licensees	3.5
Total fee-relief activities	93.5
Less 10 percent of NRC's FY 2009 total budget (non including non-fee items)	−96.7
Fee Relief to be Allocated to All Licensees' Annual Fees	$−3.2

Table IV shows how the NRC is allocating the $3.2 million in fee relief to each license fee class. As explained previously, the NRC is allocating this fee relief to each license fee class based on the percent of the budget for that fee class compared to the NRC's total budget. The fee relief is used to partially offset the required annual fee recovery from each fee class.

Separately, the NRC has continued to allocate the low-level waste (LLW) surcharge based on the volume of LLW disposal of three classes of licenses, operating reactors, fuel facilities, and materials users. Table IV also shows the allocation of the LLW surcharge activity. Because LLW activities support NRC licensees, the costs of these activities are not offset by the NRC's fee relief. For FY 2009, the total budget allocated for LLW activity is $2.3 million. (Individual values may not sum to totals due to rounding.)

TABLE IV—ALLOCATION OF FEE-RELIEF ACTIVITIES AND LLW SURCHARGE

	LLW Surcharge		Fee-Relief		Total
	Percent	$M	Percent	$M	$M
Operating Power Reactors	54.0	1.2	88	−2.8	−1.6
Spent Fuel Storage/Reactor Decommissioning			2.5	−0.1	−0.1
Test and Research Reactors			0.1	0.0	0.0
Fuel Facilities	15.0	0.3	5.2	−0.2	0.2
Materials Users	31.0	0.7	3.0	−0.1	0.6
Transportation			0.4	0.0	0.0
Uranium Recovery			0.8	0.0	0.0
Total	100.0	2.3	100.0	−3.2	−0.9

In FY 2009, the LLW surcharge exceeded the fee relief for two fee classes, fuel facilities and materials users. The net surcharge will be included in the annual fee for fuel facility and materials users licensees.

2. Agreement State Activities

By letter dated June 12, 2008, Governor Timothy Kaine of the Commonwealth of Virginia requested that the NRC enter into an Agreement with the State as authorized by Section 274 of the Atomic Energy Act of 1954. The NRC approved the request. This resulted in the transfer of approximately 386 licenses from the NRC to the Commonwealth of Virginia effective March 31, 2009.

Note that the continuing costs of oversight and regulatory support for the Commonwealth of Virginia, as for any other Agreement State, are recovered as fee-relief activities consistent with existing policy. The budgeted resources for the regulatory support of Agreement State licensees are prorated to the fee-relief activity based on the percent of total licensees in Agreement States. The NRC has updated the proration percentage in its fee calculation to make sure that resources are allocated equitably between the NRC materials users fee class and the regulatory support to Agreement States fee-relief category. Accordingly, as a result of the Commonwealth of Virginia becoming an Agreement State, the NRC has increased the percentage of materials users regulatory support costs prorated to the fee-relief activity from 82 percent in FY 2008 to 85 percent in FY 2009. The resources for licensing and inspection activities supporting NRC licensees in the materials users fee class are not prorated to the fee-relief activity.

The number of NRC materials users licensees has been updated to reflect the transfer of licensees to the Commonwealth of Virginia. Because of the effective date of March 31, 2009, the approximately 386 licensees transferring to the Commonwealth of Virginia will be subject to one-half of their annual fee for FY 2009. The number of materials users licensees is revised to reflect that the NRC will still collect one-half of the annual fee from these licensees.

This is not a substantive policy change, but rather a calculation change that will result in a more accurate estimate of the actual costs of supporting Agreement State activities.

Also, Governor Jon Corizine of the State of New Jersey has by letter dated October 16, 2008, formally requested that the NRC enter into an Agreement with his state. If approved by the Commission, this Agreement is expected to take effect by September 30, 2009. Approximately 500 NRC licensees will be transferred to the State of New Jersey. Because the expected effective date is September 30, 2009, these licensees will be assessed annual fees by NRC for the full year of FY 2009. Therefore, no changes to the FY 2009 fees or the number of NRC licensees have been made for this potential event.

3. Revised Annual Fees

The NRC is revising its annual fees in §§ 171.15 and 171.16 for FY 2009 to recover approximately 90 percent of the NRC's FY 2009 budget authority after subtracting the non-fee amounts and the estimated amount to be recovered through part 170 fees. The part 170 estimate for this final rule increased by approximately $13.7 million from the proposed fee rule based on the latest available invoice data. The total amount to be recovered through annual fees for FY 2009 is decreased to $532.6 million compared with $544.6 million in the proposed fee rule primarily due to the increase in the part 170 estimate. The required annual fee collection in FY 2008 was $468.9 million.

The Commission has determined (71 FR 30733; May 30, 2006) that the agency should proceed with a presumption in favor of rebaselining when calculating annual fees each year. Under this method, the NRC's budget is analyzed in detail and budgeted resources are allocated to fee classes and categories of licensees. The Commission expects that most years there will be budget and other changes that warrant the use of the rebaselining method.

As compared to FY 2008 annual fees, rebaselined fees are higher for three classes of licensees (power reactors, non-power reactors, and fuel facilities) and lower for spent fuel storage/reactor decommissioning licensees. There is no change in rebaselined fees for the transportation fee class. Within the materials users and uranium recovery fee classes, annual fees for most licensees increase, while annual fees for some licensees decrease.

The NRC's total fee recoverable budget, as mandated by law, has increased by approximately $92 million in FY 2009 as compared to FY 2008. Much of this increase is for reactor renewal activities, new uranium recovery facility applications, new uranium enrichment facility applications, and materials licensing. The FY 2009 budget was allocated to the fee classes that the budgeted activities support. As such, the final annual fees for operating reactor, non-power reactor, fuel facility, most uranium recovery and small materials licensees increase. Also in FY 2009, generic NRC resources supporting new uranium recovery applications are included in the budget allocated to operating power reactors and fuel facility fee classes. This is because these licensees will potentially benefit from increased production of uranium milled by new uranium recovery facilities. The impact of this allocation on the operating reactors and fuel facilities annual fees is less than one percent.

The factors affecting all annual fees include the distribution of budgeted costs to the different classes of licenses (based on the specific activities NRC will perform in FY 2009), the estimated part 170 collections for the various classes of licenses, and allocation of the fee relief to all fee classes. The percentage of the NRC's budget not subject to fee recovery remained unchanged at 10 percent from FY 2008 to FY 2009.

Table V shows the rebaselined annual fees for FY 2009 for a representative list of categories of licenses. The FY 2008 fee is also shown for comparative purposes.

TABLE V—REBASELINED ANNUAL FEES FOR FY 2009

Class/category of licenses	FY 2008 annual fee	FY 2009 final annual fee
Operating Power Reactors (Including Spent Fuel Storage/Reactor Decommissioning Annual Fee)	$4,167,000	$4,625,000
Spent Fuel Storage/Reactor Decommissioning	135,000	122,000
Test and Research Reactors (Non-power Reactors)	76,500	87,600
High Enriched Uranium Fuel Facility	3,007,000	4,691,000
Low Enriched Uranium Fuel Facility	899,000	1,649,000
UF_6 Conversion Facility	589,000	969,000
Conventional Mills	10,300	31,200
Typical Materials Users:		
Radiographers (Category 3O)	11,100	22,700
Well Loggers (Category 5A)	3,400	9,700
Gauge Users (Category 3P)	2,100	3,700
Broad Scope Medical (Category 7B)	22,900	36,300

The work papers which support this final rule show in detail the allocation of NRC's budgeted resources for each class of licenses and how the fees are calculated. The reports included in these work papers summarize the FY 2009 budgeted FTE and contract dollars allocated to each fee class and fee-relief category at the planned activity and program level, and compare these allocations to those used to develop the final FY 2008 fees. The work papers are available electronically as stated in the **ADDRESSES** section of this document.

The budgeted costs allocated to each class of licenses and the calculations of the rebaselined fees are described in paragraphs a. through h. of this section. Individual values in the tables presented in this section may not sum to totals due to rounding.

a. Fuel Facilities

The FY 2009 budgeted cost to be recovered in the annual fees assessment to the fuel facility class of licenses [which includes licensees in fee categories 1.A.(1)(a), 1.A.(1)(b), 1.A.(2)(a), 1.A.(2)(b), 1.A.(2)(c), 1.E., and 2.A.(1), under § 171.16] is approximately $23 million. This value is based on the full cost of budgeted resources associated with all activities that support this fee class, which is reduced by estimated part 170 collections and adjusted for allocated generic transportation resources, and fee relief. In FY 2009, the LLW surcharge for fuel facilities exceeds the allocated fee-relief (see Table IV in Section III.B.1., Application of Fee Relief/Surcharge, of this document). The summary calculations used to derive

this value are presented in Table VI for FY 2009, with FY 2008 values shown for comparison.

TABLE VI—ANNUAL FEE SUMMARY CALCULATIONS FOR FUEL FACILITIES

[Dollars in millions]

Summary fee calculations	FY 2008 Final	FY 2009 Final
Total budgeted resources	$31.5	$44.6
Less estimated part 170 receipts	−17.2	−22.0
Net part 171 resources	$14.3	$22.6
Allocated generic transportation	+0.5	+0.4
Allocated fee relief	−0.1	+0.2
Billing adjustments	−0.8	−0.2
Total required annual fee recovery	$13.9	$23.0

The increase in FY 2009 total budgeted resources allocated to this fee class compared with FY 2008 is primarily due to increases in resources for new uranium enrichment facility licensing activities partially offset by a higher part 170 revenue estimate. The part 170 revenue estimate for the FY 2009 final rule increased by approximately one percent compared with the proposed rule due to increased billing for fuel facilities. This results in lower FY 2009 annual fees for fuel facilities in this final fee rule.

The total required annual fee recovery amount is allocated to the individual fuel facility licensees based on the effort/fee determination matrix developed for the FY 1999 final fee rule (64 FR 31447; June 10, 1999). In the matrix included in the NRC publicly available work papers, licensees are grouped into categories according to their licensed activities (*i.e.,* nuclear material enrichment, processing operations, and material form) and according to the level, scope, depth of coverage, and rigor of generic regulatory programmatic effort applicable to each category from a safety and safeguards perspective. This methodology can be applied to determine fees for new licensees, current licensees, licensees in unique license situations, and certificate holders.

This methodology is adaptable to changes in the number of licensees or certificate holders, licensed or certified material and/or activities, and total programmatic resources to be recovered through annual fees. When a license or certificate is modified, it may result in a change of category for a particular fuel facility licensee as a result of the methodology used in the fuel facility effort/fee matrix. Consequently, this change may also have an effect on the fees assessed to other fuel facility licensees and certificate holders. For example, if a fuel facility licensee amends its license/certificate (*e.g.,* decommissioning or license termination) that results in it not being subject to part 171 costs applicable to the fee class, then the budgeted costs for the safety and/or safeguards components will be spread among the remaining fuel facility licensees/ certificate holders.

The methodology is applied as follows. First, a fee category is assigned based on the nuclear material and activity authorized by license or certificate. Although a licensee/ certificate holder may elect not to fully use a license/certificate, the license/ certificate is still used as the source for determining authorized nuclear material possession and use/activity. Second, the category and license/certificate information are used to determine where the licensee/certificate holder fits into the matrix. The matrix depicts the categorization of licensees/certificate holders by authorized material types and use/activities.

Each year, the NRC's fuel facility project managers and regulatory analysts determine the level of effort associated with regulating each of these facilities. This is done by assigning, for each fuel facility, separate effort factors for the safety and safeguards activities associated with each type of regulatory activity. The matrix includes ten types of regulatory activities, including enrichment and scrap/waste related activities (see the work papers for the complete list). Effort factors are assigned as follows: one (low regulatory effort), five (moderate regulatory effort), and ten (high regulatory effort). These effort factors are then totaled for each fee category, so that each fee category has a total effort factor for safety activities and a total effort factor for safeguards activities.

The effort factors for the various fuel facility fee categories are summarized in Table VII. The value of the effort factors shown, as well as the percent of the total effort factor for all fuel facilities, reflects the total regulatory effort for each fee category (not per facility). Note that the effort factors for the HEU fee category have decreased from FY 2008. The safety and safeguards factors decreased in FY 2009 to reflect process changes such as HEU downblending and liquid UF_6 workload. Taking into account both of these changes, the total safety and safeguards effort factor change is relatively small.

