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RESERVATIONS: (202) 741–6008

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Contents

Federal Register

Vol. 74, No. 174

Thursday, September 10, 2009

Agency for Healthcare Research and Quality
NOTICES
Meetings:
AHRQ National Advisory Council for Healthcare Research and Quality Subcommittee, etc.; Correction, 46610

Agriculture Department
See Animal and Plant Health Inspection Service
See Commodity Credit Corporation
See Forest Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 46558

Animal and Plant Health Inspection Service
RULES
Technical Amendment:
Importation of Sweet Oranges and Grapefruit From Chile, 46489

Army Department
See Engineers Corps

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

Centers for Disease Control and Prevention
NOTICES
Meetings:
Ethics Subcommittee, Advisory Committee to the Director, Centers for Disease Control and Prevention, 46610

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 46603–46604

Civil Rights Commission
NOTICES
Meetings:
Arizona Advisory Committee, 46563–46564
Hawaii Advisory Committee, 46563
Kansas Advisory Committee, 46564
New Hampshire Advisory Committee, 46563

Coast Guard
RULES
Safety Zones:
Fireworks displays within the Captain of the Port Puget Sound Zone, 46491–46493

Commerce Department
See Foreign–Trade Zones Board
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
See National Telecommunications and Information Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 46564

Committee for the Implementation of Textile Agreements
NOTICES
Determination under the Textile and Apparel Commercial Availability Provision of the Dominican Republic–Central America–United States Free Trade Agreement (CAFTA–DR Agreement), 46562–46563

Commodity Credit Corporation
NOTICES
Domestic Sugar Program:
2008–Crop Cane Sugar and Beet Sugar Marketing Allotments and Company Allocations, 46559–46561

Commodity Futures Trading Commission
NOTICES
Meetings:
Global Markets Advisory Committee, 46574

Consumer Product Safety Commission
NOTICES
Provisional Acceptance of a Settlement Agreement and Order:
Hill Sportswear Inc., 46574–46576
Kohl's Department Stores Inc., 46576–46578

Corporation for National and Community Service
RULES
Serve America Act Amendments, 46495–46509

Defense Department
See Engineers Corps
See Navy Department
NOTICES
Meetings:
Defense Health Board, 46579–46581
U.S. Nuclear Command and Control System Comprehensive Review Advisory Committee, 46581–46582
Uniform Formulary Beneficiary Advisory Panel, 46578–46579

Department of Transportation
See Pipeline and Hazardous Materials Safety Administration

Drug Enforcement Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 46617–46619

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 46583–46584

Energy Department
See Federal Energy Regulatory Commission
See Western Area Power Administration
PROPOSED RULES
Loan Guarantees for Projects That Employ Innovative Technologies, 46513

NOTICES
Meetings:
State Energy Advisory Board, 46584

Engineers Corps
NOTICES
Public Hearings:
Proposed Suspension and Modification of Nationwide Permit (21), 46582–46583

Environmental Protection Agency
RULES
National Emission Standards for Hazardous Air Pollutants:
Area Source Standards for Aluminum, Copper, and Other Nonferrous Foundries; Technical Correction, 46493–46495
NOTICES
Meetings:
Clean Air Scientific Advisory Committee (CASAC) Particulate Matter Review Panel; Teleconferences, 46586–46587
National Recommended Final Water Quality Criteria for Acrolein, 46587–46588
Public Teleconference:
National Environmental Justice Advisory Council, 46588–46589
Release of Draft Documents Related to the Review of the National Ambient Air Quality Standards for Particulate Matter, 46589–46591
Risk Management Programs Under Section 112(r)(7) of the Clean Air Act as Amended:
Contractor Access to Confidential Business Information and Address Change, Submission of Risk Management Plans, 46591

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airspace Designations and Reporting Points, 46489–46490
PROPOSED RULES
Proposed Amendment of Class E Airspace:
Altus, OK, 46513–46515
NOTICES
Approval of the Record of Decision:
Proposed Development at the Port Columbus International Airport, Columbus, OH, 46641
Availability of the Final Programmatic Environmental Impact Statement for Streamlining the Processing of Experimental Permit Applications, 46641–46642
Intent To Rule on Request To Release Airport Property:
Upper Cumberland Regional Airport, Sparta, TN, 46644
Meetings:
Air Traffic Procedures Advisory Committee, 46655
Commercial Space Transportation Advisory Committee, 46654
RTCA Special Committee 220/Automatic Flight Guidance and Control, 46654–46655

Federal Emergency Management Agency
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 46614–46615
Meetings:
National Fire Academy Board of Visitors, 46615–46616

Federal Energy Regulatory Commission
NOTICES
Revised Petitions for Rate Approvals:
Cypress Gas Pipeline, LLC, 46585
Transmission Planning Processes:
Panelists and Final Agenda for September 10, 2009 Technical Conference in Atlanta, GA, 46585

Federal Maritime Commission
NOTICES
Meetings; Sunshine Act, 46592

Federal Reserve System
NOTICES
Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities, 46592

Federal Transit Administration
PROPOSED RULES
Capital Project Management, 46515–46521

Fish and Wildlife Service
PROPOSED RULES
Endangered and Threatened Wildlife and Plants:
12-Month Finding on a Petition to List Astragalus anserinus (Goose Creek milkvetch) as Threatened or Endangered, 46521–46542
90-Day Finding on a Petition to List Cirsium wrightii Wright's marsh thistle as Threatened or Endangered with Critical Habitat, 46542–46547
90-Day Finding on a Petition to List the Amargosa Toad as Threatened or Endangered, 46551–46557
90-Day Finding on a Petition to List the Pacific Walrus as Threatened or Endangered, 46548–46551

Food and Drug Administration
NOTICES
Medical Devices:
Neurological Devices; Electroconvulsive Therapy Device; Establishing a Public Docket, 46607–46608
Meetings:
Hematology and Pathology Devices Panel of the Medical Devices Advisory Committee, 46609–46610

Foreign–Trade Zones Board
NOTICES
Reorganization/Expansion of Foreign–Trade Zone 25:
Broward County, FL, 46571

Forest Service
NOTICES
Meetings:
Lake Tahoe Basin Federal Advisory Committee, 46561–46562
Pacific Northwest Recreation Resoruce Advisory Committee, 46561
Tehama County Resource Advisory Committee, 46561
Proposed Invasive Plant Control Project:
Southwestern Region; Arizona, New Mexico, West Texas and Oklahoma; Correction, 46562

General Services Administration
NOTICES
Privacy Act; Systems of Records, 46592–46593

Health and Human Services Department
See Agency for Healthcare Research and Quality

See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health
NOTICES
Meetings:
National Vaccine Advisory Committee, 46593–46594
Secretarial Review and Publication of the Annual Report to Congress:
Submitted by the Contracted Consensus-Based Entity Regarding Performance Measurement, 46594–46603

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency
See U.S. Customs and Border Protection

Industry and Security Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 46564–46565

Interior Department
See Fish and Wildlife Service
See National Park Service
See Surface Mining Reclamation and Enforcement Office
NOTICES
Meetings:
Blackstone River Valley National Heritage Corridor Commission, 46616

International Trade Administration
NOTICES
Antidumping Duty Administrative Review:
Frozen Warmwater Shrimp from the People's Republic of China, 46565–46568
Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review:
Hot-Rolled Carbon Steel Products from India, 46569
Request for Applicants for the Appointment to the United States–India CEO Forum, 46571–46572

International Trade Commission
NOTICES
Meetings; Sunshine Act, 46617

Justice Department
See Drug Enforcement Administration

Labor Department
See Occupational Safety and Health Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 46619–46620
Publication of The Department of Labor's List of Goods from Countries Produced by Child Labor or Forced Labor, 46620

Maritime Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 46640–46641
Environmental Impact Statements; Availability, etc.:
Removal of Non-Retention Vessels from National Defense Reserve Fleet Sites for Disposal, 46642–46644
Requested Administrative Waiver of the Coastwise Trade Laws, 46658

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Humanities Panel, 46622–46623

National Highway Traffic Safety Administration
NOTICES
Privacy Act; Systems of Records, 46655–46658

National Institutes of Health
NOTICES
Government-Owned Inventions; Availability for Licensing, 46604–46607
Meetings:
Center for Scientific Review, 46612–46613
Eunice Kennedy Shriver National Institute of Child Health and Human Development, 46608
National Human Genome Research Institute, 46608
National Institute of Allergy and Infectious Diseases, 46610
National Institute of Mental Health, 46612
National Institute on Aging, 46608–46609, 46611
National Institute on Deafness and Other Communication Disorders, 46611

National Oceanic and Atmospheric Administration
RULES
Fisheries of Caribbean, Gulf of Mexico, and South Atlantic:
Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure, 46510–46511
Snapper–grouper Fishery of the South Atlantic; Closure of the July–December 2009 Commercial Fishery for Vermilion Snapper in the South Atlantic, 46509–46510
NOTICES
Availability of Permit Upgrades:
Western Pacific Pelagic Fisheries; American Samoa Longline Limited Entry Program, 46568–46569
Issuance of Permit:
Marine Mammals (File No. 13602), 46569–46570
Receipt of Application:
Marine Mammals (File No. 14233), 46570–46571
Schedules for Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops, 46572–46573

National Park Service
NOTICES
Meetings:
Denali National Park and Preserve Aircraft Overflights Advisory Council within the Alaska Region, 46617

National Science Foundation
NOTICES
Permit Applications Received under the Antarctic Conservation Act (of 1978), 46623–46624

National Telecommunications and Information Administration

NOTICES
State Broadband Data and Development Grant Program, 46573–46574

Navy Department
NOTICES
Record of Decision:
Norfolk Harbor Channel Dredging, Norfolk and Portsmouth, VA, 46583

Nuclear Regulatory Commission
PROPOSED RULES
Consideration of Petition in the Rulemaking Process:
State of Colorado and the Organization of Agreement States, 46512–46513
NOTICES
Environmental Impact Statements; Availability, etc.:
Unrestricted Release of Two Buildings at Veterans Affairs Facility in Iowa City, IA, 46624–46626
Opportunity to Request a Hearing for License Renewal Application:
University of Texas at Austin and Order Imposing Procedures for Access to Sensitive Unclassified Non Safeguards Information, etc., 46626–46630
Withdrawal of Application For Indirect Transfer of Control of Facility Operating Licenses:
Exelon Corporation and NRG South Texas LP; South Texas Project (Units 1 and 2), 46630–46631

Occupational Safety and Health Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 46621–46622

Pipeline and Hazardous Materials Safety Administration
NOTICES
Maine Department of Environmental Protection Requirements on Transportation of Cathode Ray Tubes, 46644–46654

Presidential Documents
PROCLAMATIONS
Special Observances:
Labor Day (Proc. 8411), 46659–46662

Public Debt Bureau
NOTICES
Public Debt Performance Review Board (PRB):
Senior Executive Service, 46658

Securities and Exchange Commission
NOTICES
Orders of Suspension of Trading:
Super Nova Resources, Inc., 46632
Self-Regulatory Organizations; Proposed Rule Changes:
New York Stock Exchange LLC, 46632–46636

Small Business Administration
NOTICES
Dealer Floor Plan Pilot Initiative, 46631–46632

State Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 46636

Surface Mining Reclamation and Enforcement Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 46616–46617

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Federal Aviation Administration
See Federal Transit Administration
See Maritime Administration
See National Highway Traffic Safety Administration
See Pipeline and Hazardous Materials Safety Administration
NOTICES
Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B, 46637
Privacy Act; Systems of Records, 46637–46639
Rights and Protections Available Under the Federal Antidiscrimination and Whistleblower Protection Laws, 46639–46640

Treasury Department
See Public Debt Bureau

U.S. Customs and Border Protection
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 46613

Western Area Power Administration
NOTICES
Environmental Impact Statements; Availability, etc.:
Cancellation Transmission Agency of Northern California Transmission Project, 46584–46585

Separate Parts In This Issue

Part II
Presidential Documents, 46659–46662

Reader Aids
Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:

8411 46661

7 CFR

319 46489

10 CFR

Proposed Rules:

40 46512
609 46513

14 CFR

71 46489

Proposed Rules:

71 46513

33 CFR

165 46491

40 CFR

63 46493

45 CFR

2510 46495
2516 46495
2519 46495
2520 46495
2522 46495
2540 46495
2550 46495
2551 46495
2552 46495
2553 46495

49 CFR

Proposed Rules:

633 46515

50 CFR

622 (2 documents) 46509, 46510

Proposed Rules:

17 (4 documents) 46521, 46542, 46548, 46551

Rules and Regulations

Federal Register

Vol. 74, No. 174

Thursday, September 10, 2009

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 319

[Docket No. APHIS–2007–0115]

RIN 0579–AC83

Importation of Sweet Oranges and Grapefruit From Chile; Technical Amendment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; technical amendment.