TABLE VII—EFFORT FACTORS FOR FUEL FACILITIES

Facility type (fee category)	Number of facilities	Effort factors (percent of total)	
		Safety	Safeguards
High Enriched Uranium Fuel (1.A.(1)(a))	2	87 (33.3)	97 (51.1)
Uranium Enrichment (1.E)	2	70 (26.8)	40 (21.1)
Low Enriched Uranium Fuel (1.A.(1)(b))	3	71 (27.2)	26 (13.7)
UF_6 Conversion (2.A.(1))	1	12 (4.6)	7 (3.7)
Limited Operations (1.A.(2)(a))	1	12 (4.6)	3 (1.6)

TABLE VII—EFFORT FACTORS FOR FUEL FACILITIES—Continued

Facility type (fee category)	Number of facilities	Effort factors (percent of total)	
		Safety	Safeguards
Gas Centrifuge Enrichment Demonstration (1.A.(2)(b))	1	3 (1.1)	15 (7.9)
Hot Cell (1.A.(2)(c))	1	6 (2.3)	2 (1.1)

The budgeted resources, before the fee relief adjustment, for safety activities ($13,206,181) are allocated to each fee category based on its percent of the total regulatory effort for safety activities. For example, if the total effort factor for safety activities for all fuel facilities is 100, and the total effort factor for safety activities for a given fee category is 10, that fee category will be allocated 10 percent of the total budgeted resources for safety activities. Similarly, the budgeted resources, before the fee relief adjustment, for safeguards activities ($9,613,695) are allocated to each fee category based on its percent of the total regulatory effort for safeguards activities. The fuel facility fee class' portion of the fee relief adjustment ($176,668) is allocated to each fee category based on its percent of the total regulatory effort for both safety and safeguards activities. The annual fee per licensee is then calculated by dividing the total allocated budgeted resources for the fee category by the number of licensees in that fee category as summarized in Table VIII.

TABLE VIII—ANNUAL FEES FOR FUEL FACILITIES

Facility type (fee category)	FY 2009 annual fee
High Enriched Uranium Fuel (1.A.(1)(a))	$4,691,000
Uranium Enrichment (1.E.)	2,804,000
Low Enriched Uranium (1.A.(1)(b))	1,649,000
UF_6 Conversion (2.A.(1))	969,000
Gas Centrifuge Enrichment Demonstration (1.A.(2)(b))	918,000
Limited Operations Facility (1.A.(2)(a))	765,000
Hot Cell (and others) (1.A.(2)(c))	408,000

The NRC does not expect to authorize operation of any new uranium enrichment facilities in FY 2009. The annual fee applicable to any type of new uranium enrichment facility is the annual fee in § 171.16, fee category 1.E., Uranium Enrichment, unless the NRC establishes a new fee category for the facility in a subsequent rulemaking.

b. Uranium Recovery Facilities

The total FY 2009 budgeted cost to be recovered through annual fees assessed to the uranium recovery class [which includes licensees in fee categories 2.A.(2)(a), 2.A.(2)(b), 2.A.(2)(c), 2.A.(2)(d), 2.A.(2)(e), 2.A.(3), 2.A.(4), 2.A.(5) and 18.B., under § 171.16], is approximately $0.51 million. The derivation of this value is shown in Table IX, with FY 2008 values shown for comparison purposes.

TABLE IX—ANNUAL FEE SUMMARY CALCULATIONS FOR URANIUM RECOVERY FACILITIES

[Dollars in millions]

Summary fee calculations	FY 2008 Final	FY 2009 Final
Total budgeted resources	$2.56	$7.21
Less estimated part 170 receipts	−2.02	−6.64
Net part 171 resources	$0.54	$0.57
Allocated generic transportation	+N/A	+N/A
Allocated fee relief	−0.03	−0.03
Billing adjustments	−0.06	−0.03
Total required annual fee recovery	0.46	0.51

The increase in the total required annual fee recovery is mainly due to an increase in uranium recovery licensing and inspection resources for the existing licensees. In FY 2009, NRC is excluding the generic budget resources supporting applications for new uranium recovery facilities from the annual fee charged to current uranium recovery licensees. Instead, the budget resources have been allocated to operating reactors and fuel facility licensees because these fee classes would potentially benefit from increased production of the uranium milled by the new facilities. The generic resources supporting the new uranium recovery facilities do not benefit the existing uranium recovery licensees. The budgeted resources for the final rule increased by approximately $0.2 million compared with the proposed rule due to a correction in allocations to the uranium recovery fee class. These budget resources were incorrectly allocated to generic decommissioning activities related to uranium recovery sites. Therefore, resources from the fee-relief category, generic decommissioning/reclamation, were shifted to the uranium recovery fee class

for the final rule. This increase in the uranium recovery budget allocation was offset by the higher part 170 revenue estimate compared with the proposed rule. The annual fee in the final rule decreased compared with the proposed primarily due to the $0.3 million increase in part 170 revenue estimate.

Since FY 2002, the NRC has computed the annual fee for the uranium recovery fee class by allocating the total annual fee amount for this fee class, between the Department of Energy (DOE) and the other licensees in this fee class. The NRC regulates DOE's Title I and Title II activities under the UMTRCA. The Congress established the two programs, Title I and Title II under UMTRCA, to protect the public and the environment from uranium milling. The UMTRCA Title I program is for remedial action at abandoned mill tailings sites where tailings resulted largely from production of uranium for the weapons program. The NRC also regulates DOE's UMTRCA Title II program which is directed toward uranium mill sites licensed by the NRC or Agreement States in or after 1978.

In FY 2009, 35 percent of the total annual fee amount, less the amount specifically budgeted for Title I activities ($246,563), is allocated to DOE's UMTRCA facilities. The remaining 65 percent of the total annual fee (less the amount specifically budgeted for Title I activities) is allocated to other licensees. The reduction in resources for licensing the DOE is based on the reduced effort expended for DOE UMTRCA. This is a change from FY 2008 when the distribution of the annual fee was 40 percent to DOE and 60 percent to non-DOE licensees. The change reflects NRC's current level of effort. This change in the distribution of uranium recovery fee class resources between non-DOE uranium recovery facilities and DOE results in a decrease in the annual fee for the DOE compared to the increase in the annual fee for most of the non-DOE facilities. Of the required annual fee collections, $339,000 (rounded) will be assessed to DOE for licensing its UMTRCA activities as fee category 18.B in § 170.16.

The remaining $171,000 (rounded) will be recovered through annual fees assessed to the other licensees in this fee class (*i.e.,* conventional mills, ISR facilities, 11e.(2) mill tailings disposal facilities (incidental to existing tailings sites), and a uranium water treatment facility.) Beginning in FY 2009, NRC is replacing the existing single fee category, 2.A.(2)(b), for uranium ISR facilities with four fee categories based on the type of ISR facilities. The addition of the new fee categories reflects the diverse types of uranium recovery facilities planned for construction and operation in the near future. Additionally, the new fee categories better reflect the NRC's regulatory benefit provided to the different types of facilities, both existing and planned.

The revised fee category, 2.A.(2)(b), is for an ISR yellowcake facility with zero to three satellites. These facilities include a central processing plant (CPP) that includes all the equipment necessary to collect uranium on resin, strip uranium from the resin, and process the uranium into a yellowcake slurry or dried yellowcake powder. These facilities may also receive resins from up to three satellite facilities operated by the same company for further processing of the contained uranium into yellowcake.

The new 2.A.(2)(c) fee category is for an ISR yellowcake facility with more than three satellites. These facilities have a CPP with the same equipment as the fee category as stated previously, but have four or more satellite facilities, which necessitates a correspondingly greater allocation of the staff's generic resources.

The new 2.A.(2)(d) fee category is for a stand-alone ISR resin facility which performs ISR recovery operations and includes equipment for the collection of dissolved uranium from onsite underground ore bodies onto ion exchange resins. The resins are then transported to another company's facility for further processing of the collected uranium into yellowcake.

The new fee category, 2.A.(2)(e), is for a resin toll milling facility. These facilities do not conduct any onsite recovery of uranium but consist of a CPP for the purpose of processing resins from other ISR facilities into yellowcake. Allocation of generic resources for these facilities is less than that allocated for the other categories of ISR facilities.

The annual fee being assessed to DOE includes recovery of the costs specifically budgeted for NRC's Title I activities plus 35 percent of the remaining annual fee amount, including the fee-relief and generic/other costs, for the uranium recovery class. The remaining 65 percent of the fee-relief and generic/other costs are assessed to the other NRC licensees in this fee class that are subject to annual fees. Table X shows the costs to be recovered through annual fees assessed to the uranium recovery class.

TABLE X—COSTS RECOVERED THROUGH ANNUAL FEES; URANIUM RECOVERY FEE CLASS

DOE Annual Fee Amount (UMTRCA Title I and Title II) general licenses:	
UMTRCA Title I budgeted costs	$246,563
35 percent of generic/other uranium recovery budgeted costs	101,425
35 percent of uranium recovery fee-relief	− 9,400
Total Annual Fee Amount for DOE (rounded)	339,000
Annual Fee Amount for Other Uranium Recovery Licenses:	
65 percent of generic/other uranium recovery budgeted costs less the amounts specifically budgeted for Title I activities	188,361
65 percent of uranium recovery fee-relief	−17,457
Total Annual Fee Amount for Other Uranium Recovery Licenses	170,904

The NRC will continue to use a matrix (which is included in the supporting work papers) to determine the level of effort associated with conducting the generic regulatory actions for the different (non-DOE) licensees in this fee class. The weights derived in this matrix are used to allocate the approximately $171,000, annual fee amount to these licensees. This uranium recovery annual fee matrix was established in the FY 1995 final fee rule (60 FR 32217; June 20, 1995). The FY 2009 matrix is described as follows.

First, the methodology identifies the categories of licenses included in this fee class (besides DOE). In FY 2009, these categories are conventional uranium mills and heap leach facilities, uranium solution mining and resin ISR facilities mill tailings disposal facilities (11e.(2) disposal facilities), and uranium water treatment facilities.

Second, the matrix identifies the types of operating activities that support and benefit these licensees. In FY 2009, the activities related to generic decommissioning/reclamation are not included in the matrix, because they are included in the fee-relief activities. Therefore they are not a factor in determining annual fees. The activities included in the FY 2009 matrix are operations, waste operations, and groundwater protection. The relative weight of each type of activity is then determined, based on the regulatory resources associated with each activity. The operations, waste operations, and groundwater protection activities have weights of 0, 5, and 10, respectively, in the FY 2009 matrix.

Each year, the NRC determines the level of benefit to each licensee for generic uranium recovery program activities for each type of generic activity in the matrix. This is done by assigning, for each fee category, separate benefit factors for each type of regulatory activity in the matrix. Benefit factors are assigned on a scale of 0 to 10 as follows: zero (no regulatory benefit), five (moderate regulatory benefit), and ten (high regulatory benefit). These benefit factors are first multiplied by the relative weight assigned to each activity (described previously). Total benefit factors by fee category, and per licensee in each fee category, are then calculated. These benefit factors thus reflect the relative regulatory benefit associated with each licensee and fee category.

The benefit factors per licensee and per fee category, for each of the non-DOE fee categories included in the uranium recovery fee class, are as follows:

TABLE XI—BENEFIT FACTORS FOR URANIUM RECOVERY LICENSES

Fee category	Number of licensees	Benefit factor per licensee	Total value	Benefit factor percent total
Conventional and Heap Leach mills	1	200	200	18
Basic In Situ Recovery facilities	3	190	570	52
Expanded In Situ Recovery facilities	1	215	215	20
11e.(2) disposal incidental to existing tailings sites	1	65	65	6
Uranium water treatment	1	45	45	4

The annual fee per licensee is calculated by dividing the total allocated budgeted resources for the fee category by the number of licensees in that fee category as summarized in Table XII. Applying these factors to the approximately $171,000 in budgeted costs to be recovered from non-DOE uranium recovery licensees results in the following annual fees for FY 2009:

TABLE XII—ANNUAL FEES FOR URANIUM RECOVERY LICENSEES (OTHER THAN DOE)

Facility type (Fee category)	FY 2009 annual fee
Conventional and Heap Leach mills (2.A.(2)(a))	$31,200
Basic In Situ Recovery facilities (2.A.(2)(b))	29,700
Expanded In Situ Recovery facilities (2.A.(2)(c))	33,600
11e.(2) disposal incidental to existing tailings sites (2.A.(4))	10,100
Uranium water treatment (2.A.(5))	7,000

c. Operating Power Reactors

The $468.3 million in budgeted costs to be recovered through FY 2009 annual fees assessed to the power reactor class was calculated as shown in Table XIII. FY 2008 values are shown for comparison.

TABLE XIII—ANNUAL FEE SUMMARY CALCULATIONS FOR OPERATING POWER REACTORS

[Dollars in millions]

Summary fee calculations	FY 2008 final	FY 2009 final
Total budgeted resources	$698.8	$761.5
Less estimated part 170 receipts	−258.1	−288.8
Net part 171 resources	440.7	472.7
Allocated generic transportation	+ 1.0	+ 0.9
Allocated fee relief	−5.9	−1.6
Billing adjustments	−16.5	−3.6
Total required annual fee recovery	419.3	468.3

The budgeted costs to be recovered through annual fees to power reactors are divided equally among the 104 power reactors licensed to operate. This results in a FY 2009 annual fee of $4,503,000 per reactor. Additionally, each power reactor licensed to operate will be assessed the FY 2009 spent fuel storage/reactor decommissioning annual fee of $122,000. This results in a total FY 2009 annual fee of $4,625,000 for each power reactor licensed to operate. The part 170 revenue estimate for the final rule increased by approximately $12.1 million compared with the

proposed rule primarily due to increased billings for work related to new applications and a correction to previous estimates. As a result, the annual fee for each power reactor decreased by approximately two percent in the final rule.