SUMMARY: In a final rule that was published in the **Federal Register** on April 7, 2009, and effective on May 7, 2009, we amended the fruits and vegetables regulations to allow the importation of sweet oranges and grapefruit from Chile into the continental United States. However, in making this change, we inadvertently amended the regulations to restrict the importation of clementines, mandarins, and tangerines from Chile to the continental United States and Hawaii, when in fact those fruits had been eligible for importation into the entire United States, including the territories. This technical amendment is necessary to correct that error.

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

FOR FURTHER INFORMATION CONTACT: Mr. David Lamb, Import Specialist, Risk Management and Plants for Planting Policy, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1231; (301) 734–0627.

SUPPLEMENTARY INFORMATION: In a final rule published in the **Federal Register** on April 7, 2009 (74 FR 15635–15640, Docket No. APHIS–2007–0115), and effective on May 7, 2009, we amended the regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–49) to allow the importation, under certain conditions, of sweet oranges and grapefruit from Chile into the continental United States. These conditions, which we established in § 319.56–38, are the same as those that were already in place for the importation of clementines, mandarins, and tangerines from Chile in § 319.56–38, except that clementines, mandarins, and tangerines from Chile have been eligible for importation into the entire United States, including its territories. However, in adding sweet oranges and grapefruit to the list of fruit eligible for importation from Chile in the introductory text of § 319.56–38, we inadvertently restricted the importation of clementines, mandarins, and tangerines to the continental United States and Hawaii. This document corrects that error.

List of Subjects in 7 CFR Part 319

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

■ Accordingly, we are amending 7 CFR part 319 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.

■ 2. In § 319.56–38, the introductory text is revised to read as follows:

§ 319.56–38 Citrus from Chile.

Clementines (*Citrus reticulata* Blanco var. Clementine), mandarins (*Citrus reticulata* Blanco), and tangerines (*Citrus reticulata* Blanco) may be imported into the United States from Chile, and grapefruit (*Citrus paradisi* Macfad.) and sweet oranges (*Citrus sinensis* (L.) Osbeck) may be imported into the continental United States from Chile, in accordance with this section and all other applicable provisions of this subpart.

* * * * *

Done in Washington, DC, this 3rd day of September 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–21801 Filed 9–9–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 29334; Amendment No. 71–41]

Airspace Designations; Incorporation by Reference

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 relating to airspace designations to reflect the approval by the Director of the Federal Register of the incorporation by reference of FAA Order 7400.9T, Airspace Designations and Reporting Points. This action also explains the procedures the FAA will use to amend the listings of Class A, B, C, D, and E airspace areas; air traffic service routes; and reporting points incorporated by reference.

DATES: *Effective Date:* These regulations are effective September 15, 2009, through September 15, 2010. The incorporation by reference of FAA Order 7400.9T is approved by the Director of the Federal Register as of September 15, 2009, through September 15, 2010.

FOR FURTHER INFORMATION CONTACT: Tameka Bentley, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

FAA Order 7400.9S, Airspace Designations and Reporting Points, effective October 31, 2008, listed Class A, B, C, D and E airspace areas; air traffic service routes; and reporting points. Due to the length of these descriptions, the FAA requested approval from the Office of the Federal

Register to incorporate the material by reference in the Federal Aviation Regulations section 71.1, effective October 31, 2008, through September 15, 2009. During the incorporation by reference period, the FAA processed all proposed changes of the airspace listings in FAA Order 7400.9S in full text as proposed rule documents in the **Federal Register**. Likewise, all amendments of these listings were published in full text as final rules in the **Federal Register**. This rule reflects the periodic integration of these final rule amendments into a revised edition of Order 7400.9T, Airspace Designations and Reporting Points. The Director of the Federal Register has approved the incorporation by reference of FAA Order 7400.9T in section 71.1, as of September 15, 2009, through September 15, 2010. This rule also explains the procedures the FAA will use to amend the airspace designations incorporated by reference in part 71. Sections 71.5, 71.15, 71.31, 71.33, 71.41, 71.51, 71.61, 71.71, and 71.901 are also updated to reflect the incorporation by reference of FAA Order 7400.9T.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 to reflect the approval by the Director of the Federal Register of the incorporation by reference of FAA Order 7400.9T, effective September 15, 2009, through September 15, 2010. During the incorporation by reference period, the FAA will continue to process all proposed changes of the airspace listings in FAA Order 7400.9T in full text as proposed rule documents in the **Federal Register**. Likewise, all amendments of these listings will be published in full text as final rules in the **Federal Register**. The FAA will periodically integrate all final rule amendments into a revised edition of the Order, and submit the revised edition to the Director of the Federal Register for approval for incorporation by reference in section 71.1.

The FAA has determined that this action: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. This action neither places any new restrictions or requirements on the public, nor changes the dimensions or operation requirements of the airspace listings incorporated by reference in part 71. Consequently, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Because this action will continue to update the changes to the airspace designations, which are depicted on aeronautical charts, and to avoid any unnecessary pilot confusion, I find that good cause exists, under 5 U.S.C. 553(d), for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

■ 2. Section 71.1 is revised to read as follows:

§ 71.1 Applicability.

A listing for Class A, B, C, D, and E airspace areas; air traffic service routes; and reporting points can be found in FAA Order 7400.9T, Airspace Designations and Reporting Points, dated August 27, 2009. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The approval to incorporate by reference FAA Order 7400.9T is effective September 15, 2009, through September 15, 2010. During the incorporation by reference period, proposed changes to the listings of Class A, B, C, D, and E airspace areas; air traffic service routes; and reporting points will be published in full text as proposed rule documents in the **Federal Register**. Amendments to the listings of Class A, B, C, D, and E airspace areas; air traffic service routes; and reporting points will be published in full text as final rules in the **Federal Register**. Periodically, the final rule amendments will be integrated into a revised edition of the Order and submitted to the Director of the Federal Register for approval for incorporation by reference in this section. Copies of FAA Order 7400.9T may be obtained from Airspace and Rules Group, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–8783. An electronic version of the Order is available on the FAA Web site at *http://www.faa.gov/air_traffic/publications*. Copies of FAA Order 7400.9T may be inspected in Docket No. 29334 on the **Federal Register** Web site at *http://www.regulations.gov*.

§ 71.5 [Amended]

■ 3. Section 71.5 is amended by removing the words ''FAA Order 7400.9S'' and adding, in their place, the words ''FAA Order 7400.9T.''

§ 71.15 [Amended]

■ 4. Section 71.15 is amended by removing the words ''FAA Order 7400.9S'' and adding, in their place, the words ''FAA Order 7400.9T.''

§ 71.31 [Amended]

■ 5. Section 71.31 is amended by removing the words ''FAA Order 7400.9S'' and adding, in their place, the words ''FAA Order 7400.9T.''

§ 71.33 [Amended]

■ 6. Paragraph (c) of section 71.33 is amended by removing the words ''FAA Order 7400.9S'' and adding, in their place, the words ''FAA Order 7400.9T.''

§ 71.41 [Amended]

■ 7. Section 71.41 is amended by removing the words ''FAA Order 7400.9S'' and adding, in their place, the words ''FAA Order 7400.9T.''

§ 71.51 [Amended]

■ 8. Section 71.51 is amended by removing the words ''FAA Order 7400.9S'' and adding, in their place, the words ''FAA Order 7400.9T.''

§ 71.61 [Amended]

■ 9. Section 71.61 is amended by removing the words ''FAA Order 7400.9S'' and adding, in their place, the words ''FAA Order 7400.9T.''

§ 71.71 [Amended]

■ 10. Paragraphs (b), (c), (d), (e), and (f) of section 71.71 are amended by removing the words ''FAA Order 7400.9S'' and adding, in their place, the words ''FAA Order 7400.9T.''

§ 71.901 [Amended]

■ 11. Paragraph (a) of section 71.901 is amended by removing the words ''FAA Order 7400.9S'' and adding, in their place, the words ''FAA Order 7400.9T.''

Issued in Washington, DC, on August 31, 2009.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. E9–21484 Filed 9–9–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0752]

RIN 1625–AA00

Safety Zones: Fireworks Displays Within the Captain of the Port Puget Sound Zone

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The U.S. Coast Guard is establishing safety zones on the waters of the Puget Sound located in the Captain of the Port Puget Sound Zone during multiple fireworks displays. This action is necessary to provide for the safety of life and avoidance of injury resulting from these displays. Entry into, transit through, mooring, or anchoring within these zones is prohibited unless authorized by the Captain of the Port, Puget Sound or Designated Representative.

DATES: The effective date of this temporary final rule is September 10, 2009 through 8 a.m. on September 13, 2009 unless canceled sooner by the Captain of the Port. This temporary final rule was enforced with actual notice by Coast Guard personnel beginning at 8 a.m. on August 22, 2009. Rules enforced through actual notice are superseded by this rule as of September 10, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0752 and are available online by going to *http://www.regulations.gov*, inserting USCG–2009–0752 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail ENS Ashley M. Wanzer, Waterways Management, Sector Seattle, Coast Guard; telephone 206–217–6175, e-mail *Ashley.M.Wanzer@uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is necessary to ensure public safety due to inherent hazards that may exist in conjunction with these fireworks events.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Immediate action is necessary to ensure public safety since these events encompass the launching of projectiles over a marine environment with the fallout of hot debris and flammable materials in a vicinity of public marine traffic and spectators.

Background and Purpose

The U.S. Coast Guard is establishing temporary safety zones to allow for safe fireworks displays. The effective time is from 8 a.m. on August 22, 2009 through 8 a.m. on September 13, 2009 unless canceled sooner by the Captain of the Port. All events occur within the Captain of the Port, Puget Sound, WA, Area of Responsibility (AOR). The following areas are designated safety zones:

(1) John Eddy Wedding, Magnolia Bluff, WA.

(i) *Location.* All water of Magnolia Bluff, WA extending to a 500′ radius from the launch site at 49°38′59.25″ N 122°25′21.34″ W.

(ii) *Enforcement time and date.* 9 p.m. to 11:30 p.m. on August 22, 2009.

(2) True Colors Event, Blaine, WA.

(i) *Location.* All water of Blaine, WA extending to a 300′ radius from the launch site at 48°59′29.25″ N 122°46′20.36″ W.

(ii) *Enforcement time and date.* 9 p.m. to 11:30 p.m. on September 6, 2009.

(3) Kirkland Concours D'Elegence, Kirkland, WA.

(i) *Location.* All water of Kirkland, Lake Washington, WA extending out to a 400′ radius from the launch site at 47°39′31.27″ N 122°12′26.35″ W.

(ii) *Enforcement time and date.* 9 p.m. to 11:30 p.m. on September 12, 2009.

(4) Mikilteo Lighthouse Festival, Possession Sound, WA.

(i) *Location.* All water of Possession Sound, WA extending out to a 800′ radius from the launch site at 47°56′54″ N 122°18′36″ W.

(ii) *Enforcement time and date.* 8:30 p.m. to 11:30 p.m. on September 12, 2009.

These events may result in a number of vessels congregating near fireworks launching barges and sites. The safety zones are needed to protect watercraft and their occupants from safety hazards associated with fireworks displays. The Captain of the Port Puget Sound may be assisted by other Federal and local agencies in the enforcement of this safety zone.

Discussion of Rule

This rule will control the movement of all vessels and persons in a regulated area surrounding the fireworks events indicated in this Temporary Final Rule. The safety zones do not extend on land.