The annual fee for power reactors increases in FY 2009 compared to FY 2008 primarily due to an increase in budgeted resources for licensing renewal activities and other licensing tasks. This increase is partially offset by the higher estimated part 170 collections and fee-relief adjustment. In FY 2009, the NRC estimates an increase in part 170 collections of about 12 percent for this fee class. These collections offset the required annual fee recovery amount by a total of approximately $288.8 million. The amended annual fees for power reactors are presented in § 171.15.

d. Spent Fuel Storage/Reactor Decommissioning

For FY 2009, budgeted costs of approximately $15.1 million for spent fuel storage/reactor decommissioning are to be recovered through annual fees assessed to part 50 power reactors, and to part 72 licensees who do not hold a part 50 license. Those reactor licensees that have ceased operations and have no fuel onsite are not subject to these annual fees. Table XIV shows the calculation of this annual fee amount. FY 2008 values are shown for comparison.

TABLE XIV—ANNUAL FEE SUMMARY CALCULATIONS FOR THE SPENT FUEL STORAGE/REACTOR DECOMMISSIONING FEE CLASS

[Dollars in millions]

Summary fee calculations	FY 2008 final	FY 2009 final
Total budgeted resources	$22.4	$21.1
Less estimated part 170 receipts	−5.3	−6.1
Net part 171 resources	$17.1	$15.0
Allocated generic transportation	+ 0.2	+ 0.2
Allocated fee relief	−0.3	−0.1
Billing adjustments	−0.5	−0.1
Total required annual fee recovery	16.6	15.1

The required annual fee recovery amount is divided equally among 123 licensees, resulting in a FY 2009 annual fee of $122,000 per licensee. The value of total budgeted resources for this fee class decreases in FY 2009 compared to FY 2008 due to a decrease in the budgeted resources for decommissioning and the fee-relief adjustment. The part 170 revenue estimate for the final rule increased by approximately 11 percent due to increased billings for spent fuel storage and a correction to prior estimate, which resulted in a lower annual fee compared with the proposed rule.

e. Test and Research Reactors (Non-power Reactors)

Approximately $350,000 in budgeted costs is to be recovered through annual fees assessed to the test and research reactor class of licenses for FY 2009. Table XV summarizes the annual fee calculation for test and research reactors for FY 2009. FY 2008 values are shown for comparison.

TABLE XV—ANNUAL FEE SUMMARY CALCULATIONS FOR TEST AND RESEARCH REACTORS

[Dollars in millions]

Summary fee calculations	FY 2008 final	FY 2009 final
Total budgeted resources	$0.99	$1.22
Less estimated part 170 receipts	−0.66	−0.87
Net part 171 resources	0.33	0.35
Allocated generic transportation	+ 0.01	+ 0.01
Allocated fee relief	−0.01	−0.00
Billing adjustments	−0.02	−0.01
Total required annual fee recovery	0.31	0.35

This required annual fee recovery amount is divided equally among the four test and research reactors subject to annual fees, and results in a FY 2009 annual fee of $87,600 for each licensee. The increase in annual fees from FY 2008 to FY 2009 is due to an increase in budget resources for license renewal activities partially offset by higher part 170 revenue estimate for test and research reactors class. The part 170 revenue estimate for the final rule increased by approximately 21 percent due to increased billings, which resulted in a lower annual fee compared to the proposed rule. The part 170 revenue estimates for FY 2009 increased by approximately 32 percent compared with FY 2008 due to increased billing for test and research reactors, including Federal facilities. The Energy Policy Act of 2005 authorizes the NRC to bill Federal facilities for part 170 services.

f. Rare Earth Facilities

The one licensee who had an NRC specific license for receipt and

processing of source material under the Rare Earth fee class transferred to the Agreement State, Commonwealth of Pennsylvania, effective March 31, 2008.

Because the NRC does not anticipate receiving an application for a rare earth facility this fiscal year, no budget resources were allocated to this fee class and no annual fee will be published in FY 2009. NRC has also revised the fee category for this fee class from 2.A.(2)(c) to 2.A.(2)(f) in FY 2009.

g. Materials Users

Table XVI shows the calculation of the FY 2009 annual fee amount for materials users licensees. FY 2008 values are shown for comparison. Note the following fee categories under § 171.16 are included in this fee class: 1.C., 1.D., 2.B., 2.C., 3.A. through 3.S., 4.A. through 4.C., 5.A., 5.B., 6.A., 7.A. through 7.C., 8.A., 9.A. through 9.D., 16, and 17.

TABLE XVI—ANNUAL FEE SUMMARY CALCULATIONS FOR MATERIALS USERS

[Dollars in millions]

Summary fee calculations	FY 2008 final	FY 2009 final
Total budgeted resources	22.8	28.7
Less estimated part 170 receipts	−2.0	−1.7
Net part 171 resources	20.8	27.0
Allocated generic transportation	+ 0.9	+ 0.8
Allocated surcharge	+ 0.3	+ 0.6
Billing adjustments	−0.5	−0.1
Total required annual fee recovery	21.4	28.4

The annual fee for most material users decreased in the final rule compared with the proposed rule due to an increase in the part 170 revenue estimate. However, the annual fee for fee category 17 increases in the final rule compared with the proposed rule due to the NRC's revision of the average professional staff hours for this fee category. The total required annual fees to be recovered from materials licensees increased in FY 2009 mainly because of increases in the budgeted resources allocated to this fee class for licensing activities, and a lower part 170 estimate. Annual fees for most fee categories within the materials users fee class increased. The number of licensees decreased because of the transfer of licensees to the Commonwealth of Virginia. Because the agreement with the Commonwealth of Virginia became effective March 31, 2009, the licensees that transferred to the Commonwealth of Virginia are subject to one-half of the annual fees in FY 2009.

To equitably and fairly allocate the $28.4 million in FY 2009 budgeted costs to be recovered in annual fees assessed to the approximately 3,800 diverse materials users licensees, the NRC will continue to base the annual fees for each fee category within this class on the part 170 application fees and estimated inspection costs for each fee category. Because the application fees and inspection costs are indicative of the complexity of the license, this approach approximately allocates the generic and other regulatory costs to the diverse categories of licenses based on NRC's cost to regulate each category. This fee calculation also continues to consider the inspection frequency (priority), which is indicative of the safety risk and resulting regulatory costs associated with the categories of licenses.

The annual fee for these categories of materials users licenses is developed as follows:

Annual fee = Constant × [Application Fee + (Average Inspection Cost divided by Inspection Priority)] + Inspection Multiplier × (Average Inspection Cost divided by Inspection Priority) + Unique Category Costs.

The constant is the multiple necessary to recover approximately $20.5 million in general costs (including allocated generic transportation costs) and is 1.3 for FY 2009. The average inspection cost is the average inspection hours for each fee category multiplied by the hourly rate of $257. The inspection priority is the interval between routine inspections, expressed in years. The inspection multiplier is the multiple necessary to recover approximately $7.2 million in inspection costs, and is 1.71 for FY 2009. The unique category costs are any special costs that the NRC has budgeted for a specific category of licenses. No unique costs were identified for FY 2009.

The annual fee to be assessed to each licensee also includes a fee relief adjustment of $616,000 (see Section III.B.1., Application of Fee Relief/ Surcharge, of this document). This adjustment is the result of subtracting the $96,000 in fee relief (reduction to annual fee) allocated to the materials users fee class from the approximately $712,000 in LLW surcharge costs allocated to the fee class.

The annual fee for each fee category is shown in § 171.16(d). Annual fees for most fee categories within the materials users fee class increase, while some decrease. As indicated previously, changes in the FY 2009 annual fees for categories of licensees within the materials users fee class reflect not only change in the budgeted resources supporting this fee class, but also changes in the estimates of average professional staff time for materials users license applications and inspections. This is derived from the biennial review performed for the FY 2009 fee rule (see discussion of the biennial review under Section III.A.2., Flat Application Fee Changes, of this document). Accordingly, the relatively large percentage increase in the annual fee for many of the fee categories under § 171.16 is the result of a significant increase to the average professional staff time estimates.

h. Transportation

Table XVII shows the calculation of the FY 2009 generic transportation budgeted resources to be recovered through annual fees. FY 2008 values are shown for comparison.

TABLE XVII—ANNUAL FEE SUMMARY CALCULATIONS FOR TRANSPORTATION

[Dollars in millions]

Summary fee calculations	FY 2008 Final	FY 2009 Final
Total budgeted resources	$5.7	$6.1
Less estimated part 170 receipts	−2.3	−2.9
Net part 171 resources	3.4	3.1

The NRC must approve any package used for shipping nuclear material before shipment. If the package meets NRC requirements, the NRC issues a Radioactive Material Package Certificate of Compliance (CoC) to the organization requesting approval of a package. Organizations are authorized to ship radioactive material in a package approved for use under the general licensing provisions of 10 CFR Part 71. The resources associated with generic transportation activities are distributed to the license fee classes based on the number of CoCs benefitting (used by) that fee class, as a proxy for the generic transportation resources expended for each fee class.

The total FY 2009 budgeted resources for generic transportation activities, including those to support DOE CoCs, are $3.1 million. The net part 171 resources for these activities in the FY 2009 final rule increased by $0.1 million compared with the proposed rule. This increase in the final rule is primarily due to approximately five percent decrease in the part 170 revenue estimate as a result of decreased billings for transportation-related reviews. Generic transportation resources associated with fee-exempt entities are not included in this total. These costs are included in the appropriate fee-relief category (*e.g.,* the fee-relief category for nonprofit educational institutions).

Consistent with the policy established in the NRC's FY 2006 final fee rule (71 FR 30734; May 30, 2006), the NRC will recover generic transportation costs unrelated to DOE as part of existing annual fees for license fee classes. NRC will continue to assess a separate annual fee under § 171.16, fee category 18.A., for DOE transportation activities. The number of CoCs for DOE decreased in FY 2009 resulting in a slightly lower percent of the total CoCs compared with FY 2008.

The amount of the generic resources allocated is calculated by multiplying the percentage of total CoCs used by each fee class (and DOE) by the total generic transportation resources to be recovered. In FY 2009, the generic transportation cost allocated to the most fee classes decreases compared to FY 2008 due to a higher part 170 estimate.

The distribution of these resources to the license fee classes and DOE is shown in Table XVIII. The distribution is adjusted to account for the licensees in each fee class that are fee exempt. For example, if 3 CoCs benefit the entire test and research reactor class, but only 4 of 30 test and research reactors are subject to annual fees, the number of CoCs used to determine the proportion of generic transportation resources allocated to test and research reactor annual fees equals ((4/30)*3), or 0.4 CoCs.

TABLE XVIII—DISTRIBUTION OF GENERIC TRANSPORTATION RESOURCES, FY 2009

[Dollars in millions]

License fee class/DOE	Number CoCs benefiting fee class (or DOE)	Percentage of total CoCs (percent)	Allocated generic transportation resources
Total	121.5	100.0	$3.14
DOE	29.0	23.9	0.75
Operating Power Reactors	34.0	28.0	0.88
Spent Fuel Storage/Reactor Decommissioning	9.0	7.4	0.23
Test and Research Reactors	0.5	0.4	0.01
Fuel Facilities	17.0	14.0	0.44
Materials Users	32.0	26.3	0.83

The NRC will continue to charge DOE an annual fee based on the part 71 CoCs it holds, and will not allocate these DOE-related resources to other licensees' annual fees, because these resources specifically support DOE. Note that DOE's annual fee includes a reduction for the fee relief (see Section III.B.1, Application of Fee Relief/Surcharge, of this document), resulting in a total annual fee of $719,000 for FY 2009. This fee is the same as last year primarily due to a decrease in the generic transportation resources offset by a lower reduction for fee-relief and billing adjustments. The annual fee for DOE in the final rule increased by approximately six percent compared with the proposed rule due to a lower part 170 estimate.

4. Small Entity Fees

The small entity annual fee is charged to those licensees who qualify as small entities and who would otherwise be required to pay annual fees as stipulated under § 171.16(d). Based on an in-depth analysis conducted in FY 2009, the NRC is reducing the maximum small entity fee from $2,300 to $1,900 and the lower tier fee from $500 to $400. This reduction reflects the decrease in annual fees for the small materials licensees in the past two years.

In 2007, the NRC revised its receipts-based size standards (72 FR 44951; August 10, 2007) to conform to the Small Business Agency standards. The maximum average gross annual receipts (upper tier) to qualify as a small entity were changed to $6.5 million from $5 million. The NRC is revising the small entity lower tier receipts-based threshold to $450,000 from $350,000. This change is approximately the same percentage adjustment as the change in the upper tier receipts-based standard.

5. Fee Category Changes

The NRC is revising the fee categories for uranium recovery facilities in

§ 171.16. The new fee categories better reflect the NRC's regulatory effort expended for the different types of facilities, both existing and planned. A more detailed discussion is in Section III.B.3.b., Uranium Recovery Facilities, of this document. The NRC is also modifying footnote 4 in § 171.16 to remove references to uranium milling. These references no longer apply because fee categories under 2.A.(2) related to uranium recovery facilities have been revised.

The NRC is also revising the description for fee category 7.A. in § 171.16. The NRC is amending fee category 7.A., related to medical licenses, to more precisely state which medical devices it covers. Currently, the fee category applies to teletherapy devices. The NRC has historically included gamma stereotactic radiosurgery units (gamma knives) in this category in accordance with NUREG 1556, Volume 20, Appendix G. This amendment explicitly provides that fee category 7.A. include gamma knives and other similar beam therapy devices.

The new fee category description does not represent any additions to the types of licenses regulated by NRC. The change clarifies the types of licenses covered under specific categories for NRC licensees.

6. Administrative Amendments

The NRC applies the 10 percent of its budget that it receives as fee relief under OBRA–90 to offset the budget resources supporting activities which do not directly benefit current NRC licensees (fee-relief activities). Any remaining amount is allocated to all licensees' annual fees (see Section III.B.1., Application of Fee Relief/Surcharge, of this document). The NRC is replacing the term for this allocated amount in § 171.15 and § 171.16 from 'surcharge' to 'fee-relief adjustment'. The new term better describes the allocated amount because the fee relief is a reduction in the annual fee for most fee classes in FY 2009. The allocation is an adjustment to the annual fee.

In summary, the NRC is—

1. Using the NRC's fee relief to reduce all licensees' annual fees, based on their percent of the NRC budget;

2. Revising the number of NRC licensees due to the Commonwealth of Virginia becoming an Agreement State effective March 31, 2009;

3. Establishing rebaselined annual fees for FY 2009;

4. Reducing the maximum small entity fee from $2,300 to $1,900, and the lower tier fee from $500 to $400;

5. Revising some fee categories to better reflect NRC's regulatory effort; and

6. Making certain administrative changes for purposes of clarification.

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 3701) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using these standards is inconsistent with applicable law or is otherwise impractical. In this final rule, the NRC is amending the licensing, inspection, and annual fees charged to its licensees and applicants as necessary to recover approximately 90 percent of its budget authority in FY 2009, as required by the Omnibus Budget Reconciliation Act of 1990, as amended. This action does not constitute the establishment of a standard that contains generally applicable requirements.

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental assessment nor an environmental impact statement has been prepared for the final rule. By its very nature, this regulatory action does not affect the environment and, therefore, no environmental justice issues are raised.

VI. Paperwork Reduction Act Statement

This final rule does not contain information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

VII. Regulatory Analysis

With respect to 10 CFR part 170, this final rule was developed under Title V of the IOAA (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in *National Cable Television Association, Inc.* v. *United States,* 415 U.S. 36 (1974) and *Federal Power Commission* v. *New England Power Company,* 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the ''value to the recipient'' of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia: *National Cable Television Association* v. *Federal Communications Commission,* 554 F.2d 1094 (DC Cir. 1976); *National Association of Broadcasters* v. *Federal Communications Commission,* 554 F.2d 1118 (DC Cir. 1976); *Electronic Industries Association* v. *Federal Communications Commission,* 554 F.2d 1109 (DC Cir. 1976); and *Capital Cities Communication, Inc.* v. *Federal Communications Commission,* 554 F.2d 1135 (DC Cir. 1976). The Commission's fee guidelines were developed based on these legal decisions.

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in *Mississippi Power and Light Co.* v. *U.S. Nuclear Regulatory Commission,* 601 F.2d 223 (5th Cir. 1979), *cert. denied,* 444 U.S. 1102 (1980). This court held that—

(1) The NRC had the authority to recover the full cost of providing services to identifiable beneficiaries;

(2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act of 1954, as amended, and with applicable regulations;

(3) The NRC could charge for costs incurred in conducting environmental reviews required by the National Environmental Policy Act (42 U.S.C. 4321);

(4) The NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule;

(5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and

(6) The NRC's fees were not arbitrary or capricious.

With respect to 10 CFR part 171, on November 5, 1990, the Congress passed OBRA–90, which required that, for FYs 1991 through 1995, approximately 100 percent of the NRC budget authority, less appropriations from the NWF, be recovered through the assessment of fees. OBRA–90 was subsequently amended to extend the 100 percent fee recovery requirement through FY 2000. The FY 2001 Energy and Water

Development Appropriation Act (EWDAA) amended OBRA–90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount was 90 percent in FY 2005. The FY 2006 EWDAA extended this 90 percent fee recovery requirement for FY 2006. Section 637 of the Energy Policy Act of 2005 made the 90 percent fee recovery requirement permanent in FY 2007. As a result, the NRC is required to recover approximately 90 percent of its FY 2009 budget authority, less the amounts appropriated from the NWF, WIR, and generic homeland security activities through fees. To comply with this statutory requirement and in accordance with § 171.13, the NRC is publishing the amount of the FY 2009 annual fees for reactor licensees, fuel cycle licensees, materials licensees, and holders of CoCs, registrations of sealed source and devices, and Government agencies. OBRA–90, consistent with the accompanying Conference Committee Report, and the amendments to OBRA–90, provides that—

(1) The annual fees will be based on approximately 90 percent of the Commission's FY 2009 budget of $1,045.5 million less the funds directly appropriated from the NWF to cover the NRC's high-level waste program, and for WIR, generic homeland security activities, and less the amount of funds collected from part 170 fees;

(2) The annual fees shall, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by the Commission; and

(3) The annual fees be assessed to those licensees the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment.

Part 171, which established annual fees for operating power reactors, effective October 20, 1986 (51 FR 33224; September 18, 1986), was challenged and upheld in its entirety in *Florida Power and Light Company* v. *United States,* 846 F.2d 765 (DC Cir. 1988), *cert. denied,* 490 U.S. 1045 (1989). Further, the NRC's FY 1991 annual fee rule methodology was upheld by the DC Circuit Court of Appeals in *Allied Signal* v. *NRC,* 988 F.2d 146 (DC Cir. 1993).

VIII. Regulatory Flexibility Analysis

The NRC is required by the OBRA–90, as amended, to recover approximately 90 percent of its FY 2009 budget authority through the assessment of user fees. This Act further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

This final rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 2009. This final rule results in increases in the annual fees charged to certain licensees and holders of certificates, registrations, and approvals, and decreases in annual fees for others. Licensees affected by the annual fee increases and decreases include those that qualify as a small entity under NRC's size standards in 10 CFR 2.810. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this final rule.

The Small Business Regulatory Enforcement Act (SBREFA) requires all Federal agencies to prepare a written compliance guide for each rule for which the agency is required by 5 U.S.C. 604 to prepare a regulatory flexibility analysis. Therefore, in compliance with the law, Attachment 1 to the Regulatory Flexibility Analysis is the small entity compliance guide for FY 2009.

IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and that a backfit analysis is not required for this final rule. The backfit analysis is not required because these amendments do not require the modification of, or additions to systems, structures, components, or the design of a facility, or the design approval or manufacturing license for a facility, or the procedures or organization required to design, construct, or operate a facility.

X. Congressional Review Act

In accordance with the Congressional Review Act of 1996 (5 U.S.C. 801–808), the NRC has determined that this action is a major rule and has verified the determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

List of Subjects

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, Registrations, Approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 170 and 171.

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

■ 1. The authority citation for part 170 continues to read as follows:

Authority: Section 9701, Pub. L. 97–258, 96 Stat. 1051 (31 U.S.C. 9701); Sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841); Sec. 205a, Pub. L. 101–576, 104 Stat. 2842, as amended (31 U.S.C. 901, 902); Sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note), sec. 623, Pub. L. 109–58, 119 Stat. 783 (42 U.S.C. 2201(w)); Sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

■ 2. In § 170.11, the introduction text of paragraph (a)(1), paragraphs (a)(1)(ii), (a)(1)(iii) introductory text, (a)(1)(iii)(A), (B), and (C), and paragraph (b) are revised to read as follows:

§ 170.11 Exemptions.

(a) * * *

(1) A request/report submitted to the NRC—

* * * * *

(ii) In response to an NRC request from the Associate Office Director level or above to resolve an identified safety, safeguards, or environmental issue, or to assist NRC in developing a rulemaking, regulatory guide, policy statement, generic letter, or bulletin; or

(iii) As a means of exchanging information between industry organizations and the NRC. To receive this fee exemption:

(A) The report should be submitted for the specific purpose of supporting ongoing NRC generic regulatory improvements or efforts (*e.g.,* rules, regulations, regulatory guides and policy statements) and the agency, at the time the document is submitted, plans to use it for that purpose. The exemption applies even if ultimately the NRC does not use the document as planned.

(B) The NRC must be the primary beneficiary of the NRC's review and approval of these documents. This exemption does not apply to a topical report submitted for the purpose of

obtaining NRC approval for future use of the report by the industry to address licensing or safety issues, even though the NRC may realize some benefits from its review and approval of the document.

(C) The fee exemption is requested in writing to the Chief Financial Officer in accordance with 10 CFR 170.5, and the Chief Financial Officer grants this request in writing.

* * * * *

(b) The Commission may, upon application by an interested person, or upon its own initiative, grant such exemptions from the requirements of this part as it determines are authorized by law and are otherwise in the public interest. Applications for exemption under this paragraph may include activities such as, but not limited to, the use of licensed materials for educational or noncommercial public displays or scientific collections.

■ 3. Section 170.20 is revised to read as follows:

§ 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, 10 CFR part 55 re-qualification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 will be calculated using the professional staff-hour rate of $257 per hour.

■ 4. In § 170.21, in the table, fee category K is revised to read as follows:

§ 170.21 Schedule of fees for production and utilization facilities, review of standard referenced design approvals, special projects, inspections and import and export licenses.

* * * * *

SCHEDULE OF FACILITY FEES

[See footnotes at end of table]

Facility categories and type of fees	Fees[1, 2]
* * * * * * *	
K. Import and export licenses:	
Licenses for the import and export only of production and utilization facilities or the export only of components for production and utilization facilities issued under 10 CFR Part 110.	
1. Application for import or export of production and utilization facilities[4] (including reactors and other facilities) and exports of components requiring Commission and Executive Branch review, for example, actions under 10 CFR 110.40(b).	
Application—new license, or amendment; or license exemption request	$16,700
2. Application for export of reactor and other components requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(1)–(8).	
Application—new license, or amendment; or license exemption request	9,800
3. Application for export of components requiring the assistance of the Executive Branch to obtain foreign government assurances.	
Application—new license, or amendment; or license exemption request	4,100
4. Application for export of facility components and equipment (examples provided in 10 CFR part 110, Appendix A, Items (5) through (9)) not requiring Commission or Executive Branch review, or obtaining foreign government assurances.	
Application—new license, or amendment; or license exemption request	2,600
5. Minor amendment of any active export or import license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms or conditions or to the type of facility or component authorized for export and therefore, do not require in-depth analysis or review or consultation with the Executive Branch, U.S. host state, or foreign government authorities.	
Minor amendment to license	770

[1] Fees will not be charged for orders related to civil penalties or other civil sanctions issued by the Commission under § 2.202 of this chapter or for amendments resulting specifically from the requirements of these orders. For orders unrelated to civil penalties or other civil sanctions, fees will be charged for any resulting licensee-specific activities not otherwise exempted from fees under this chapter. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (*e.g.,* 10 CFR 50.12, 10 CFR 73.5) and any other sections in effect now or in the future, regardless if the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form.

[2] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect when the service was provided. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for any topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

* * * * *

[4] Imports only of major components for end-use at NRC-licensed reactors are now authorized under NRC general import license.