The U.S. Coast Guard through this action intends to promote the safety of vessels and spectators during fireworks displays and activities associated with these events. Entry into this zone by all vessels or persons will be prohibited unless authorized by the Captain of the Port or Designated Representative. The Captain of the Port may be assisted by other Federal, State, or local agencies as needed.

Regulatory Analyses

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

Regulatory Planning and Review

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

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently

owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

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

This temporary rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit a portion of the Puget Sound while this rule is enforced. These safety zones will not have significant economic impact on a substantial number of small entities for the following reasons. This temporary rule will be in effect for minimal times when vessel traffic volume is low and are limited in size. If safe to do so, traffic will be allowed to pass through the zone with the permission of the Captain of the Port or Designated Representative.

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 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 this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves multiple safety zones on the waters of Puget Sound established for one week or longer to deal with an emergency situation.

An ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' will be available in the docket.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5;

Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T13–107 to read as follows:

§ 165.T13–107 Safety Zones: Fireworks displays within the Captain of the Port, Puget Sound Zone.

(a) *Safety Zones.* The following areas are designated safety zones:

(1) John Eddy Wedding, Magnolia Bluff, WA.

(i) *Location.* All water of Magnolia Bluff, WA extending to a 500′ radius from the launch site at 49°38′59.25″ N 122°25′21.34″ W.

(ii) *Enforcement time and date.* 9 p.m. to 11:30 p.m. on August 22, 2009.

(2) True Colors Event, Blaine, WA.

(i) *Location.* All water of Blaine, WA extending to a 300′ radius from the launch site at 48°59′29.25″ N 122°46′20.36″ W.

(ii) *Enforcement time and date.* 9 p.m. to 11:30 p.m. on September 6, 2009.

(3) Kirkland Concours D'Elegence, Kirkland, WA.

(i) *Location.* All water of Kirkland, Lake Washington, WA extending out to a 400′ radius from the launch site at 47°39′31.27″ N 122°12′26.35″ W.

(ii) *Enforcement time and date.* 9 p.m. to 11:30 p.m. on September 12, 2009.

(4) Mikilteo Lighthouse Festival, Possession Sound, WA.

(i) *Location.* All water of Possession Sound, WA extending out to an 800′ radius from the launch site at 47°56′54″ N 122°18′36″ W.

(ii) *Enforcement time and date.* 8:30 p.m. to 11:30 p.m. on September 12, 2009.

(b) *Regulations.* In accordance with the general regulations in 33 CFR Part 165, Subpart C, no vessel may enter, transit, moor, or anchor within this safety zone, except for vessels authorized by the Captain of the Port or Designated Representative.

(c) *Authorization.* All vessel operators who desire to enter the safety zone must obtain permission from the Captain of the Port or Designated Representative by contacting either the on-scene patrol craft on VHF Ch 13 or Ch 16 or the Coast Guard Sector Seattle Joint Harbor Operations Center (JHOC) via telephone at (206) 217–6002.

(d) *Effective Period.* This rule is effective from 8 a.m. on August 22, 2009 through 8 a.m. on September 13, 2009 unless canceled sooner by the Captain of the Port.

Dated: August 20, 2009.

Suzanne E. Englebert,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. E9–21757 Filed 9–9–09; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2008–0236; FRL–8954–3]

RIN 2060–AP85

National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Aluminum, Copper, and Other Nonferrous Foundries—Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: This action makes technical corrections to regulatory text of the ''Revision of Source Category List for Standards Under Section 112(k) of the Clean Air Act; National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Aluminum, Copper, and Other Nonferrous Foundries,'' which was issued as a final rule on June 25, 2009. These technical corrections will not change the standards established by the rule or the level of health protection provided.

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

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2008–0236. All documents in the docket are listed in the Federal Docket Management System index at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available (*e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute). Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For questions about the final standards for aluminum foundries, contact Mr. David Cole, Office of Air Quality Planning and Standards, Outreach and Information Division, Regulatory Development and Policy Analysis Group (C404–05), Environmental Protection Agency, Research Triangle Park, NC 27711; Telephone Number: (919) 541–5565; Fax Number: (919) 541–0242; E-mail address: *Cole.David@epa.gov.* For questions about the final standards for copper foundries and other nonferrous foundries, contact Mr. Gary Blais, Office of Air Quality Planning and Standards, Outreach and Information Division, Regulatory Development and Policy Analysis Group (C404–05), Environmental Protection Agency, Research Triangle Park, NC 27711; Telephone Number: (919) 541–3223; Fax Number: (919) 541–0242; E-mail address: *Blais.Gary@epa.gov.*

SUPPLEMENTARY INFORMATION: Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making this action final without prior proposal and opportunity for comment because the changes to the rule are minor technical corrections, noncontroversial, and do not substantively change the requirements of the rule. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B) (see also the final sentence of section 307(d)(1) of the Clean Air Act, 42 U.S.C. 7607(d)(1), indicating that the good cause provisions of the APA continue to apply to this type of rulemaking under the Clean Air Act).

Regulated Entities. The regulated categories and entities potentially affected by the final rule include:

Category	NAICS code [1]	Examples of regulated entities
Industry:		
Aluminum Foundries	331524	Area source facilities that pour molten aluminum into molds to manufacture aluminum castings (excluding die casting).

Category	NAICS code [1]	Examples of regulated entities
Copper Foundries	331525	Area source facilities that pour molten copper and copper-based alloys (e.g., brass, bronze) into molds to manufacture copper and copper-based alloy castings (excluding die casting).
Other Nonferrous Foundries	331528	Area source facilities that pour molten nonferrous metals (except aluminum and copper) into molds to manufacture nonferrous castings (excluding die casting). Establishments in this industry purchase nonferrous metals, such as nickel, zinc, and magnesium that are made in other establishments.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR 63.11544 of subpart ZZZZZZ (National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Aluminum, Copper, and Other Nonferrous Foundries). If you have any questions regarding the applicability of this action to a particular entity, consult either the air permit authority for the entity or your EPA Regional representative, as listed in 40 CFR 63.13 of subpart A (General Provisions).

Electronic Access. In addition to being available in the docket, an electronic copy of this final action will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of this final action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/*. The TTN provides information and technology exchange in various areas of air pollution control.

I. Correction

On June 25, 2009 (74 FR 30366), the EPA promulgated the national emission standards for hazardous air pollutants (NESHAP) for area source aluminum, copper, and other nonferrous foundries under section 112(d)(5) of the Clean Air Act as subpart ZZZZZZ in 40 CFR part 63. Today's action makes minor corrections to clarify wording in the regulatory text. The corrections will become effective immediately (without further rulemaking action) on September 10, 2009.

Minor corrections are being made to clarify the applicability requirements in § 63.11544(a)(1), (2), and (3) to change the word ''materials'' to ''material'' and to delete the words ''one or more'' in the phrases ''materials containing one or more aluminum foundry HAP as defined in § 63.11556'', ''materials containing one or more copper foundry HAP, as defined in § 63.11556'', and ''materials containing one or more other nonferrous foundry HAP, as defined in § 63.11556.'' We are also adding a comma after ''aluminum foundry HAP'' for consistency. These minor technical changes provide confirmation that the applicability provisions are referring to terms in the definitions section of the final rule, *i.e.,* ''material containing aluminum foundry HAP'', ''material containing copper foundry HAP'', and ''material containing other nonferrous foundry HAP.'' Each of these terms is defined as ''a material containing one or more [aluminum/copper/other nonferrous] foundry HAP. * * *'' making it clear, even without these technical corrections, that the applicability provisions were referring to the terms ''material containing aluminum foundry HAP'', ''material containing copper foundry HAP'', and ''material containing other nonferrous foundry HAP.'' This clear intent was explained in detail in the preamble of the final rule (74 FR 30376, 30377).

II. Statutory and Executive Order Reviews

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to EO 12866 review.

The technical correction does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Because EPA has made a ''good cause'' finding that this action is not subject to notice and comment requirements under the APA or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments, as described in section 203 of the UMRA.

The technical correction does not have federalism implications, as specified in EO 13132, Federalism (64 FR 43255, August 10, 1999). Today's action also does not have Tribal implications, as specified by EO 13175, Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 6, 2000).

The technical correction is not subject to EO 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) because it is not economically significant. The technical correction is not subject to EO 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under EO 12866.

The technical correction action does not involve technical standards; 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.

The technical correction will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment, as addressed by EO 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994).

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. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the

Federal Register. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This final rule will be effective on September 10, 2009.

The EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the June 25, 2009 **Federal Register** notice containing the Area Source Aluminum, Copper, and Other Nonferrous Foundries final rule (74 FR 30366).

List of Subjects for 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 1, 2009.

Gina McCarthy,

Assistant Administrator for Air and Radiation.

■ For the reasons set out in the preamble, title 40, chapter I, part 63, subpart ZZZZZZ of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart ZZZZZZ—[Amended]

■ 2. Section 63.11544 is amended by:

■ a. Revising paragraph (a)(1);

■ b. Revising paragraph (a)(2); and

■ c. Revising paragraph (a)(3) to read as follows:

§ 63.11544 Am I subject to this subpart?

(a) * * *

(1) Your aluminum foundry uses material containing aluminum foundry HAP, as defined in § 63.11556, ''What definitions apply to this subpart?''; or

(2) Your copper foundry uses material containing copper foundry HAP, as defined in § 63.11556, ''What definitions apply to this subpart?''; or

(3) Your other nonferrous foundry uses material containing other nonferrous foundry HAP, as defined in § 63.11556, ''What definitions apply to this subpart?''.

* * * * *

§ 63.11553 [Amended]

■ 3. Section 63.11553 is amended by redesignating the second paragraph (b)(4) as paragraph (b)(5).

[FR Doc. E9–21712 Filed 9–9–09; 8:45 am]

BILLING CODE 6560–50–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Parts 2510, 2516, 2519, 2520, 2522, 2540, 2550, 2551, 2552, and 2553

RIN 3045–AA50

Serve America Act Amendments to the National and Community Service Act of 1990 and the Domestic Volunteer Service Act of 1973

AGENCY: Corporation for National and Community Service.

ACTION: Interim final rule with request for comments.

SUMMARY: On April 21, 2009, President Obama signed into law the Edward M. Kennedy Serve America Act (Serve America Act). The Serve America Act reauthorizes and expands national service programs administered by the Corporation for National and Community Service (''the Corporation'') by amending the National and Community Service Act of 1990 (NCSA) and the Domestic Volunteer Service Act of 1973 (DVSA). The Corporation publishes this interim final rule to implement time-sensitive changes that are required by the Serve America Act to take effect on October 1, 2009. In addition to aligning statutory amendments with the NCSA and DVSA, the interim final rule reorders and renumbers certain parts of the existing regulations and expands the construction and use of defined terms.

DATES: This interim final rule is effective October 1, 2009. Comments must be received by November 9, 2009.

ADDRESSES: You may mail or deliver your comments to Amy Borgstrom, Docket Manager, Corporation for National and Community Service, 1201 New York Ave., NW., Washington, DC 20525. You may also send your comments by facsimile transmission to (202) 606–3476, send them electronically to *Rulemaking@cns.gov,* submit comments through the Federal government's one-stop rulemaking Web site at *http://www.regulations.gov*, or submit comments on the Corporation's Web site at *http://www.nationalservice.gov/serveact*. Members of the public may review copies of all communications received on this rulemaking at the Corporation's Washington, DC headquarters.

FOR FURTHER INFORMATION CONTACT: Amy Borgstrom, Docket Manager, Corporation for National and Community Service, (202) 606–6930, TDD (202) 606–3472. Persons with visual impairments may request this document in an alternate format.