■ 5. In § 170.31, the table is revised to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

* * * * *

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees[1]	Fee[2,3]
1. Special nuclear material:	
A. (1) Licenses for possession and use of U–235 or plutonium for fuel fabrication activities.	
(a) Strategic Special Nuclear Material (High Enriched Uranium) [Program Code(s): 21130]	Full Cost
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel [Program Code(s): 21210]	Full Cost
(2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities.	
(a) Facilities with limited operations [Program Code(s): 21310, 21320]	Full Cost
(b) Gas centrifuge enrichment demonstration facilities	Full Cost
(c) Others, including hot cell facilities	Full Cost
B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI) [Program Code(s): 23200].	Full Cost
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers.[4]	
Application [Program Code(s): 22140]	$1,200
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those under Category 1.A.[4]	
Application [Program Code(s): 22110, 22111, 22120, 22131, 22136, 22150, 22151, 22161, 22163, 22170, 23100, 23300, 23310].	$2,400
E. Licenses or certificates for construction and operation of a uranium enrichment facility [Program Code(s): 21200]	Full Cost
2. Source material:	
A. (1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride [Program Code(s): 11400].	Full Cost
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ recovery, heap-leaching, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.	
(a) Conventional and Heap Leach facilities [Program Code(s): 11100]	Full Cost
(b) Basic In Situ Recovery facilities [Program Code(s):]	Full Cost
(c) Expanded In Situ Recovery facilities [Program Code(s):]	Full Cost
(d) In Situ Recovery Resin facilities	Full Cost
(e) Resin Toll Milling facilities	Full Cost
(f) Other facilities [Program Code(s): 11700]	Full Cost
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4) [Program Code(s): 11600].	Full Cost
(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2).	Full Cost
(5) Licenses that authorize the possession of source material related to removal of contaminants (source material) from drinking water.	Full Cost
B. Licenses which authorize the possession, use, and/or installation of source material for shielding.	
Application [Program Code(s): 11210]	$570
C. All other source material licenses.	
Application [Program Code(s): 11200, 11220, 11221, 11230, 11300, 11800, 11810]	$10,100
3. Byproduct material:	
A. Licenses of broad scope for the possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution.	
Application [Program Code(s): 03211, 03212, 03213]	$12,000
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution.	
Application [Program Code(s): 03214, 03215, 22135, 22162]	$4,500
C. Licenses issued under §§ 32.72 and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4). These licenses are covered by fee Category 3.D.	
Application [Program Code(s): 02500, 02511, 02513]	$6,500
D. Licenses and approvals issued under §§ 32.72 and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§ 32.72 and/or 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4).	
Application [Program Code(s): 02512, 02514]	$4,400
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units).	
Application [Program Code(s): 03510, 03520]	$3,000
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application [Program Code(s): 03511]	$6,000

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees[1]	Fee[2,3]
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application [Program Code(s): 03521]	$28,700
H. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter. The category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter.	
Application [Program Code(s): 03255]	$5,500
I. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter.	
Application [Program Code(s): 03250, 03251, 03252, 03253, 03254, 03256]	$10,000
J. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter.	
Application [Program Code(s): 03240, 03241, 03243]	$1,800
K. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter.	
Application [Program Code(s): 03242, 03244]	$1,100
L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution.	
Application [Program Code(s): 01100, 01110, 01120, 03610, 03611, 03612, 03613]	$10,100
M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution.	
Application [Program Code(s): 03620]	$3,500
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and	
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4.A., 4.B., and 4.C.	
Application [Program Code(s): 03219, 03225, 03226]	$6,100
O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations.	
Application [Program Code(s): 03310, 03320]	$5,800
P. All other specific byproduct material licenses, except those in Categories 4.A. through 9.D.	
Application [Program Code(s): 02400, 02410, 03120, 03121, 03122, 03123, 03124, 03220, 03221, 03222, 03800, 03810, 22130].	$1,400
Q. Registration of a device(s) generally licensed under part 31 of this chapter.	
Registration	$310
R. Possession of items or products containing radium-226 identified in 10 CFR 31.12 which exceed the number of items or limits specified in that section.[6]	
1. Possession of quantities exceeding the number of items or limits in 10 CFR 31.12(a)(4), or (5) but less than or equal to 10 times the number of items or limits specified.	
Application [Program Code(s): 02700]	$1,180
2. Possession of quantities exceeding 10 times the number of items or limits specified in 10 CFR 31.12(a)(4), or fee category (5).C.	
Application [Program Code(s): 02710]	$1,400
S. Licenses for production of accelerator-produced radionuclides.	
Application [Program Code(s): 03210]	$6,500
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material..	
[Program Code(s): 03231, 03233, 03235, 03236, 06100, 06101]	Full Cost
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.	
Application [Program Code(s): 03234]	$4,400
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.	
Application [Program Code(s): 03232]	$4,600
5. Well logging:	

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees[1]	Fee[2,3]
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies.	
Application [Program Code(s): 03110, 03111, 03112]	$3,400
B. Licenses for possession and use of byproduct material for field flooding tracer studies.	
Licensing [Program Code(s): 03113]	Full Cost
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material.	
Application [Program Code(s): 03218]	$20,500
7. Medical licenses:	
A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in gamma stereotactic radiosurgery units, teletherapy devices, or similar beam therapy devices.	
Application [Program Code(s): 02300, 02310]	$11,200
B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.	
Application [Program Code(s): 02110]	$8,000
C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices.	
Application [Program Code(s): 02120, 02121, 02200, 02201, 02210, 02220, 02230, 02231, 02240, 22160]	$2,300
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities.	
Application [Program Code(s): 03710]	$1,180
9. Device, product, or sealed source safety evaluation:	
A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution.	
Application—each device	$8,300
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices.	
Application—each device	$8,300
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution.	
Application—each source	$5,800
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel.	
Application—each source	$980
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers.	
1. Spent Fuel, High-Level Waste, and plutonium air packages	Full Cost
2. Other Casks	Full Cost
B. Quality assurance program approvals issued under part 71 of this chapter.	
1. Users and Fabricators.	
Application	$3,100
Inspections	Full Cost
2. Users.	
Application	$3,100
Inspections	Full Cost
C. Evaluation of security plans, route approvals, route surveys, and transportation security devices (including immobilization devices).	Full Cost
11. Review of standardized spent fuel facilities	Full Cost
12. Special projects:	
Including approvals, preapplication/licensing activities, and inspections	Full Cost
13. A. Spent fuel storage cask Certificate of Compliance	Full Cost
B. Inspections related to storage of spent fuel under § 72.210 of this chapter	Full Cost
14. A. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter.	Full Cost
B. Site-specific decommissioning activities associated with unlicensed sites, regardless of whether or not the sites have been previously licensed.	Full Cost
15. Import and Export licenses:	
Licenses issued under part 110 of this chapter for the import and export only of special nuclear material, source material, tritium and other byproduct material, and the export only of heavy water, or nuclear grade graphite (fee categories 15.A. through 15.E).	
A. Application for export or import of nuclear materials, including radioactive waste requiring Commission and Executive Branch review, for example, those actions under 10 CFR 110.40(b).	
Application—new license, or amendment; or license exemption request	$16,700

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees[1]	Fee[2,3]
B. Application for export or import of nuclear material, including radioactive waste, requiring Executive Branch review, but not Commission review. This category includes applications for the export and import of radioactive waste and requires NRC to consult with domestic host state authorities, Low-Level Radioactive Waste Compact Commission, the U.S. Environmental Protection Agency, etc.	
Application—new license, or amendment; or license exemption request	$9,800
C. Application for export of nuclear material, for example, routine reloads of low enriched uranium reactor fuel and/or natural uranium source material requiring the assistance of the Executive Branch to obtain foreign government assurances.	
Application—new license, or amendment; or license exemption request	$4,100
D. Application for export or import of nuclear material, including radioactive waste, not requiring Commission or Executive Branch review, or obtaining foreign government assurances. This category includes applications for export or import of radioactive waste where the NRC has previously authorized the export or import of the same form of waste to or from the same or similar parties located in the same country, requiring only confirmation from the receiving facility and licensing authorities that the shipments may proceed according to previously agreed understandings and procedures.	
Application—new license, or amendment; or license exemption request	$2,600
E. Minor amendment of any active export or import license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms and conditions or to the type/quantity/chemical composition of the material authorized for export and, therefore, do not require in-depth analysis, review, or consultations with other Executive Branch, U.S. host state, or foreign government authorities.	
Minor amendment	$770
Licenses issued under part 110 of this chapter for the import and export only of Category 1 and Category 2 quantities of radioactive material listed in Appendix P to part 110 of this chapter (fee categories 15.F. through 15.R.).[5]	
Category 1 Exports:	
F. Application for export of Category 1 materials involving an exceptional circumstances review under 10 CFR 110.42(e)(4).	
Application—new license, or amendment; or license exemption request	$16,700
G. Application for export of Category 1 materials requiring Executive Branch review, Commission review, and/or government-to-government consent.	
Application—new license, or amendment; or license exemption request	$9,800
H. Application for export of Category 1 materials requiring Commission review and government-to-government consent.	
Application—new license, or amendment; or license exemption request	$6,200
I. Application for export of Category 1 material requiring government-to-government consent.	
Application—new license, or amendment; or license exemption request	$5,100
Category 2 Exports:	
J. Application for export of Category 2 materials involving an exceptional circumstances review under 10 CFR 110.42(e)(4).	
Application—new license, or amendment; or license exemption request	$16,700
K. Applications for export of Category 2 materials requiring Executive Branch review and/or Commission review.	
Application—new license, or amendment; or license exemption request	$9,800
L. Application for the export of Category 2 materials.	
Application—new license, or amendment; or license exemption request	$4,600
Category 1 Imports:	
M. Application for the import of Category 1 material requiring Commission review.	
Application—new license, or amendment; or license exemption request	$4,900
N. Application for the import of Category 1 material.	
Application—new license, or amendment; or license exemption request	$4,100
Category 2 Imports:	
O. Application for the import of Category 2 material.	
Application—new license, or amendment; or license exemption request	$3,600
Category 1 Imports with Agent and Multiple Licensees:	
P. Application for the import of Category 1 material with agent and multiple licensees requiring Commission review.	
Application—new license, or amendment; or license exemption request	$5,700
Q. Application for the import of Category 1 material with agent and multiple licensees.	
Application B new license, or amendment; or license exemption request	$4,600
Minor Amendments (Category 1 and 2 Export and Imports):	
R. Minor amendment of any active export or import license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms and conditions or to the type/quantity/chemical composition of the material authorized for export and, therefore, do not require in-depth analysis, review, or consultations with other Executive Branch, U.S. host state, or foreign authorities.	
Minor amendment	$770
16. Reciprocity.	
Agreement State licensees who conduct activities under the reciprocity provisions of 10 CFR 150.20.	
Application	$1,800
17. Master materials licenses of broad scope issued to Government agencies:	
Application	$73,100
18. Department of Energy.	
A. Certificates of Compliance. Evaluation of casks, packages, and shipping containers (including spent fuel, high-level waste, and other casks, and plutonium air packages).	Full Cost
B. Uranium Mill Tailings Radiation Control Act (UMTRCA) activities	Full Cost

[1] *Types of fees*—Separate charges, as shown in the schedule, will be assessed for pre-application consultations and reviews; applications for new licenses, approvals, or license terminations; possession only licenses; issuance of new licenses and approvals; certain amendments and renewals to existing licenses and approvals; safety evaluations of sealed sources and devices; generally licensed device registrations; and certain inspections. The following guidelines apply to these charges:

(a) *Application and registration fees.* Applications for new materials licenses and export and import licenses; applications to reinstate expired, terminated, or inactive licenses except those subject to fees assessed at full costs; applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20; and applications for amendments to materials licenses that would place the license in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for each category.

(1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(2) Applications for new licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for fee Category 1.C. only.

(b) *Licensing fees.* Fees for reviews of applications for new licenses and for renewals and amendments to existing licenses, pre-application consultations and reviews of other documents submitted to NRC for review, and project manager time for fee categories subject to full cost fees, are due upon notification by the Commission in accordance with § 170.12(b).

(c) *Amendment fees.* Applications for amendments to export and import licenses must be accompanied by the prescribed amendment fee for each license affected. An application for an amendment to an export or import license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories, in which case the amendment fee for the highest fee category would apply.

(d) *Inspection fees.* Inspections resulting from investigations conducted by the Office of Investigations and non-routine inspections that result from third-party allegations are not subject to fees. Inspection fees are due upon notification by the Commission in accordance with § 170.12(c).

(e) *Generally licensed device registrations under 10 CFR 31.5.* Submittals of registration information must be accompanied by the prescribed fee.

[2] Fees will not be charged for orders related to civil penalties or other civil sanctions issued by the Commission under 10 CFR 2.202 or for amendments resulting specifically from the requirements of these orders. For orders unrelated to civil penalties or other civil sanctions, fees will be charged for any resulting licensee-specific activities not otherwise exempted from fees under this chapter. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (*e.g.,* 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections in effect now or in the future), regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9.A. through 9.D.

[3] Full cost fees will be determined based on the professional staff time multiplied by the appropriate professional hourly rate established in § 170.20 in effect when the service is provided, and the appropriate contractual support services expended. For applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

[4] Licensees paying fees under Categories 1.A., 1.B., and 1.E. are not subject to fees under Categories 1.C. and 1.D. for sealed sources authorized in the same license except for an application that deals only with the sealed sources authorized by the license.

[5] For a combined import and export license application for material listed in Appendix P to part 110 of this chapter, only the higher of the two applicable fee amounts must be paid.