SUPPLEMENTARY INFORMATION:

List of Topics

I. Notice and Comment
II. Background
III. Specifics of the Interim Final Rule
A. Learn and Serve America
School-Based Service-Learning Programs
Higher Education Innovative Programs for Community Service
B. AmeriCorps State and National
Prohibited Member Activities
Criminal History Check Requirements
Length of and Extension to a Term of Service
Release From a Term of Service for Compelling Personal Circumstances
Tutoring Requirements
State Commission Composition Requirements
State Plan Requirements
State Commission Administrative Grants
C. Senior Corps
D. General Provisions
Parental Involvement
IV. Effective Dates
V. Rulemaking Analyses and Notices

I. Notice and Comment

This interim final rule makes amendments to Chapter 25 of Title 45 of the Code of Federal Regulations to align the regulations with the National and Community Service Act of 1990 and the Domestic Volunteer Service Act, as amended by the Edward M. Kennedy Serve America Act, Public Law 111–13. This rule implements only those provisions in the Serve America Act that are time-sensitive and that will have actual programmatic impact beginning October 1, 2009; subsequent rulemakings to implement other provisions in the Serve America Act will follow.

This interim final rule will become effective without prior notice and comment. Notice and comment procedures are not required under the Administrative Procedure Act (APA) when the agency for good cause finds that notice and comment is impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)(B)). The Corporation has determined that prior notice and comment would be impracticable under the circumstances. The APA's legislative history defines the term ''impracticable'' as a situation in which the due and required execution of the agency functions would be unavoidably prevented by its undertaking public rulemaking proceedings (*See* S. Rep. No. 752, 79th Cong., 1st Sess. at 16 (1945)).

The Corporation finds that public notice and comment before the issuance of this interim final rule would have been impracticable. The Serve America Act was enacted on April 21, 2009, with an effective date for most purposes of

October 1, 2009. Immediately upon enactment the Corporation began the process of evaluating the impact that the Serve America Act would have on existing regulations and programs. This required the Corporation to determine which amendments to the NCSA and DVSA required regulatory changes by the effective date in order for programs to comply with the law and which changes could be implemented at a later time. The regulatory changes in this interim final rule are those that are necessary for compliance with the law on the effective date. The process of analyzing the need for immediate changes to the regulations and preparing and publishing the interim final rule for timely implementation did not provide sufficient time for prior notice and comment.

The Corporation invites all interested persons to submit written views, or other information on this interim final rule. Even though this interim final rule takes effect before the comment period closes, comments submitted in response to this notice will be given full consideration and will be addressed when the Corporation publishes final regulations for these interim regulations. To ensure that your comments have maximum value in helping us develop final regulations, we urge you to identify clearly the specific section or sections of the interim final regulations that each comment addresses and to arrange your comments in the same order as the interim final regulations. During and after the comment period, you may inspect all public comments about these interim final regulations by contacting the Docket Manager listed in this notice.

For more information about commenting please visit our Web site at *http://www.nationalservice.gov/ServeAct*.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. Background

On April 21, 2009, President Obama signed into law the Edward M. Kennedy Serve America Act (Serve America Act). The Serve America Act reauthorizes and expands national service programs administered by the Corporation by amending the NCSA and DVSA. The Corporation engages four million Americans in service each year, including approximately 75,000 AmeriCorps members, 492,000 Senior Corps Volunteers, 1.1 million Learn and Serve America students, and 2.2 million additional community volunteers mobilized and managed through agency programs. This interim final rule is being published to implement time-sensitive changes to the Corporation's AmeriCorps State/National, Senior Corps, and Learn and Serve America program regulations. The changes are required as a result of amendments to the NCSA and DVSA by the Serve America Act, which takes effect for most purposes on October 1, 2009. Section 6101 of the Serve America Act authorizes the Chief Executive Officer of the Corporation to issue such regulations as may be necessary to carry out the amendments required under the act. This action is intended to fulfill that responsibility. Amendments mandated by the Serve America Act that do not require immediate regulatory action will be implemented through other means including future proposed rulemaking with notice and the opportunity for comment. Among other things, the interim final rule renumbers certain parts of the existing regulations, removes regulations for programs that will no longer be authorized, and expands the construction and use of defined terms as required by the Serve America Act amendments. An overview of specific changes for each program is set out below.

III. Specifics of the Interim Final Rule

(A) Learn and Serve America

School-Based Service-Learning Programs

Section 1201 of the Serve America Act makes amendments to the Corporation's service-learning programs under Subtitle B (Learn and Serve America) of Title I of the NCSA, as reflected below. References to section numbers of Subtitle B in the following discussion are to the revised section numbers reflected in the Serve America Act. References to the regulations are to the appropriate sections of 45 CFR Part 2516.

Definitions (§ 2510.20)

Section 1102 of the Serve America Act amends the NCSA at § 101 to add a definition for *community-based entity,* which is now an eligible entity for certain types of direct and subgrant school-based funding. The interim final rule adds this definition to 45 CFR 2510.20.

Purpose for School-Based Service-Learning Programs (§ 2516.100)

The Serve America Act amends the NCSA at section 111 by including, for the first time, a purpose provision for school-based service-learning programs. This purpose provision is incorporated into the regulations verbatim. This change reassigns § 2516.100 to the new purpose provision and reassigns prior §§ 2616.100 through 110 as §§ 2616.110–120.

Eligible Applicants for Direct Grants (§ 2516.110)

The Serve America Act amends the NCSA at section 112 by revising the types of entities that are eligible applicants for a direct school-based grant from the Corporation. Accordingly, paragraph (a)(1) is amended to reflect that for funding eligibility purposes an SEA means a State Educational Agency (SEA) or SEA-designated statewide entity (which may be a community-based entity). Paragraph (a)(3) is amended to remove *grantmaking entity* as an eligible direct recipient; and to reflect that a *community-based entity* is now eligible for funding to conduct activities in a nonparticipating State or Indian Tribe. Note, however, that a grantmaking entity meeting the definition of a community-based entity may qualify as an SEA-designated statewide entity. Previous paragraph (a)(4) regarding the eligibility that a local educational agencies (LEA) or LEA partnerships may apply for direct funding has been removed.

Eligible Applicants for Subgrants (§ 2516.120)

Under the Serve America Act amendments (NCSA § 112(a), 113(b)), the list of entities for eligible to receive distributions of school-based funds from a direct grantee was changed in several ways. Most notably, in addition to LEAs and qualified organizations, for-profit businesses, private elementary and secondary schools, and institutions of higher education are eligible for support from a State or Indian Tribe for planning and capacity building. Additionally, a community-based entity will be eligible to make subgrants when it is a direct grantee of the Corporation. Since grantmaking entities no longer are eligible for direct funding, the reference to them as a distributor of subgrants in § 2516.120 (formerly § 2516.110) is amended to reflect this change.

Another change made by the Serve America Act amendment of the NCSA at

section 112(a)(2)(B)(ii) is the provision that when an Indian Tribe, as a direct recipient, distributes school-based funds to support a local partnership's costs for implementing, operating or expanding school-based service learning projects, that Tribe is not eligible to be part of the partnership operating that project. Similarly, under section 112(a)(4) when an Indian Tribe is a direct recipient, it is not eligible to receive funds it distributes to support the implementation, operation or expansion of an adult volunteer service-learning program.

Finally, the Serve America Act permits States and Indian Tribes to support *eligible entities* in carrying out civic engagement activities, so this is now reflected in § 2516.120.

Use of Grant Funds (§ 2516.200)

Section 112(a) of NCSA as amended by the Serve America Act authorizes school-based funds to be used to support five types of service-learning programs: (1) Planning and capacity-building for States and Indian Tribes; (2) implementing, operating, and expanding school-based service-learning programs; (3) planning of school-based service-leaning programs through distributions to LEAs and Indian Tribes; (4) implementing, operating, or expanding adult volunteer programs; and (5) developing civic engagement service-learning programs. The amendments expand the authorized use of school-based fund in several ways. In addition to the authorized activities set out in the previous version of this rule, the interim final rule under § 2516.200(a)(2)(vi) permits recipients to use funds for planning and capacity building activities associated with establishing effective outreach and dissemination to ensure the broadest possible participation of schools throughout a State, with special emphasis on schools that are not making adequate progress under section 111 of the Elementary and Secondary Education Act of 1965. Under the same subsection at (a)(2)(ii), the development of service-learning curricula must be consistent with State or local academic content standards. LEA planning grant authority under § 2516.200(c)(3)(ii) is expanded to now permit recipients to pay the cost of recruiting, training, supervising, and placing service-learning coordinators who may be, but are not required to be, AmeriCorps VISTA members or participants in a Youthbuild program. The prior rule only allowed such support for AmeriCorps State/National members serving as service-learning coordinators. Consistent with the Serve America Act, grantees may use funds to support civic engagement programs as described in § 2516.200(f).

Waiver for Private School Participants (§ 2516.310)

Section 115(a) of the NCSA as amended by the Serve America Act requires school-based State, territory, and Indian Tribe grantees to provide for the inclusion of services and arrangements for the equitable participation of private school students and private school teachers in supported programs. Under § 115(b), the Corporation's Chief Executive Officer may waive the requirement to include private school participants if a grantee is prohibited by law from providing for their participation. Essentially the same waiver provision existed under the NCSA at § 115A(b) prior to passage of the Serve America Act. However, the Serve America Act removes the requirement that waiver procedures be consistent with ''the consultation, withholding, notice and judicial review requirements'' [of the Elementary and Secondary Act of 1965]. Therefore, the regulation is amended to remove the quoted waiver procedure language by removing subsection (b)(2).

Contents of a Direct Grant Application From a State or Indian Tribe (§ 2516.400)

Section 1612 of the Serve America Act, adds section 189D to the NCSA. The criminal history check requirement of section 189D applies to all individuals receiving a living allowance, stipend, national service educational award, or salary through a program receiving assistance under the national service laws, regardless of the type of service the individual is performing or the individual's access to vulnerable populations. Section 189D also provides that an individual convicted of murder, as described in section 1111 of title 18, United States Code, is ineligible to serve in a national service position. The criminal history check standards are set out in the regulations at 45 CFR Part 2540. Thus, in addition to the other assurances that applicants must make, compliance with the criminal history check requirements under Part 2540, which take effect October 1, 2009, has been added to § 2516.400(c)(2) and 2516.410(c)(4).

For more information on criminal history checks, please visit the Corporation's Web site at *http://www.nationalservice.gov/for_organizations/manage/history_checks.asp.*

Contents of a Direct Grant Application From a Community-Based Entity (§ 2516.410)

Consistent with amendments to the NCSA at section 113, this section of the regulation is amended to replace *grantmaking entity* with *community-based entity* and to remove references to LEAs and local partnerships, which may no longer apply for grants directly from the Corporation except as an SEA-designated entity in lieu of an SEA. Additionally, as discussed in the previous paragraph, § 2516.410(c)(4) is amended to require applicants for direct funding as a community-based entity to make as assurance that it will comply with the criminal history check requirements of 45 CFR Part 2540.

Contents of a Subgrant (§ 2516.420)

Like § 2516.410, this section is amended by replacing the term *grantmaking entity* with *community-based entity,* thereby making it consistent with the Serve America Act's NCSA amendments regarding the type of entities now eligible for direct funding, which in turn will make subgrants.

Application Review Criteria for Direct Grants (§ 2516.500)

As is the case in other sections of Part 2516, this section replaces the term *grantmaking entity* with *community-based entity* at (a)(3)(i). In that same paragraph a technical amendment is made by changing the reference to the State Plan from § 2550.80(a) to section 2513. Added to the list of priorities in reviewing proposals is the phrase *serving economically disadvantaged youth* at (b)(2), thereby making this priority consistent with the amendment to the priorities set out in the Serve America Act's NCSA amendment at section 114.

Application Review Criteria for Subgrants (§ 2516.520)

Consistent with the Serve America Act, this section is amended by replacing the term *grantmaking entity* with *community-based entity.*

Distribution of Funds (§ 2516.600)

The Serve America Act makes several major changes to the NCSA at section 112A that affect this section of the regulations. For the first time, the Corporation is required to reserve a minimum of school-based funding for Indian Tribes and U.S. Territories. Previously, the Corporation was required to reserve ''not more than 3 percent,'' but there was no minimum amount that had to be reserved. The Serve America Act amendments now

require that ''not less than 2 percent and not more than 3 percent'' be reserved for Indian Tribes and U.S. territories. This change is now reflected in paragraph (a) of the regulation.

The competitive school-based program has been eliminated. Therefore reference to the 25 percent set-aside for the program has been deleted from paragraph (b)(1). Paragraph (b)(1) has been reassigned to the formula allotments to the States. The allotment percentage has been raised in the NCSA amendments from 37.5 percent to 50 percent for the number of school-age youth in a State that bears to the total number of school-age youth in all States and for the amount a State will receive based on the ratio of the State's prior fiscal year allocation under Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965. The Serve America Act amendments provide that if Learn and Serve America funding exceeds $50 million in any fiscal year, the minimum allotted to each State will be $75,000. The prior minimum funding amount was based on fiscal year 1993 funding, supplemented by State competitive funds. These minimum funding changes are reflected in (b)(iii). Paragraph (c) is amended to add community-based entity in place of local partnerships or LEAs for the type of entity eligible for funding in a nonparticipating State, as provided in the Serve America Act. Lastly, paragraph (d) of the regulation referencing competitive funding if less than $20 million is appropriated has been removed in conformity with the Serve America Act.

Match Requirements (§ 2516.700)

The amendments to the NCSA at section 116 lower the Corporation's share available for school-based programs. The Corporation's share in the first year is decreased to 80 percent. In the second year it is decreased to sixty-five percent and for the third and any subsequent years, it is set at fifty percent. These changes are now reflected in paragraph (a) of the regulation. The Serve America Act amendments preclude the use as match of funding from Title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 *et seq.*) or the Individuals with Disabilities Education Act (20 U.S.C. 1400 *et seq.*), unless waived by the Corporation based on lack of available resources at the local level. This change is reflected in paragraph (b).

Limits on Administrative Costs & Capacity (§ 2516.710)

The amendments to the NCSA at section 117 raise the amount of funding that may be used to pay for administrative costs from five percent to a maximum of six percent. This change is reflected in paragraph (a), where appropriate. The amendments also remove the requirement that recipients spend 10 to 15 percent of funding on capacity building. Therefore, this requirement has been removed from the regulation.

Higher Education Innovative Programs for Community Service

Section 1202 of the Serve America Act makes amendments to the Corporation's Higher Education program. References to section numbers of Subtitle B of the NCSA in the following discussion are to the revised section numbers reflected in the Serve America Act. References to the regulations are to the appropriate sections of 45 CFR Part 2519.

Federal Work-Study Requirement (§ 2519.120)

The interim final rule adds § 2519.120, which requires recipients to meet minimum Federal Work-Study standards as provided in section 119(g) of the NCSA as amended by the Serve America Act. Specifically, the Serve America Act amendments provide that an institution of higher education, to be eligible for NCSA funding, must demonstrate that it meets the minimum requirements under the Higher Education Act of 1965 (443(b)(2)(A); 42 U.S.C. 2753(b)(2)(A)) relating to the participation of Federal Work-Study students employed under part C of title IV of the Higher Education Act of 1965 (42 U.S.C. 2751 *et seq.*) in community service activities or has received a waiver of those requirements from the Secretary of Education. The current minimum requirement under section 443(b)(2)(A) of the Higher Education Act provides that an institution must use at least 7 percent of the total amount of funds granted to it under the Federal Work-Study program to support students engaged in community service.

Contents of a Grant Application (§ 2519.400)

As is the case with all other Corporation national service programs, the Serve America Act amendments now apply the criminal history check provisions of section 189D of the NCSA to the Higher Education Program. The criminal history check standards are set out in 45 CFR Part 2540. Thus, in addition to the other assurances that applicants must make, compliance with the criminal history check requirements under Part 2540, which take effect October 1, 2009, has been added to § 2519.400(b)(2).

Application Review Criteria (§ 2519.500)

The Serve America Act amendments (NCSA section 119(f)) include several revised or additional application review criteria that are reflected in paragraphs (b)(4), (5), (6), (7), and (10) of this section. These include consideration of an applicant's description of a partnership that will participate in, among previously acceptable activities, providing service in or involving low-income communities and a department of the institution, or a group of faculty comprised of different departments, schools, or colleges at an institution. Other new review criteria include demonstrating the extent to which a proposal will contribute to the goals of involved community members and a commitment to performing projects in underserved communities, methods for improving service, and a description of needs that proposed projects are intended to address.

Acceptable Match (§ 2519.700)

The interim final rule, in accordance with the Serve America Act amendments (NCSA § 119(c)(1)), adds a descriptive phrase regarding match by clarifying that private funds or donated services are acceptable as local match.

Limits on Administrative Costs (§ 2519.710)

Amendments to the NCSA at § 117 increase the amount of funding that may be used to pay for administrative costs from five percent to a maximum of six percent for school-based programs. A similar amendment for the Higher Education Program is reflected in this section.

(B) AmeriCorps State and National

The Serve America Act lists as an effective date October 1, 2009. For this rule, we have identified those provisions in that Act that will require grantees to amend their practices beginning October 1, 2009 that conflict with a provision in current AmeriCorps regulations. The rule includes amendments to the list of prohibited member activities, criminal history check requirements, definitions for terms of service, documentation requirements for a release for compelling personal circumstances, requirements for tutors and tutoring programs, and State Commission administrative grant range and match

requirements, composition requirements, and State Plan requirements. There are many provisions in the Act that will be implemented in later rulemakings; this rule is primarily to eliminate conflict between the law and the regulations for those provisions that will have an immediate impact on grantee operations.

Prohibited Member Activities (§ 2520.65)

The Serve America Act adds a new section 132A to the NCSA, codifying the Corporation's longstanding list of activities in which AmeriCorps members may not engage during AmeriCorps service hours. In addition to those activities the Corporation already prohibits (found in current § 2520.65) the SAA prohibits AmeriCorps members from ''[p]roviding abortion services or referrals for receipt of such services.'' This interim final rule amends § 2520.65 to include a prohibition on providing abortion services or referrals for receipt of such services during AmeriCorps member service hours. No member, including currently serving members, may engage in this newly added prohibited activity during AmeriCorps service hours on or after October 1, 2009.

Criminal History Check Requirements (§§ 2522.205–207, 2540.200–207)

Section 1612 of the Serve America Act, adds a new section 189D to the NCSA, codifying existing AmeriCorps criminal history check requirements, with two significant changes. First, section 189D expands coverage to all individuals receiving ''a living allowance, stipend, national service educational award, or salary through a program receiving assistance under the national service laws''—regardless of the type of service the individual is performing or the individual's access to vulnerable populations. Previously, the criminal history check outlined in our regulations in Part 2540 was required only for individuals with recurring access to vulnerable populations.

Second, section 189D states that an ''individual shall be ineligible to serve in a [covered position] if such individual * * * has been convicted of murder, as described in section 1111 of title 18, United States Code.'' This is in addition to the current suitability criteria rendering ineligible individuals who are registered, or required to be registered, on a State sex offender registry. This interim rule amends §§ 2522.205–207 and §§ 2540.200–201 to align with these changes to the statute. Programs must amend their criminal history check practices to comply with these changes for any individual who will receive a living allowance, stipend, education award, or salary through the program hired or enrolled in a program on or after October 1, 2009. Programs are not required to apply these changes to individuals hired or enrolled prior to that date. For more information on criminal history check requirements, please visit the Corporation's Web site at *http://www.nationalservice.gov/for_organizations/manage/history_checks.asp.*

The Serve America Act also includes a provision which would require FBI fingerprint checks for individuals working with vulnerable populations. This provision goes into effect two years after the date of enactment of the Serve America Act, and will be implemented in a later rulemaking.

Length of and Extension to a Term of Service (§§ 2522.220, 2522.240)

The Serve America Act amends section 139 of the NCSA by making two significant changes to the definition of terms of service: (1) It removes the limitation that a full-time term of service must be served over a period of at least nine months; and (2) it sets the maximum length of a part-time term of service at two years, conforming with current practice. This rule amends § 2522.220(a) to align the definitions of full-time and part-time terms of service with the new statutory definitions. Under this rule, a full-time term of service is defined as 1,700 hours of service over a period of not more than one year, and a part-time term of service is defined as 900 hours of service during a period of not more than two years.

While it is no longer necessary for a full-time term to cover a period of at least nine months, our grant provisions still require that grantees ''ensure that each member has sufficient opportunity to complete the required number of hours to qualify for their education award.'' (2009 AmeriCorps Grant Provisions, IV.C.5). Further, ''[in] planning for the member's term of service, the grantee must account for holidays and other time off, and must provide each member with sufficient opportunity to make up missed hours.'' (2009 AmeriCorps Grant Provisions, IV.D.1). A grantee that imposes unreasonable service hour requirements on an AmeriCorps member may be considered to be non-compliant with these provisions. The new definitions for terms of service will go into effect for any member enrolling on or after October 1, 2009.

The Serve America Act also amends section 139 to provide an exception to the limit on the length of a term of service for disaster purposes. The Act states that ''an individual in an approved national service position performing service directly related to disaster relief efforts may continue in a term of service for a period of 90 days beyond the period otherwise specified.'' The Act specifies that ''a period of service performed by an individual in an originally-agreed to term of service and service performed [during an extension for disaster purposes] shall constitute a single term of service.'' Further, while the Act permits a program to continue to provide a member with a living allowance and other benefits during an extension for disaster purposes, the member would not be eligible for any additional education award beyond what would be received for the originally agreed-upon term of service. In other words, an AmeriCorps member serving in a full-time position whose term of service was extended to respond to a natural disaster would be eligible for an education award of equivalent value to a member whose term was not extended. This rule amends § 2522.220 to provide for an extension to a term of service for disaster purposes, and amends § 2522.240 to provide for the receipt of a living allowance and other benefits during an extension. Any program wishing to extend a member's term of service for disaster relief purposes must first obtain permission from the Corporation.

Release From a Term of Service for Compelling Personal Circumstances (§ 2522.230)

The amendments to the NCSA at section 139 include a change to how a release for compelling personal circumstances is documented. Under the amended section, the program has the responsibility for determining whether an individual should be released for compelling personal circumstances, and is responsible for certifying the individual's eligibility for a pro-rated educational award; the program is no longer required to obtain or maintain documentation of the member's demonstration of compelling personal circumstances. This interim rule amends § 2522.230 to align with the changes to the statute. Programs will still be required to keep documentation of the basis for their determination that compelling personal circumstances prevented the participant from completing a term of service (§ 2522.230(a)(4)).

To be released for compelling personal circumstances under the amended section, the individual must have ''otherwise performed satisfactorily and [have] completed at least 15 percent of the term of service''. While the Serve America Act changes current practice by limiting releases for compelling personal circumstances to those members who have served at least 15 percent of a term of service, this change in characterization of the release will not impact an individual's eligibility to serve an additional term or to receive an education award. Under current rules, an individual's eligibility for a subsequent term of service is not affected by release for cause so long as the individual received a satisfactory end-of-term performance review (§ 2522.230(b)(6)). Further, under current rules an individual released for compelling personal circumstances must have served at least 15 percent of a term of service to be eligible to receive a pro-rated education award (§ 2526.20(a)). To illustrate, the following table shows the impact of releases prior to serving 15% under current rules:

Reason for release prior to serving 15%	Eligible for education award?	Eligible for subsequent term of service?
For Cause—For reasons of misconduct	No	No.
For Cause—For reasons other than misconduct	No	Yes.
For Compelling Personal Circumstances	No	Yes.

As illustrated above, considering all releases for reasons other than misconduct—including those reasons a program may consider ''compelling''—has no impact on a member's eligibility to earn an education award or serve a subsequent term of service.

Tutoring Requirements (§§ 2522.910, 930, 940)

The Serve America Act amends section 122 of the NCSA to codify the Corporation's existing regulatory requirements for AmeriCorps tutoring programs, with two significant differences. First, amended section 122(h) requires that an AmeriCorps tutoring program certify that an individual serving as a tutor, except for ''an individual serving in an approved national service position who is enrolled in an elementary or secondary school and is providing tutoring services through a structured, school-managed cross-grade tutoring program,'' have ''obtained their high school diploma.'' Previously, our rules have permitted an individual who has not received a high school diploma the option of passing a proficiency test in order to serve as a tutor; amended section 122(h) removes this option. For the purposes of this requirement, ''high school diploma'' can be understood to mean a high school diploma or its equivalent.