[6] Persons who possess radium sources that are used for operational purposes in another fee category are not also subject to the fees in this category. (This exception does not apply if the radium sources are possessed for storage only.)

PART 171—ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

■ 6. The authority citation for part 171 continues to read as follows:

Authority: Section 7601, Pub. L. 99–272, 100 Stat. 146, as amended by Sec. 5601, Pub. L. 100–203, 101 Stat. 1330, as amended by Sec. 3201, Pub. L. 101–239, 103 Stat. 2132, as amended by Sec. 6101, Pub. L. 101–508, 104 Stat. 1388, as amended by Sec. 2903a, Pub. L. 102–486, 106 Stat. 3125 (42 U.S.C. 2213, 2214), and as amended by Title IV, Pub. L. 109–103, 119 Stat. 2283 (42 U.S.C. 2214); Sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201w); Sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841); Sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note), Sec. 651(e), Pub. L.109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

■ 7. In § 171.15, paragraph (b)(1), the introductory text of paragraph (b)(2), paragraph (c)(1), the introductory text of paragraph (c)(2) and the introductory text of paragraph (d)(1), and paragraphs (d)(2), (d)(3), and paragraph (e), are revised to read as follows:

§ 171.15 Annual fees: Reactor licenses and independent spent fuel storage licenses.

* * * * *

(b)(1) The FY 2009 annual fee for each operating power reactor which must be collected by September 30, 2009, is $4,503,000.

(2) The FY 2009 annual fee is comprised of a base annual fee for power reactors licensed to operate, a base spent fuel storage/reactor decommissioning annual fee, and associated additional charges (fee-relief adjustment). The activities comprising the FY 2009 spent storage/reactor decommissioning base annual fee are shown in paragraphs (c)(2)(i) and (ii) of this section. The activities comprising the FY 2009 fee-relief adjustment are shown in paragraph (d)(1) of this section. The activities comprising the FY 2009 base annual fee for operating power reactors are as follows:

* * * * *

(c)(1) The FY 2009 annual fee for each power reactor holding a 10 CFR part 50 license that is in a decommissioning or possession only status and has spent fuel onsite, and each independent spent fuel storage 10 CFR part 72 licensee who does not hold a 10 CFR part 50 license is $122,000.

(2) The FY 2009 annual fee is comprised of a base spent fuel storage/reactor decommissioning annual fee (which is also included in the operating power reactor annual fee shown in paragraph (b) of this section), and an additional charge (fee-relief adjustment). The activities comprising the FY 2009 fee-relief adjustment are shown in paragraph (d)(1) of this section. The activities comprising the FY 2009 spent fuel storage/reactor decommissioning rebaselined annual fee are:

* * * * *

(d)(1) The fee-relief adjustment allocated to annual fees includes a surcharge for the activities listed in paragraph (d)(1)(i) of this section, plus the amount remaining after total budgeted resources for the activities included in paragraphs (d)(1)(ii) and (d)(1)(iii) of this section is reduced by the appropriations NRC receives for these types of activities. If the NRC's appropriations for these types of activities are greater than the budgeted resources for the activities included in paragraphs (d)(1)(ii) and (d)(1)(iii) of this section for a given FY, an annual fee reduction will be allocated to annual fees. The activities comprising the FY 2009 fee-relief adjustment are as follows:

* * * * *

(2) The total FY 2009 fee-relief adjustment allocated to the operating power reactor class of licenses is −$1.6 million, not including the amount allocated to the spent fuel storage/reactor decommissioning class. The FY 2009 operating power reactor fee-relief adjustment to be assessed to each operating power reactor is approximately −$15,400. This amount is calculated by dividing the total operating power reactor fee-relief adjustment (−$1.6 million) by the number of operating power reactors (104).

(3) The FY 2009 fee-relief adjustment allocated to the spent fuel storage/reactor decommissioning class of licenses is −$79,500. The FY 2009 spent fuel storage/reactor decommissioning fee-relief adjustment to be assessed to each operating power reactor, each power reactor in decommissioning or possession only status that has spent fuel onsite, and to each independent spent fuel storage 10 CFR part 72 licensee who does not hold a 10 CFR part 50 license is approximately −$646. This amount is calculated by dividing the total fee-relief adjustment costs allocated to this class by the total number of power reactor licenses, except those that permanently ceased operations and have no fuel onsite, and 10 CFR part 72 licensees who do not hold a 10 CFR part 50 license.

(e) The FY 2009 annual fees for licensees authorized to operate a test and research (non-power) reactor licensed under part 50 of this chapter, unless the reactor is exempted from fees under § 171.11(a), are as follows:

Research reactor	$87,600
Test reactor	$87,600

■ 8. In § 171.16, the introductory text of paragraph (b), paragraphs (c) and (d), and the introductory text of paragraph (e) are revised to read as follows:

§ 171.16 Annual fees: Materials licensees, holders of certificates of compliance, holders of sealed source and device registrations, holders of quality assurance program approvals, and government agencies licensed by the NRC.

* * * * *

(b) The annual fee is comprised of a base annual fee and an allocation for fee-relief adjustment. The activities comprising the fee-relief adjustment are shown in paragraph (e) of this section. The base annual fee is the sum of budgeted costs for the following activities:

* * * * *

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification along with its annual fee payment, the licensee may pay reduced annual fees as shown in the following table. Failure to file a small entity certification in a timely manner could result in the denial of any refund that might otherwise be due. The small entity fees are as follows:

	Maximum annual fee per licensed category
Small Businesses Not Engaged in Manufacturing (Average gross receipts over last 3 completed fiscal years):	
$450,000 to $6.5 million	$1,900
Less than $450,000	400
Small Not-For-Profit Organizations (Annual Gross Receipts):	
$450,000 to $6.5 million	1,900
Less than $450,000	400
Manufacturing entities that have an average of 500 employees or fewer:	
35 to 500 employees	1,900
Fewer than 35 employees	400
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 50,000	1,900
Fewer than 20,000	400
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Fewer:	
35 to 500 employees	1,900
Fewer than 35 employees	400

(d) The FY 2009 annual fees are comprised of a base annual fee and an allocation for fee-relief adjustment. The activities comprising the FY 2009 fee-relief adjustment are shown for convenience in paragraph (e) of this section. The FY 2009 annual fees for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are shown in the following table:

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

[See footnotes at end of table]

Category of materials licenses	Annual fees[1,2,3]
1. Special nuclear material:	
A. (1) Licenses for possession and use of U-235 or plutonium for fuel fabrication activities..	
(a) Strategic Special Nuclear Material (High Enriched Uranium) [Program Code(s): 21130]	$4,691,000
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel [Program Code(s): 21210]	1,649,000
(2) All other special nuclear materials licenses not included in Category.	
1.A.(1) which are licensed for fuel cycle activities.	
(a) Facilities with limited operations [Program Code(s): 21310, 21320]	765,000
(b) Gas centrifuge enrichment demonstration facilities	918,000
(c) Others, including hot cell facilities	408,000

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees[1,2,3]
B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI) [Program Code(s): 23200]	[11]N/A
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers [Program Code(s): 22140]	2,700
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2) [Program Code(s): 22110, 22111, 22120, 22131, 22136, 22150, 22151, 22161, 22163, 22170, 23100, 23300, 23310]	7,600
E. Licenses or certificates for the operation of a uranium enrichment facility [Program Code(s): 21200]	2,804,000
2. Source material:	
A. (1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride [Program Code(s): 11400]	969,000
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ recovery, heap-leaching, ore buying stations, ion exchange facilities and in-processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.	
(a) Conventional and Heap Leach facilities [Program Code(s): 11100]	31,200
(b) Basic In Situ Recovery facilities [Program Code(s):]	29,700
(c) Expanded In Situ Recovery facilities [Program Code(s):]	33,600
(d) In Situ Recovery Resin facilities	[5] N/A
(e) Resin Toll Milling facilities	[5] N/A
(f) Other facilities[4] [Program Code(s): 11700]	[5] N/A
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4) [Program Code(s): 11600]	[5] N/A
(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2)	10,100
(5) Licenses that authorize the possession of source material related to removal of contaminants (source material) from drinking water	7,000
B. Licenses that authorize only the possession, use and/or installation of source material for shielding [Program Code(s): 11210]	1,310
C. All other source material licenses [Program Code(s): 11200, 11220, 11221, 11230, 11300, 11800, 11810]	17,400
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution [Program Code(s): 03211, 03212, 03213]	40,000
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution [Program Code(s): 03214, 03215, 22135, 22162]	10,300
C. Licenses issued under §§ 32.72 and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when included on the same license. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 171.11(a)(1). These licenses are covered by fee under Category 3.D. [Program Code(s): 02500, 02511, 02513]	13,500
D. Licenses and approvals issued under §§ 32.72 and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§ 32.72 and 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under § 171.11(a)(1). This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when included on the same license [Program Code(s): 02512, 02514]	8,700
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units) [Program Code(s): 03510, 03520]	6,600
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes [Program Code(s): 03511]	12,700
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes [Program Code(s): 03521]	62,800
H. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter [Program Code(s): 03255]	8,300

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees[1,2,3]
I. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter [Program Code(s): 03250, 03251, 03252, 03253, 03254, 03256]	14,900
J. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter [Program Code(s): 03240, 03241, 03243]	3,300
K. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter [Program Code(s): 03242, 03244]	2,500
L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution [Program Code(s): 01100, 01110, 01120, 03610, 03611, 03612, 03613]	19,800
M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution [Program Code(s): 03620]	7,500
N. Licenses that authorize services for other licensees, except: (1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3.P.; and (2) Licenses that authorize waste disposal services are subject to the fees specified in fee categories 4.A., 4.B., and 4.C. [Program Code(s): 03219, 03225, 03226]	11,400
O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when authorized on the same license [Program Code(s): 03310, 03320]	22,700
P. All other specific byproduct material licenses, except those in Categories 4.A. through 9.D. [Program Code(s): 02400, 02410, 03120, 03121, 03122, 03123, 03124, 03220, 03221, 03222, 03800, 03810, 22130]	3,700
Q. Registration of devices generally licensed under part 31 of this chapter	[13] N/A
R. Possession of items or products containing radium-226 identified in 10 CFR 31.12 which exceed the number of items or limits specified in that section:[14].	
1. Possession of quantities exceeding the number of items or limits in 10 CFR 31.12(a)(4), or (5) but less than or equal to 10 times the number of items or limits specified [Program Code(s): 02700]	3,300
2. Possession of quantities exceeding 10 times the number of items or limits specified in 10 CFR 31.12(a)(4), or (5) [Program Code(s): 02710]	3,700
S. Licenses for production of accelerator-produced radionuclides [Program Code(s): 03210]	12,200
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material [Program Code(s): 03231, 03233, 03235, 03236, 06100, 06101]	[5] N/A
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material [Program Code(s): 03234]	18,700
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material [Program Code(s): 03232]	11,800
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies [Program Code(s): 03110, 03111, 03112]	9,700
B. Licenses for possession and use of byproduct material for field flooding tracer studies [Program Code(s): 03113]	[5] N/A
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material [Program Code(s): 03218]	35,400
7. Medical licenses:	
A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in gamma stereotactic radiosurgery units, teletherapy devices, or similar beam therapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license [Program Code(s): 02300, 02310]	17,500
B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9] [Program Code(s): 02110]	36,300

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees[1,2,3]
C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9] [Program Code(s): 02120, 02121, 02200, 02201, 02210, 02220, 02230, 02231, 02240, 22160]	6,200
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities [Program Code(s): 03710]	3,300
9. Device, product, or sealed source safety evaluation:	
A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution	10,400
B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices	10,400
C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution	7,300
D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel	1,200
10. Transportation of radioactive material:	
A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers.	
1. Spent Fuel, High-Level Waste, and plutonium air packages	[6] N/A
2. Other Casks	[6] N/A
B. Quality assurance program approvals issued under part 71 of this chapter.	
1. Users and Fabricators	[6] N/A
2. Users	[6] N/A
C. Evaluation of security plans, route approvals, route surveys, and transportation security devices (including immobilization devices)	[6] N/A
11. Standardized spent fuel facilities	[6] N/A
12. Special Projects	[6] N/A
13. A. Spent fuel storage cask Certificate of Compliance	[6] N/A
B. General licenses for storage of spent fuel under 10 CFR 72.210	[12] N/A
14. Decommissioning/Reclamation:	
A. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter	[7] N/A
B. Site-specific decommissioning activities associated with unlicensed sites, whether or not the sites have been previously licensed	[7] N/A
15. Import and Export licenses	[8] N/A
16. Reciprocity	[8] N/A
17. Master materials licenses of broad scope issued to Government agencies	187,000
18. Department of Energy:	
A. Certificates of Compliance	[10] 719,000
B. Uranium Mill Tailings Radiation Control Act (UMTRCA) activities	339,000

[1] Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the current FY. The annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses before October 1, 2007, and permanently ceased licensed activities entirely before this date. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a possession only license during the FY and for new licenses issued during the FY will be prorated in accordance with the provisions of § 171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (*e.g.,* human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1.A.(1) are not subject to the annual fees for Categories 1.C. and 1.D. for sealed sources authorized in the license.