Second, amended section 122(h) requires that AmeriCorps tutoring programs ''offer a curriculum that is high quality, research-based, and consistent with the State academic standards required by section 1111 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311) and the instructional program of the local educational agency.'' Previously, our rules have permitted programs to offer a curriculum that is consistent with the State academic standards or the instructional program of the local educational agency; this change will require that the curricula be consistent with both.

This interim final rule aligns the regulatory requirements in §§ 2522.910, 930, and 940 with those in the amended statute. Tutoring programs must ensure that all members enrolling after October 1, 2009, have earned a high school diploma or its equivalent. All tutoring programs beginning after October 1, 2009, must design their curriculum to be consistent with both the State academic standards and the instructional program of the local educational agency.

State Commission Composition Requirements (§ 2550.50)

Section 178 of the NCSA, as amended by the Serve America Act, adds to the list of required voting members of a State Commission a ''representative of the volunteer sector.'' This rule amends the list of required voting members of a State Commission in § 2550.50 to align with the statute.

In addition, amended section 178 no longer permits States to allow the ex-officio member of the Commission designated by the Corporation as a representative to be a voting member. This rule amends § 2550.80 to align with the statute and longstanding Corporation guidance.

State Plan Requirements (§ 2550.80)

The Serve America Act amends the duties of State Commissions listed in section 178 of the NCSA by expanding the required components of the State Plan and adding a new requirement for a State Service Plan for adults age 55 and older.

State Plans

Under amended section 178, the State Plan must provide for ''effective coordination of funding applications submitted by the State and other organizations within the State under the national service laws,'' must ''include measurable goals and outcomes for the State national service programs in the State consistent with the performance levels for national service programs as described in section 179(k),'' must ''ensure outreach to, and coordination with, municipalities (including large cities) and county governments regarding the national service laws,'' and is ''subject to approval by the chief executive officer of the State.''

This rule amends § 2550.80(a) to align with the new requirements for State Plans in the NCSA. The Corporation understands that different States have different schedules for their State plans, meaning that while one State may be in the third year of its three-year plan, another State may be beginning its first year. Further, we understand that many of the new components in the State Plan rely upon elements of the Serve America Act that have not yet been implemented, such as the program performance levels required in section 179(k) of the NCSA that will not begin to be used with State and National operational grants until the 2010 funding cycle. The Serve America Act makes an additional amendment to the description of the State Plan by describing it as covering a three-year period, ''the beginning of which may be set by the State.'' Therefore, when a State Commission is preparing to develop its next three-year plan, it must incorporate these new elements. This will give States time to consider other changes resulting from implementation of the Serve America Act and enable

States to develop a plan befitting their particular needs and timeline.

Supplemental State Plan for Adults Age 55 or Older

Amended section 178 also adds a requirement for a ''State Service Plan for Adults Age 55 or Older'' (hereinafter ''Supplemental State Plan for Adults Age 55 or Older'', or ''Supplemental Plan''). While there will likely be overlap between the two plans, this plan is distinct from the State Plan in two significant ways beyond the plans' required content. First, unlike the State Plan, States are required to have a Supplemental Plan in order to be eligible to receive any funds under Subtitles B and C of title I of the NCSA—including funding for Learn and Serve programs, AmeriCorps programs, disability placement funds, and administrative grants. Second, unlike the State Plan, there is no statutory requirement for a time period the Supplemental Plan must cover, nor is there a requirement to update this new plan on an annual basis. In order to ensure that all States are eligible to receive Subtitle B and C funding in the coming year, the required components of the Supplemental Plan have already been incorporated in the application instructions for Admin/PDAT/Disability applications due this Fall. States may choose to periodically update the Supplemental Plan along with their State Plans.

This rule adds development of a Supplemental State Plan for Adults Age 55 or Older to the list of duties of State Commissions in § 2550.80 to align the list with the statute. As stated in the rule and in the Admin/PDAT/Disability instructions, these plans must:

(1) Include recommendations for policies to increase service for adults age 55 or older, including how to best use such adults as sources of social capital, and how to utilize their skills and experience to address community needs;

(2) Include recommendations to the State agency on aging (as defined in section 102 of the Older Americans Act of 1965, 42 U.S.C. 3002) on a marketing outreach plan to businesses and outreach to nonprofit organizations, the State educational agency, institutions of higher education, and other State agencies;

(3) Include recommendations for civic engagement and multigenerational activities, including early childhood education and care, family literacy, and other after school programs, respite services for adults age 55 or older and caregivers, and transitions for older adults age 55 or older to purposeful work in their post-career lives; and

(4) Incorporate the current knowledge base regarding the economic impact of the roles of workers age 55 or older in the economy, the social impact of the roles of such workers in the community, the health and social benefits of active engagement for adults age 55 or older.

The plans, once developed, must be made available to the public.

State Commission Administrative Grants (§ 2550.110)

Amount of Administrative Grants

The Serve America Act amends section 126 of the NCSA, the section authorizing administrative grants to State Commissions for the purpose of establishing or operating the Commission. Under amended section 126, the range of administrative grants has been increased from $125,000–$750,000 to $250,000 up to $1 million. This rule amends § 2550.110(a) to reflect the new range. Please note that the minimum administrative grant amount of $250,000 will not be in effect until a fiscal year 2010 Appropriations Bill is enacted. Please also note that the $1,000,000 is an ''up to'' amount, and the Corporation will exercise its discretion based on availability of funds, as to the amount awarded to larger States.

Administrative Grant Matching Requirements

Amended section 126 requires States to ''provide matching funds from non-Federal sources of not less than $1 for every $1 provided by the Corporation'' in the administrative grant. For the first time, this amended section will allow the Corporation to waive the match requirement for State Commissions that demonstrate hardship or for new State Commissions.

Upon receipt of such a waiver, the Commission will use the following match schedule, as outlined in amended section 126:

Grant amount	Match requirement
(1) First $100,000	No match requirement.
(2) Amounts above $100,000 but less than $250,000	$1 of non-Federal funds for every $2 provided by the Corporation in excess of $100,000.
(3) Amounts greater than $250,000	$1 of non-Federal funds for every $1 provided by the Corporation in excess of $250,000.

For example, a Commission receiving an administrative grant amount of $300,000 who has received a waiver would have a match requirement of $125,000:

$0	(for the first $100,000).
+ $75,000	(for the amount between $101,000 and $250,000 (or .5 × $150,000)).
+ $50,000	(for the amount between $251,000 and $300,000 (or 1 × $50,000)).
$125,000	

Please note that match waivers authorized under amended section 126 will not be available until an FY 2010 Appropriations Bill has been enacted.

(C) Senior Corps

The Serve America Act amends sections 200, 211, and 213(a) of the Domestic Volunteer Service Act of 1973 (DVSA) by lowering the age of eligibility for participation in the Senior Companion and Foster Grandparent Programs from 60 to 55. The Act also includes more expansive language that will permit Foster Grandparents to serve children whose circumstances limit their academic, social, or emotional development, as well as provide supportive services and companionship to children with special or exceptional needs.

The Serve America Act also adds a conviction for the offense of murder, as defined under Federal law in section 1111 of title 18, United States Code, as an offense disqualifying an individual from serving as a Senior Companion, Foster Grandparent, or as a grant-funded employee of the Senior Companion, Foster Grandparent, or the Retired and Senior Volunteer Program. Programs must amend their criminal history check procedures to comply with the new criteria for all staff and volunteers selected on or after October 1, 2009. For more information on criminal history check requirements, please visit the

Corporation's Web site at *http://www.nationalservice.gov/for_organizations/manage/history_checks.asp.*

The Serve America Act amends section 211 of the DVSA to raise the income eligibility guidelines for Senior Companion and Foster Grandparent volunteers to 200 percent of the poverty line, as set forth in 42 U.S.C. 9902(2). This interim rule amends the applicable sections of the Senior Corps regulations, which address the above issues, to align them with the new statutory requirements of the Serve America Act.

Finally, the Serve America Act also amends the DVSA by requiring the Corporation to develop a competitive process for issuing grants for the Retired and Service Volunteer Program beginning in 2013. This process will be addressed in future Corporation rulemaking.

(D) General Provisions

Parental Involvement (§ 2540.330)

The Serve America Act amends section 177 of the NCSA to add a requirement that all recipients of funds under the national service laws that intend to operate programs that include and serve children must ''consult with the parents or legal guardians of children in developing and operating'' those programs. Further, the Act adds a requirement that any recipient of funds under the national service laws must, ''before transporting minor children, provide the children's parents with the reason for the transportation and obtain the parents' permission for such transportation, consistent with State law.''

This interim rule adds these requirements in a new § 2540.330. Learn and Serve America, VISTA, Senior Corps, and AmeriCorps State and National programs beginning after October 1, 2009, that will include or serve children must include in their program design an opportunity to consult with parents of the children included or served. All programs that transport children, including existing programs, must provide the children's parents or legal guardians with the reason for transportation and obtain a parent's or legal guardian's permission for the transportation beginning on October 1, 2009.

IV. Effective Dates

This interim final rule will take effect October 13, 2009.

V. Rulemaking Analyses and Notices

Regulatory Flexibility Act

The Corporation has determined that the regulatory action will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, the Corporation has not performed the initial regulatory flexibility analysis that is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) for major rules that are expected to have such results.

Other Impact Analyses

This rule contains no information collection requirements and is therefore not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

For purposes of Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, as well as Executive Order 12875, this regulatory action does not contain any Federal mandate that may result in increased expenditures in either Federal, State, local, or Tribal governments in the aggregate, or impose an annual burden exceeding $100 million on the private sector.

List of Subjects

45 CFR Part 2510

Grant programs—social programs, Volunteers.

45 CFR Part 2516

Grants administration, Grant programs—social programs.

45 CFR Part 2519

Grants administration, Grant programs—social programs.

45 CFR Part 2520

Grant programs—social programs, Volunteers.

45 CFR Part 2522

Grants administration, Grant programs—social programs, Volunteers.

45 CFR Part 2540

Civil rights, Fraud, Grants administration, Grant programs—social programs, Trademarks—signs and symbols, Trust, Volunteers.

45 CFR Part 2550

Grants administration, Grant programs—social programs.

45 CFR Part 2551

Aged, Grant programs—social programs, Reporting and recordkeeping requirements, Volunteers.

45 CFR Part 2552

Aged, Grant programs—social programs, Reporting and recordkeeping requirements, Volunteers.

45 CFR Part 2553

Aged, Grant programs—social programs, Reporting and recordkeeping requirements, Volunteers.

■ For the reasons stated in the preamble, under the authority of 42 U.S.C. 12651d, the Corporation for National and Community Service amends chapter XXV, title 45 of the Code of Federal Regulations as follows:

PART 2510—OVERALL PURPOSES AND DEFINITIONS

■ 1. The authority citation for part 2510 is revised to read as follows:

Authority: 42 U.S.C. 12511.

■ 2. Amend § 2510.20 by adding the definition of ''community-based entity'' to read as follows:

§ 2510.20 Definitions.

* * * * *

Community-based entity. The term community-based entity means a public or private nonprofit organization that—

(1) Has experience with meeting unmet human, educational, environmental, or public safety needs; and

(2) Meets other such criteria as the Chief Executive Officer may establish.

* * * * *

PART 2516—SCHOOL-BASED SERVICE-LEARNING PROGRAMS

■ 3. The authority citation for part 2516 is revised to read as follows:

Authority: 42 U.S.C. 12521–12529; 42 U.S.C. 12645g.

■ 4. Revise Subpart A to read as follows:

Subpart A—Eligibility To Apply

Sec.

2516.100 What is the purpose of school-based service-learning programs?
2516.110 Who may apply for a direct grant from the Corporation?
2516.120 Who may apply for funding a subgrant?

Subpart A—Eligibility To Apply

§ 2516.100 What is the purpose of school-based service-learning programs?

The purpose of school-based service-learning programs is to promote service-learning as a strategy to support high-quality service-learning projects that engage students in meeting community needs with demonstrable results, while enhancing students' academic and civic learning; and support efforts to build institutional capacity, including the training of educators, and to strengthen the service infrastructure to expand service opportunities.