[2] Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of parts 30, 40, 70, 71, 72, or 76 of this chapter.

[3] Each FY, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the FEDERAL REGISTER for notice and comment.

[4] Another license includes licenses for extraction of metals, heavy metals, and rare earths.

[5] There are no existing NRC licenses in these fee categories. If NRC issues a license for these categories, the Commission will consider establishing an annual fee for this type of license.

[6] Standardized spent fuel facilities, 10 CFR parts 71 and 72 Certificates of Compliance and related Quality Assurance program approvals, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to users of the designs, certificates, and topical reports.

[7] Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

[8] No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

[9] Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions that also hold nuclear medicine licenses under Categories 7.B. or 7.C.

[10] This includes Certificates of Compliance issued to DOE that are not funded from the Nuclear Waste Fund.

[11] See § 171.15(c).

[12] See § 171.15(c).

[13] No annual fee is charged for this category because the cost of the general license registration program applicable to licenses in this category will be recovered through 10 CFR part 170 fees.

[14] Persons who possess radium sources that are used for operational purposes in another fee category are not also subject to the fees in this category. (This exception does not apply if the radium sources are possessed for storage only.)

(e) The fee-relief adjustment allocated to annual fees includes the budgeted resources for the activities listed in paragraph (e)(1) of this section, plus the total budgeted resources for the activities included in paragraphs (e)(2) and (e)(3) of this section as reduced by the appropriations NRC receives for these types of activities. If the NRC's appropriations for these types of activities are greater than the budgeted resources for the activities included in paragraphs (e)(2) and (e)(3) of this section for a given FY, a negative fee-relief adjustment (or annual fee reduction) will be allocated to annual fees. The activities comprising the FY 2009 fee-relief adjustment are as follows:

* * * * *

Dated at Rockville, Maryland, this 26th day of May 2009.

For the Nuclear Regulatory Commission.

J.E. Dyer,

Chief Financial Officer.

Note: This Appendix Will Not Appear in the Code of Federal Regulations.

APPENDIX A TO THIS FINAL RULE—REGULATORY FLEXIBILITY ANALYSIS FOR THE FINAL AMENDMENTS TO 10 CFR PART 170 (LICENSE FEES) AND 10 CFR PART 171 (ANNUAL FEES)

I. Background

The Regulatory Flexibility Act (RFA), as amended 5 U.S.C. 601 *et seq.,* requires that agencies consider the impact of their rulemakings on small entities and, consistent with applicable statutes, consider alternatives to minimize these impacts on the businesses, organizations, and government jurisdictions to which they apply.

The NRC has established standards for determining which NRC licensees qualify as small entities (10 CFR 2.810). These standards were based on the Small Business Administration's most common receipts-based size standards and provides for business concerns that are manufacturing entities. The NRC uses the size standards to reduce the impact of annual fees on small entities by establishing a licensee's eligibility to qualify for a maximum small entity fee. The small entity fee categories in § 171.16(c) of this final rule are based on the NRC's size standards.

The NRC is required each year, under OBRA–90, as amended, to recover approximately 90 percent of its budget authority (less amounts appropriated from the NWF and for other activities specifically removed from the fee base), through fees to NRC licensees and applicants. In total, the NRC is required to bill approximately $866.5 million in fees for FY 2009.

OBRA–90 requires that the schedule of charges established by rulemaking should fairly and equitably allocate the total amount to be recovered from the NRC's licensees and be assessed under the principle that licensees who require the greatest expenditure of agency resources pay the greatest annual charges. Since FY 1991, the NRC has complied with OBRA–90 by issuing a final rule that amends its fee regulations. These final rules have established the methodology used by the NRC in identifying and determining the fees to be assessed and collected in any given FY.

The Commission is rebaselining its part 171 annual fees in FY 2009. Rebaselining fees results in increased annual fees for three classes of licensees (power reactors, non-power reactors, and fuel facilities), and decreased annual fees for two classes of licensees (spent fuel storage/reactor decommissioning and transportation). Within the materials users and uranium recovery fee classes, annual fees for most licensees increase, while annual fees for some licensees decrease.

The Small Business Regulatory Enforcement Act (SBREFA) provides Congress with the opportunity to review agency rules before they go into effect. Under this legislation, the NRC annual fee rule is considered a ''major'' rule and must be reviewed by Congress and the Comptroller General before the rule becomes effective.

The Small Business Regulatory Enforcement Act also requires that an agency prepare a guide to assist small entities in complying with each rule for which a final RFA is prepared. As required by law, this analysis and the small entity compliance guide (Attachment 1) have been prepared for the FY 2009 fee rule as required by law.

II. Impact on Small Entities

The fee rule results in substantial fees charged to those individuals, organizations, and companies licensed by the NRC, including those licensed under the NRC materials program. Comments received on previous proposed fee rules and the small entity certifications in response to previous final fee rules indicate that licensees qualifying as small entities under the NRC's size standards are primarily materials licensees. Therefore, this analysis will focus on the economic impact of fees on materials licensees. In FY 2008, about 26 percent of these licensees (approximately 1,100 licensees) qualified as small entities.

Commenters on previous fee rulemakings consistently indicated that the following would occur if the proposed annual fees were not modified:

1. Large firms would gain an unfair competitive advantage over small entities. Commenters noted that small and very small companies (''Mom and Pop'' operations) would find it more difficult to absorb the annual fee than a large corporation or a high-volume type of operation. In competitive markets, such as soil testing, annual fees would put small licensees at an extreme competitive disadvantage with their much larger competitors because the proposed fees would be identical for both small and large firms.

2. Some firms would be forced to cancel their licenses. A licensee with receipts of less than $500,000 per year stated that the proposed rule would, in effect, force it to relinquish its soil density gauge and license, thereby reducing its ability to do its work effectively. Other licensees, especially well-loggers, noted that the increased fees would force small businesses to abandon the materials license altogether. Commenters estimated that the proposed rule would cause roughly 10 percent of the well-logging licensees to terminate their licenses immediately and approximately 25 percent to terminate before the next annual assessment.

3. Some companies would go out of business.

4. Some companies would have budget problems. Many medical licensees noted that, along with reduced reimbursements, the proposed increase of the existing fees and the introduction of additional fees would significantly affect their budgets. Others noted that, in view of the cuts by Medicare and other third party carriers, the fees would produce a hardship difficult for some facilities to meet.

Over 3,000 licenses, approvals, and registration terminations have been requested since the NRC first established annual fees for materials licenses. Although some terminations were requested because the license was no longer needed or could be combined with registrations, indications are that the economic impact of the fees caused other terminations.

To alleviate the significant impact of the annual fees on a substantial number of small entities, the NRC considered the following alternatives in accordance with the RFA in developing each of its fee rules since FY 1991.

1. Base fees on some measure of the amount of radioactivity possessed by the licensee (*e.g.,* number of sources).

2. Base fees on frequency of use of licensed radioactive material (*e.g.,* volume of patients).

3. Base fees on the NRC size standards for small entities.

The NRC has reexamined its previous evaluations of these alternatives and continues to believe that a maximum fee for small entities is the most appropriate and effective option for reducing the impact of fees on small entities.

III. Maximum Fee

The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic impact on a small entity; therefore, the NRC has no benchmark to assist it in determining the amount or percent of gross receipts that should be charged to a small entity. In developing the maximum small entity annual fee in FY 1991, the NRC examined 10 CFR part 170 licensing and inspection fees and Agreement State fees for fee categories which were expected to have a substantial number

of small entities. Six Agreement States (Washington, Texas, Illinois, Nebraska, New York, and Utah), were used as benchmarks in the establishment of the maximum small entity annual fee in FY 1991.

The NRC maximum small entity fee was established as an annual fee only. In addition to the annual fee, NRC small entity licensees were required to pay amendment, renewal and inspection fees. In setting the small entity annual fee, NRC ensured that the total amount small entities paid would not exceed the maximum paid in the six benchmark Agreement States.

Of the six benchmark states, the NRC used Washington's maximum Agreement State fee of $3,800 as the ceiling for total fees. Thus NRC's small entity fee was developed to ensure that the total fees paid by NRC small entities would not exceed $3,800. Given the NRC's FY 1991 fee structure for inspections, amendments, and renewals, a small entity annual fee established at $1,800 allowed the total fee (small entity annual fee plus yearly average for inspections, amendments and renewal fees) for all categories to fall under the $3,800 ceiling.

In FY 1992, the NRC introduced a second, lower tier to the small entity fee in response to concerns that the $1,800 fee, when added to the license and inspection fees, still imposed a significant impact on small entities with relatively low gross annual receipts. For purposes of the annual fee, each small entity size standard was divided into an upper and lower tier. Small entity licensees in the upper tier continued to pay an annual fee of $1,800 while those in the lower tier paid an annual fee of $400.

Based on the changes that had occurred since FY 1991, the NRC re-analyzed its maximum small entity annual fees in FY 2000 and determined that the small entity fees should be increased by 25 percent to reflect the increase in the average fees paid by other materials licensees since FY 1991, as well as changes in the fee structure for materials licensees. The structure of fees NRC charged its materials licensees changed during the period between 1991 and 1999. Costs for materials license inspections, renewals, and amendments, which were previously recovered through part 170 fees for services, are now included in the part 171 annual fees assessed to materials licensees. Because of the 25 percent increase, in FY 2000 the maximum small entity annual fee increased from $1,800 to $2,300. However, despite the increase, total fees for many small entities were reduced because they no longer paid part 170 fees. Costs not recovered from small entities were allocated to other materials licensees and to power reactors.

While reducing the impact on many small entities, the NRC determined that the maximum annual fee of $2,300 for small entities could continue to have a significant impact on materials licensees with relatively low annual gross receipts. Therefore, the NRC continued to provide the lower-tier small entity annual fee for small entities with relatively low gross annual receipts, manufacturing concerns and for educational institutions not State or publicly supported with fewer than 35 employees. The NRC also increased the lower tier small entity fee by 25 percent, the same percentage increase to the maximum small entity annual fee, resulting in the lower tier small entity fee increasing from $400 to $500 in FY 2000.

The NRC stated in the RFA for the FY 2001 final fee rule that it would re-examine the small entity fees every two years, in the same years in which it conducts the biennial review of fees as required by the Chief Financial Officers Act. Accordingly, the NRC examined the small entity fees again in FY 2003 and FY 2005, determining that a change was not warranted to those fees established in FY 2001.

As part of the small entity review in FY 2007, the NRC also considered whether it should establish reduced fees for small entities under part 170. The NRC received one comment requesting that small entity fees be considered for certain export licenses, particularly in light of the recent increases to part 170 fees for these licenses. Because the NRC's part 170 fees are not assessed to a licensee or applicant on a regular basis (*i.e.,* they are only assessed when a licensee or applicant requests a specific service from the NRC), the NRC does not believe that the impact of its part 170 fees warrants a fee reduction for small entities, in addition to the part 171 small entity fee reduction. Regarding export licenses, the NRC notes that interested parties can submit a single application for a broad scope, multi-year license that permits exports to multiple countries. Because the NRC charges fees per application, this process minimizes the fees for export applicants. Because a single NRC fee can cover numerous exports, and because there are a limited number of entities who apply for these licenses, the NRC does not anticipate that the part 170 export fees will have a significant impact on a substantial number of small entities. Therefore, the NRC retained the $2,300 small entity annual fee and the $500 lower tier small entity annual fee for FY 2007, and FY 2008.

The NRC conducted an in-depth biennial review of the FY 2009 small entity fees. The review noted significant changes between FY 2000 and FY 2008 in both the external and internal environment which impacted fees for NRC's small materials users licensees. Since FY 2000 small entity licensees in the upper tier have increased approximately 53 percent. In addition, due to changes in the law, NRC is now only required to recover 90 percent of its budget authority compared to 100 percent recovery required in FY 2000. This ten percent fee relief has influenced the small materials users' annual fees. A decrease in the NRC's budget allocation to the small materials users has also influenced annual fees in the last two years. Based on the review, the NRC will change the small entity fee for FY 2009 and establish a new methodology for reviewing small entity fees. The NRC will now determine the maximum small entity fee each biennial year using a fixed percentage of 39 percent applied to the prior two-year weighted average of small materials users fees for all fee categories which have small entity licensees.

For FY 2009, these changes result in a maximum small entity fee of $1,900 and a lower tier annual fee of $400. This new methodology allows small entity licensees to be able to predict changes in their fee in the biennial year based on the small materials fees for the previous two years. Using a two-year weighted average will smooth the fluctuations caused by programmatic and budget variables and will reflect the importance of the fee categories with the majority of small entities. Since the current small entity annual fee of $2,300 is 39 percent of the two-year weighted average for all fee categories in FY 2005 and FY 2006 that have an upper tier small entity licensee, the agency will retain the 39 percent as the percentage applied to the prior two-year weighted average of small materials users fees. The lower tier annual fee remains at 22 percent of the maximum small entity annual fee.