§ 2516.110 Who may apply for a direct grant from the Corporation?

(a) The following entities may apply for a direct grant from the Corporation:

(1) A State, through a State educational agency (SEA). For purposes of this part ''State'' means one of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and, except for the purpose of § 2516.600(b), U.S. Territories; ''SEA'' means a ''State educational agency'' as defined in § 2510.20 of this chapter or an SEA-designated statewide entity (which may be a community-based entity) with demonstrated experience in supporting or implementing service-learning programs.

(2) An Indian Tribe.

(3) For activities in a nonparticipating State or Indian Tribe, a community-based entity as defined in § 2510.20.

(b) The types of grants for which each entity is eligible are described in § 2516.200.

§ 2516.120 Who may apply for funding a subgrant?

Entities that may apply for a subgrant from a State, Indian Tribe, or community-based entity are:

(a) A qualified organization, Indian Tribe, Territory, local educational agency, for-profit business, private elementary school or secondary school, or institution of higher education for a grant from a State for planning and building the capacity of school-based service-learning programs.

(b) A local partnership, for a grant from a State to implement, operate, or expand a school-based service learning program.

(1) The local partnership must include an LEA and one or more community partners. The local partnership may include a private for-profit business, or private elementary or secondary school, or an Indian Tribe (except that an Indian Tribe distributing funds to a project under this paragraph is not eligible to be part of the partnership operating that project).

(2) The community partners must include a public or private nonprofit organization that has demonstrated expertise in the provision of services to meet educational, public safety, human, or environmental needs; will make projects available for participants, who must be students; and was in existence at least one year before the date on which the organization submitted an application under this part.

(c) An LEA or Indian Tribe for planning school-based service-learning programs involving paying, recruiting, and supporting service-learning coordinators.

(d) An LEA, local partnership, or public or private nonprofit organization for a grant from a State to implement, operate, or expand an adult volunteer program. The local partnership must include an LEA and one or more public or private nonprofit organizations, other educational agencies, or an Indian Tribe (except that an Indian Tribe distributing funds under this paragraph is not eligible to be a recipient of those funds) that coordinate and operate projects for participants who must be students.

(e) An eligible entity for a grant from a State or Indian Tribe to carry out civic engagement activities.

5. Revise § 2516.200 to read as follows:

§ 2516.200 How may grant funds be used?

Funds under a school-based service learning grant may be used for the purposes described in this section.

(a) *Planning and capacity-building.* (1) A State, Indian Tribe, or community-based entity may use funds to pay for planning and building its capacity to implement school-based service-learning programs. These entities may use funds either directly or through subgrants or contracts with qualified organizations.

(2) Authorized activities include the following:

(i) Providing training for teachers, supervisors, personnel from community-based agencies (particularly with regard to the utilization of participants) and trainers, conducted by qualified individuals or organizations experienced in service-learning.

(ii) Developing service-learning curricula, consistent with State or local academic content standards, to be integrated into academic programs, including the age-appropriate learning components for students to analyze and apply their service experiences.

(iii) Forming local partnerships described in § 2516.120 to develop school-based service-learning programs in accordance with this part.

(iv) Devising appropriate methods for research and evaluation of the educational value of service-learning and the effect of service-learning activities on communities.

(v) Establishing effective outreach and dissemination of information to ensure the broadest possible involvement of community-based agencies with demonstrated effectiveness in working with school-age youth in their communities.

(vi) Establishing effective outreach and dissemination of information to ensure the broadest possible participation of schools throughout the State, Territory or serving the Indian Tribe involved, with particular attention to schools not making adequate yearly progress for two or more consecutive years under section 1111 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 *et seq.*).

(b) *Implementing, operating, and expanding school-based programs.* (1) A State, Indian Tribe or community-based entity may use funds to make subgrants to local partnerships described in § 2516.120(b) to implement, operate, or expand school-based service-learning programs.

(2) If a State does not submit an application that meets the requirements for an allotment grant under § 2516.400, the Corporation may use the allotment to fund applications from community-based entities for programs in that State.

(3) Authorized activities include paying the costs of the recruitment, training, supervision, placement, salaries and benefits of service-learning coordinators.

(c) *Planning programs.* (1) A State may use funds to make subgrants to LEAs for planning school-based service-learning programs.

(2) If a State does not submit an application that meets the requirements for an allotment grant under § 2516.400, the Corporation may use the allotment to fund applications from community-based entities for planning programs in that State.

(3) Authorized activities include paying the costs of—

(i) The salaries and benefits of service-learning coordinators as defined in § 2510.20 of this chapter; and

(ii) The recruitment, training, supervision, and placement of service-learning coordinators who may be, but are not required to be, participants in an AmeriCorps program described in parts 2520 through 2524 of this chapter, or who receive AmeriCorps education awards, or who may be participants in a project under section 201 of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5001), or who may participate

in a Youthbuild program under section 173A of the Workforce Investment Act of 1998 (29 U.S.C. 2918a).

(d) *Adult volunteer programs.* (1) A State, Indian Tribe, or community-based entity may use funds to make subgrants to local partnerships described in § 2516.120(c) to implement, operate, or expand school-based programs involving adult volunteers to utilize service-learning to improve the education of students.

(2) If a State does not submit an application that meets the requirements for an allotment grant under § 2516.400, the Corporation may use the allotment to fund applications from those local partnerships for adult volunteer programs in that State.

(e) *Planning by Indian Tribes and U.S. Territories.* If the Corporation makes a grant to an Indian Tribe or a U.S. Territory to plan school-based service-learning programs, the grantee may use the funds for that purpose.

(f) *Civic engagement programs.* A State, Indian Tribe, Territory or qualified organization may use funds to support service-learning civic engagement programs that promote a better understanding of:

(1) The principles of the Constitution, the heroes of United States history (including military history), and the meaning of the Pledge of Allegiance;

(2) How the Nation's government functions; and

(3) The importance of service in the Nation's character.

§ 2516.310 [Amended]

■ 6. Amend § 2516.310 by removing paragraph (b)(2) and redesignating paragraph (b)(1) as paragraph (b).

■ 7. Revise § 2516.400(c)(2) to read as follows:

§ 2516.400 What must a State or Indian Tribe include in an application for a grant?

* * * * *

(c) * * *

(2) Comply with the criminal history check requirements for all grant-funded staff employed after October 1, 2009, in accordance with 45 CFR 2540.200–207, as well as the nonduplication, nondisplacement, and grievance procedure requirements of Part 2540.

■ 8. Revise § 2516.410 to read as follows:

§ 2516.410 What must a community-based entity include in an application for a grant?

In order to apply to the Corporation for a grant, a community-based entity must submit the following:

(a) A detailed description of the proposed program goals and activities. The application of a community-based entity must include—

(1) A description of how the applicant will coordinate its activities with the State Plan under § 2513 of this chapter, including a description of plans to meet and consult with the State Commission, if possible, and to provide a copy of the program application to the State Commission and with other Federally-assisted activities.

(b) The specific program, budget, and other information specified by the Corporation in the grant application package.

(c) Assurances that the applicant will—

(1) Keep such records and provide such information to the Corporation with respect to the program as may be required for fiscal audits and program evaluations;

(2) Prior to the placement of a participant, consult with the appropriate local labor organization, if any, representing employees in the area who are engaged in the same or similar work as that proposed to be carried out by the program, to prevent the displacement and protect the rights of those employees;

(3) Develop an age-appropriate learning component for participants in the program that includes a chance for participants to analyze and apply their service experiences; and

(4) Comply with the criminal history check requirements for all grant-funded staff employed after October 1, 2009, in accordance with 45 CFR 2540.200–207, as well as the nonduplication, nondisplacement, and grievance procedure requirements of Part 2540.

■ 9. Revise § 2516.420 to read as follows:

§ 2516.420 What must an LEA, local partnership, qualified organization or other eligible entity include in an application for a subgrant?

In order to apply for a subgrant from a State, Indian Tribe, or community-based entity under this part, an applicant must include the information required by the Corporation grantee.

■ 10. Amend § 2516.500(a)(3)(i) by removing the word ''grantmaking'' and adding the word ''community-based'' in it place and by revising paragraph (b)(2) to read as follows:

§ 2516.500 How does the Corporation review the merits of an application?

* * * * *

(b) * * *

(2) Reflect the greatest need for assistance, such as programs targeting low-income areas or serving economically disadvantaged youth;

* * * * *

§ 2516.520 [Amended]

■ 11. Amend the caption for § 2516.520 by removing the term ''grantmaking'' and adding the term ''community-based'' in its place.

■ 12. Revise § 2516.600 to read as follows:

§ 2516.600 How are funds for school-based service-learning programs distributed?

(a) Of the amounts appropriated to carry out this part for any fiscal year, the Corporation will reserve not less than two percent and not more than three percent for grants to Indian Tribes and U.S. Territories to be allotted in accordance with their respective needs.

(b) The Corporation will use the remainder of the funds appropriated as follows:

(1) Allotments to States.

(i) From 50 percent of the remainder, the Corporation will allot to each State an amount that bears the same ratio to 50 percent of the remainder as the number of school-age youth in the State bears to the total number of school-age youth of all States.

(ii) From 50 percent of the remainder, the Corporation will allot to each State an amount that bears the same ratio to 50 percent of the remainder as the allocation to the State for the previous fiscal year under Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 *et seq.*) bears to the allocations to all States.

(iii) Notwithstanding other provisions of paragraph (b)(1) of this section, for any fiscal year for which amounts appropriated for Part I of Subtitle B of Title I of the National and Community Service Act of 1990 (42 U.S.C. 12521 *et seq.*) exceed $50,000,000, the minimum allotment to each State under this paragraph (b)(1) will be $75,000.

(2) For the purpose of paragraph (b) of this section, ''State'' means one of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(c) If a State or Indian Tribe does not submit an application that meets the requirements for approval under this part, the Corporation (after making any grants to community-based entities for activities in nonparticipating States) may use its allotment for States and Indian Tribes with approved applications, as the Corporation determines appropriate.

■ 13. Revise § 2516.700 to read as follows:

§ 2516.700 What matching funds are required?

(a) The Corporation share of the cost of carrying out a program funded under this part may not exceed—

(1) Eighty percent of the total cost for the first year for which the program receives assistance;

(2) Sixty-five percent of the total cost for the second year; and

(3) Fifty percent of the total cost for the third year and any subsequent year.

(b) In providing for the remaining share of the cost of carrying out a program, each recipient of assistance must provide for that share through a payment in cash or in-kind, fairly evaluated, including facilities, equipment, or services, and may provide for that share through State sources, local sources, or Federal sources (other than funds made available under the national service laws or title I of the Elementary and Secondary Act of 1965 (20 U.S.C. 6311 *et seq.*)).

(c) The Corporation may waive the requirements of paragraph (b) of this section in whole or in part with respect to any program in any fiscal year if the Corporation determines that the waiver would be equitable due to a lack of available financial resources at the local level.

■ 14. Revise § 2516.710 to read as follows:

§ 2516.710 What are the limits on the use of funds?

The following limits apply to funds available under this part:

(a) (1) Not more than six percent of the grant funds provided under this part for any fiscal year may be used to pay for administrative costs, as defined in § 2510.20 of this chapter.

(2) The distribution of administrative costs between the grant and any subgrant is subject to the approval of the Corporation.

(3) In applying the limitation on administrative costs, the Corporation may approve one of the following methods in the award document:

(i) Limit the amount or rate of indirect costs that may be paid with Corporation funds under a grant or subgrant to six percent of total Corporation funds expended, provided that—

(A) Organizations that have an established indirect cost rate for Federal awards will be limited to this method; and

(B) Unreimbursed indirect costs may be applied to meeting operational matching requirements under the Corporation's award;

(ii) Specify that a fixed rate of six percent or less (not subject to supporting cost documentation) of total Corporation funds expended may be used to pay for administrative costs, provided that the fixed rate is in conjunction with an overall 15 percent administrative cost factor to be used for organizations that do not have established indirect cost rates; or

(iii) Use such other method that the Corporation determines in writing is consistent with OMB guidance and other applicable requirements, helps minimize the burden on grantees or subgrantees, and is beneficial to grantees or subgrantees and the Federal Government.