IV. Summary

The NRC has determined that the 10 CFR part 171 annual fees significantly impact a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to recover 90 percent of the NRC budget and the requirement to consider means of reducing the impact of the fee on small entities. Based on its regulatory flexibility analysis, the NRC concludes that a maximum annual fee of $1,900 for small entities and a lower-tier small entity annual fee of $400 for small businesses and not-for-profit organizations with gross annual receipts of less than $450,000, small governmental jurisdictions with a population of fewer than 20,000, small manufacturing entities that have fewer than 35 employees, and educational institutions that are not State or publicly supported and have fewer than 35 employees reduces the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA–90. Thus, the fees for small entities maintain a balance between the objectives of OBRA–90 and the RFA.

In 2007, the NRC revised its receipts-based size standards (72 FR 44951; August 10, 2007) to conform with the Small Business Agency standards. The maximum average gross annual receipts (upper tier) to qualify as a small entity were changed to $6.5 million from $5 million. The NRC is now proposing to revise the small entity lower tier receipts-based threshold to $450,000 from $350,000 approximately the same percentage adjustment as the change in the upper tier receipts-based standard.

ATTACHMENT 1 TO APPENDIX A—U.S. Nuclear Regulatory Commission Small Entity Compliance Guide; Fiscal Year 2009

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Introduction
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Introduction

The Congressional Review Act requires all Federal agencies to prepare a written guide for each ''major'' final rule, as defined by the Act. The NRC's fee rule, published annually to comply with the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), as amended, is considered a ''major'' rule under

the Congressional Review Act. Therefore, in compliance with the law, this guide has been prepared to assist NRC materials licensees in complying with the FY 2009 fee rule.

Licensees may use this guide to determine whether they qualify as a small entity under NRC regulations and are eligible to pay reduced FY 2009 annual fees assessed under 10 CFR part 171. The NRC has established two tiers of annual fees for those materials licensees who qualify as small entities under the NRC's size standards.

Licensees who meet the NRC's size standards for a small entity (listed in 10 CFR 2.810) must submit a completed NRC Form 526 ''Certification of Small Entity Status for the Purposes of Annual Fees Imposed under 10 CFR Part 171'' to qualify for the reduced annual fee. This form can be accessed on the NRC's Web site at *http://www.nrc.gov.* The form can then be accessed by selecting ''Business with NRC,'' then ''NRC Forms,'' selecting NRC Form 526. For licensees who cannot access the NRC's Web site, NRC Form 526 may be obtained through the local point of contact listed in the NRC's ''Materials Annual Fee Billing Handbook,'' NUREG/BR–0238, which is enclosed with each annual fee billing. Alternatively, the form may be obtained by calling the fee staff at 301–415–7554, or by e-mailing the fee staff at *fees.resource@nrc.gov.* The completed form, the appropriate small entity fee, and the payment copy of the invoice should be mailed to the U.S. Nuclear Regulatory Commission, License Fee Team, at the address indicated on the invoice. Failure to file the NRC small entity certification Form 526 in a timely manner may result in the denial of any refund that might otherwise be due.

NRC Definition of Small Entity

For purposes of compliance with its regulations (10 CFR 2.810), the NRC has defined a small entity as follows:

(1) *Small business*—a for-profit concern that provides a service, or a concern that is not engaged in manufacturing, with average gross receipts of $6.5 million or less over its last 3 completed fiscal years;

(2) *Manufacturing industry*—a manufacturing concern with an average of 500 or fewer employees based on employment during each pay period for the preceding 12 calendar months;

(3) *Small organizations*—a not-for-profit organization that is independently owned and operated and has annual gross receipts of $6.5 million or less;

(4) *Small governmental jurisdiction*—a government of a city, county, town, township, village, school district or special district, with a population of fewer than 50,000;

(5) *Small education institution*—an educations institution supported by a qualifying small governmental jurisdiction, or one that is not State or publicly supported and has 500 or fewer employees.[1]

To further assist licensees in determining if they qualify as a small entity, the following guidelines are provided, which are based on the Small Business Administration's regulations (13 CFR part 121).

(1) A small business concern is an independently owned and operated entity which is not considered dominant in its field of operations.

(2) The number of employees means the total number of employees in the parent company, any subsidiaries and/or affiliates, including both foreign and domestic locations (i.e., not solely the number of employees working for the licensee or conducting NRC licensed activities for the company).

(3) Gross annual receipts includes all revenue received or accrued from any source, including receipts of the parent company, any subsidiaries and/or affiliates, and account for both foreign and domestic locations. Receipts include all revenues from sales of products and services, interest, rent, fees, and commissions, from whatever sources derived (i.e., not solely receipts from NRC licensed activities).

(4) A licensee who is a subsidiary of a large entity, including a foreign entity, does not qualify as a small entity.

NRC Small Entity Fees

In 10 CFR 171.16(c), the NRC has established two tiers of fees for licensees that qualify as a small entity under the NRC's size standards. The fees are as follows:

	Maximum annual fee per licensed category
Small Businesses Not Engaged in Manufacturing (Average gross receipts over last 3 completed fiscal years):	
$450,000 to $6.5 million	$1,900
Less than $450,000	400
Small Not-For-Profit Organizations (Annual Gross Receipts):	
$450,000 to $6.5 million	1,900
Less than $450,000	400
Manufacturing entities that have an average of 500 employees or fewer:	
35 to 500 employees	1,900
Fewer than 35 employees	400
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 50,000	1,900
Fewer than 20,000	400
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Fewer:	
35 to 500 employees	1,900
Fewer than 35 employees	400

Instructions for Completing NRC Small Entity Form 526

1. Complete all items on NRC Form 526 as follows: (**Note**: Incomplete or improperly completed forms will be returned as unacceptable.)

(a) Enter the license number and invoice number exactly as they appear on the annual fee invoice.

(b) Enter the North American Industry Classification System (NAICS).

(c) Enter the licensee's name and address exactly as they appear on the invoice. Annotate name and/or address changes for billing purposes on the payment copy of the invoice—include contact's name, telephone number, e-mail address, and company Web site address. Correcting the name and/or address on NRC Form 526 or on the invoice does not constitute a request to amend the license.

(d) Check the appropriate size standard under which the licensee qualifies as a small entity. Check one box only. Note the following:

(i) A licensee who is a subsidiary of a large entity, including foreign entities, does not qualify as a small entity. The calculation of a firm's size includes the employees or receipts of all affiliates. Affiliation with another concern is based on the power to control, whether exercised or not. Such factors as common ownership, common management and identity of interest (often found in members of the same family), among others, are indications of affiliation. The affiliated business concerns need not be in the same line of business.

(ii) Gross annual receipts, as used in the size standards, include all revenue received or accrued by your company from all sources,

[1] An educational institution referred to in the size standards is an entity whose primary function is education, whose programs are accredited by a nationally recognized accrediting agency or association, who is legally authorized to provide a program of organized instruction or study, who provides an educational program for which it awards academic degrees, and whose education programs are available to the public.

regardless of the form of the revenue and not solely receipts from licensed activities.

(iii) NRC's size standards on a small entity are based on the Small Business Administration's regulations (13 CFR part 121).

(iv) The size standards apply to the licensee, not to the individual authorized users who may be listed in the license.

2. If the invoice states the ''Amount Billed Represents 50% Proration,'' the amount due is not the prorated amount shown on the invoice but rather one-half of the maximum small entity annual fee shown on NRC Form 526 for the size standard under which the licensee qualifies (either $950 or $200) for each category billed.

3. If the invoice amount is less than the reduced small entity annual fee shown on this form, pay the amount on the invoice; there is no further reduction. In this case, do not file NRC Form 526. However, if the invoice amount is greater than the reduced small entity annual fee, file NRC Form 526 and pay the amount applicable to the size standard you checked on the form.

4. The completed NRC Form 526 must be submitted with the required annual fee payment and the ''Payment Copy'' of the invoice to the address shown on the invoice.

5. 10 CFR 171.16(c)(3) states licensees shall submit a new certification with its annual fee payment each year. Failure to submit NRC Form 526 at the time the annual fee is paid will require the licensee to pay the full amount of the invoice.

The NRC sends invoices to its licensees for the full annual fee, even though some licensees qualify for reduced fees as small entities. Licensees who qualify as small entities and file NRC Form 526, which certifies eligibility for small entity fees, may pay the reduced fee, which is either $1,900 or $400 for a full year, depending on the size of the entity, for each fee category shown on the invoice. Licensees granted a license during the first 6 months of the fiscal year, and licensees who file for termination or for a ''possession only'' license and permanently cease licensed activities during the first 6 months of the fiscal year, pay only 50 percent of the annual fee for that year. Such invoices state that the ''amount billed represents 50% proration.''

Licensees must file a new small entity form (NRC Form 526) with the NRC each fiscal year to qualify for reduced fees in that year. Because a licensee's ''size,'' or the size standards, may change from year to year, the invoice reflects the full fee and licensees must complete and return NRC Form 526 for the fee to be reduced to the small entity fee amount. LICENSEES WILL NOT RECEIVE A NEW INVOICE FOR THE REDUCED AMOUNT. The completed NRC Form 526, the payment of the appropriate small entity fee, and the ''Payment Copy'' of the invoice should be mailed to the U.S. Nuclear Regulatory Commission, License Fee Team at the address indicated on the invoice.

If you have questions regarding the NRC's annual fees, please contact the license fee staff at 301–415–7554, e-mail the fee staff at *fees.resource@nrc.gov,* or write to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Office of the Chief Financial Officer.

False certification of small entity status could result in civil sanctions being imposed by the NRC under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801 *et seq.* NRC's implementing regulations are found at 10 CFR part 13.

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Wednesday,
June 10, 2009

Part IV

The President

Proclamation 8387—Lesbian, Gay, Bisexual, and Transgender Pride Month, 2009 (Republication With Correction)

Federal Register
Vol. 74, No. 110
Wednesday, June 10, 2009

Presidential Documents

Title 3—

The President

Proclamation 8387

Lesbian, Gay, Bisexual, And Transgender Pride Month, 2009

By the President of the United States of America

A Proclamation

[**Editorial Note:** Proclamation 8387, originally published on pages 26927–26930 in the **Federal Register** of Thursday, June 4, 2009, is being reprinted with a White House correction.]

Forty years ago, patrons and supporters of the Stonewall Inn in New York City resisted police harassment that had become all too common for members of the lesbian, gay, bisexual, and transgender (LGBT) community. Out of this resistance, the LGBT rights movement in America was born. During LGBT Pride Month, we commemorate the events of June 1969 and commit to achieving equal justice under law for LGBT Americans.

LGBT Americans have made, and continue to make, great and lasting contributions that continue to strengthen the fabric of American society. There are many well-respected LGBT leaders in all professional fields, including the arts and business communities. LGBT Americans also mobilized the Nation to respond to the domestic HIV/AIDS epidemic and have played a vital role in broadening this country's response to the HIV pandemic.

Due in no small part to the determination and dedication of the LGBT rights movement, more LGBT Americans are living their lives openly today than ever before. I am proud to be the first President to appoint openly LGBT candidates to Senate-confirmed positions in the first 100 days of an Administration. These individuals embody the best qualities we seek in public servants, and across my Administration—in both the White House and the Federal agencies—openly LGBT employees are doing their jobs with distinction and professionalism.

The LGBT rights movement has achieved great progress, but there is more work to be done. LGBT youth should feel safe to learn without the fear of harassment, and LGBT families and seniors should be allowed to live their lives with dignity and respect.

My Administration has partnered with the LGBT community to advance a wide range of initiatives. At the international level, I have joined efforts at the United Nations to decriminalize homosexuality around the world. Here at home, I continue to support measures to bring the full spectrum of equal rights to LGBT Americans. These measures include enhancing hate crimes laws, supporting civil unions and Federal rights for LGBT couples, outlawing discrimination in the workplace, ensuring adoption rights, and ending the existing ''Don't Ask, Don't Tell'' policy in a way that strengthens our Armed Forces and our national security. We must also commit ourselves to fighting the HIV/AIDS epidemic by both reducing the number of HIV infections and providing care and support services to people living with HIV/AIDS across the United States.

These issues affect not only the LGBT community, but also our entire Nation. As long as the promise of equality for all remains unfulfilled, all Americans are affected. If we can work together to advance the principles upon which our Nation was founded, every American will benefit. During LGBT Pride Month, I call upon the LGBT community, the Congress, and

the American people to work together to promote equal rights for all, regardless of sexual orientation or gender identity.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim June 2009 as Lesbian, Gay, Bisexual, and Transgender Pride Month. I call upon the people of the United States to turn back discrimination and prejudice everywhere it exists.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of June, 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.

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