(b) Funds made available under this part may not be used to pay any stipend, allowance, or other financial support to any participant in a service-learning program under this part except reimbursement for transportation, meals, and other reasonable out-of-pocket expenses directly related to participation in a program assisted under this part.

PART 2519—HIGHER EDUCATION INNOVATIVE PROGRAMS FOR COMMUNITY SERVICE

■ 15. The authority citation for part 2519 is revised to read as follows:

Authority: 42 U.S.C. 12561; 42 U.S.C. 12645g.

■ 16. Add § 2519.120 in subpart A to read as follows:

§ 2519.120 What is the Federal Work-Study Requirement?

To be eligible for assistance under this part, an institution of higher education must demonstrate that it meets the minimum requirements under section 443(b)(2)(A) of the Higher Education Act of 1965 (42 U.S.C. 2753(b)(2)(A)) relating to the participation of students employed under part C of title IV of the Higher Education Act of 1965 (42 U.S.C. 2751 *et seq.*) (relating to Federal Work-Study programs) in community service activities, or has received a waiver of those requirements from the Secretary of Education.

■ 17. Amend § 2519.400 by revising paragraph (c)(2) to read as follows:

§ 2519.400 What must an applicant include in an application for a grant?

* * * * *

(c) * * *

(2) Comply with the criminal history check requirements for all grant-funded staff employed after October 1, 2009, in accordance with 45 CFR 2540.200–207, as well as the nonduplication, nondisplacement, and grievance procedure requirements of Part 2540.

■ 18. Revise § 2519.500 to read as follows:

§ 2519.500 How does the Corporation review an application?

(a) The Corporation will review an application submitted under this part on the basis of the quality, innovation, replicability, and sustainability of the proposed program and such other criteria as the Corporation establishes in an application package.

(b) In addition, in reviewing applications submitted under this part, the Corporation will take into consideration whether proposed programs—

(1) Demonstrate the commitment of the institution of higher education, other than by demonstrating the commitment of its students, to supporting the community service projects carried out under the program;

(2) Specify how the institution will promote faculty, administration, and staff participation in the community service projects;

(3) Specify the manner in which the institution will provide service to the community through organized programs, including, where appropriate, clinical programs for students in professional schools and colleges;

(4) Describe any higher education partnership that will participate in the community service projects, such as a higher education partnership comprised of the institution, a student organization, a community-based agency, a local government agency, or a nonprofit entity that serves or involves school-age youth, older adults, low-income communities, a department of the institution, or a group of faculty comprised of different departments, schools, or colleges at the institution;

(5) Demonstrate community involvement in the development of the proposal and the extent to which the proposal will contribute to the goals of the involved community members;

(6) Demonstrate a commitment to perform community service projects in underserved urban and rural communities;

(7) Describe research on effective strategies and methods to improve service utilized in the design of the projects;

(8) Specify that the institution will use funds under this part to strengthen the infrastructure in institutions of higher education;

(9) With respect to projects involving delivery of service, specify projects that involve leadership development of school-age youth; or

(10) Describe the needs that the proposed projects are designed to

address, such as housing, economic development, infrastructure, health care, job training, education, crime prevention, urban planning, transportation, information technology, or child welfare.

(c) In addition, the Corporation may designate additional review criteria in an application notice that will be used in selecting programs.

■ 19. Amend § 2519.700 by revising paragraph (b) to read as follows:

§ 2519.700 Are matching funds required?

* * * * *

(b) In providing for the remaining share of the cost of carrying out a program, each recipient of assistance must provide for that share through a payment in cash or in-kind, fairly evaluated, including facilities, equipment, or services, and may provide for that share through State sources, local sources (including private funds or donated services) or Federal sources (other than funds made available under the national service laws).

* * * * *

§ 2519.710 [Amended]

■ 20. Amend § 2519.710 by replacing the term ''five percent'' with ''six percent'' in (a)(1), (a)(3)(i) and (a)(3)(ii).

PART 2520—GENERAL PROVISIONS: AMERICORPS SUBTITLE C PROGRAMS

■ 21. The authority citation for part 2520 is revised to read as follows:

Authority: 42 U.S.C. 12571–12595.

■ 22. Amend § 2520.65 by:

■ a. Removing the word ''and'' from the end of paragraph (a)(8)(iv);

■ b. Redesignating paragraph (a)(10) as (a)(11); and

■ c. Adding a new paragraph (a)(10) to read as follows:

§ 2520.65 What activities are prohibited in AmeriCorps subtitle C programs?

(a) * * *

(10) Providing abortion services or referrals for receipt of such services; and

* * * * *

PART 2522—AMERICORPS, PARTICIPANTS, PROGRAMS, AND APPLICANTS

■ 23. The authority citation for part 2522 is revised to read as follows:

Authority: 42 U.S.C. 12571–12595; 12651b–12651d; E.O. 13331, 69 FR 9911, Sec. 1612, Pub. L. 111–13.

§ 2522.205 [Amended]

■ 24. Amend § 2522.205 by removing ''**,** and which involves recurring access to children, persons age 60 or older, or individuals with disabilities.''

■ 25. Revise § 2522.206 to read as follows:

§ 2522.206 What suitability criteria must I apply to a covered position?

An individual is ineligible to serve in a covered position if the individual:

(a) Is registered, or required to be registered, on a State sex offender registry or the National Sex Offender Registry; or

(b) Has been convicted of murder, as defined in section 1111 of title 18, United States Code.

■ 26. Amend § 2522.220 by revising paragraphs (a)(1) and (a)(2) and adding a new paragraph (g) to read as follows:

§ 2522.220 What are the required terms of service for AmeriCorps participants, and may they serve more than one term?

(a) * * *

(1) *Full-time service.* 1,700 hours of service during a period of not more than one year.

(2) *Part-time service.* 900 hours of service during a period of not more than two years.

* * * * *

(g) *Extension of term for disaster purposes.* If approved by the Corporation, a program may permit an AmeriCorps participant performing service directly related to disaster relief efforts to continue in a term of service for a period of up to 90 days beyond the period otherwise specified. A period of service performed by an AmeriCorps participant in an originally agreed-upon term of service and service performed under this paragraph shall constitute a single term of service for the purposes of § 2526.50(a) of this chapter.

■ 27. Amend § 2522.230 by:

■ a. Revising the introductory text;

■ b. Revising paragraph (a)(1);

■ c. Removing paragraph (a)(3); and

■ d. Redesignating paragraphs (a)(4) through (a)(7) as (a)(3) through (a)(6), respectively.

The revised text reads as follows:

§ 2522.230 Under what circumstances may AmeriCorps participants be released from completing a term of service, and what are the consequences?

An AmeriCorps program may release a participant from completing a term of service for compelling personal circumstances, as determined by the program, or for cause.

(a) * * *

(1) An AmeriCorps program may release a participant upon a determination by the program, consistent with the criteria listed in paragraphs (a)(6) and (a)(7) of this section, that the participant is unable to complete the term of service because of compelling personal circumstances, if the participant has otherwise performed satisfactorily and has completed at least fifteen percent of the agreed term of service.

* * * * *

■ 28. Amend § 2522.240 by adding a new paragraph (c) to read as follows:

§ 2522.240 What financial benefits do AmeriCorps participants serving in approved AmeriCorps positions receive?

* * * * *

(c) *Financial benefits for participants during an extended term of service for disaster purposes.* An AmeriCorps participant performing extended service under § 2522.220(g) may continue to receive a living allowance under paragraph (b) and other benefits under § 2522.250, but may not receive an additional AmeriCorps educational award under paragraph (a).

■ 29. Revise § 2522.910(b)(1) to read as follows:

§ 2522.910 What basic qualifications must an AmeriCorps member have to serve as a tutor?

If the tutor is:	Then the tutor must meet the following qualifications:
* * * * *	
(b) * *	(1) High School diploma or its equivalent, or a higher degree; and
* * * * *	

§ 2522.930 [Reserved]

■ 30. Remove and reserve § 2522.930.

■ 31. Amend § 2522.940 by:

■ a. Revising paragraphs (a) and (c) to read as follows:

§ 2522.940 What are the requirements for a program in which AmeriCorps members serve as tutors?

* * * * *

(a) Articulate appropriate criteria for selecting and qualifying tutors, including the requirements in § 2522.910 of this subpart, and certify that selected tutors meet the requirements in § 2522.910.

* * * * *

(c) Certify that the tutoring curriculum and pre-service and in-service training content are high-quality and research-based, consistent with the instructional program of the local

educational agency and with State academic content standards.

* * * * *

PART 2540—GENERAL ADMINISTRATIVE POSITIONS

■ 32. The authority citation for part 2540 is revised to read as follows:

Authority: E.O. 13331, 69 FR 9911; 18 U.S.C. 506, 701, 1017; 42 U.S.C. 12653, 12631–12637; 42 U.S.C. 5065.

§ 2540.200 [Amended]

■ 33. Amend § 2540.200 by removing ''**,** and which involves recurring access to children, persons age 60 and older, or individuals with disabilities''.

■ 34. Revise § 2540.201 to read as follows:

§ 2540.201 What suitability criteria must I apply to a covered position?

An individual is ineligible to serve in a covered position if the individual:

(a) Is registered, or required to be registered, on a State sex offender registry or the National Sex Offender Registry; or

(b) Has been convicted of murder, as defined in section 1111 of title 18, United States Code.

■ 35. Amend § 2540.203 by revising the section heading and paragraphs (a) and (b) to read as follows:

§ 2540.203 When must I conduct a State criminal registry check and a National Sex Offender Public Web site check on an individual in a covered position?

(a) The State criminal registry check must be conducted on Foster Grandparents, Senior Companions, and AmeriCorps State and National participants and grant-funded staff with recurring access to children, persons age 60 or older, or individuals with disabilities, who enroll in, or are hired by, your program after November 23, 2007. For all other covered individuals, the State criminal registry check must be conducted on an individual who enrolls in, or is hired by, your program on or after October 1, 2009.

(b) The National Sex Offender Public Web site check must be conducted on an individual who is serving, or applies to serve, as a Foster Grandparent, Senior Companion, or AmeriCorps State and National participant or grant-funded staff with recurring access to children, persons age 60 or older, or individuals with disabilities on or after November 23, 2007. For all other covered individuals, the National Sex Offender Public Web site check must be conducted on an individual who enrolls in, or is hired by, your program on or after October 1, 2009.

■ 36. Add § 2540.330 to Subpart C to read as follows:

§ 2540.330 Parental Involvement Required

(a) *Consultation Requirement.* Programs that receive assistance under the national service laws shall consult with the parents or legal guardians of children in developing and operating programs that include and serve children.

(b) *Parental Permission.* Programs that receive assistance under the national service laws must, before transporting minor children, provide the children's parents or legal guardians with the reason for the transportation and obtain the parent's or legal guardian's permission for such transportation, consistent with State law.

PART 2550—REQUIREMENTS AND GENERAL PROVISIONS FOR STATE COMMISSIONS AND ALTERNATIVE ADMINISTRATIVE ENTITIES

■ 37. The authority citation for Part 2550 continues to read as follows:

Authority: 42 U.S.C. 12638.

■ 38. Amend § 2550.50 by:

■ a. Removing the word ''and'' from the end of paragraph (a)(8);

■ b. Removing the period and adding ''; and'' at the end of paragraph (a)(9);

■ c. Adding a new paragraph (a)(10); and

■ d. Revising paragraph (i).

The additions and revisions read as follows:

§ 2550.50 What are the composition requirements and other requirements, restrictions, or guidelines for State Commissions?

(a) * * *

(10) A representative of the volunteer sector.

* * * * *

(i) *The role of the Corporation representative.* The Corporation will designate one of its employees to serve as a representative to each State or group of States. This individual must be included as an ex officio non-voting member on the State Commission. In general, the Corporation representative will be responsible for assisting States in carrying out national service activities.

■ 39. Amend § 2550.80 by:

■ a. Revising paragraph (a) introductory text;

■ b. Redesignating paragraph (a)(5) as (a)(9);

■ c. Adding new paragraphs (a)(5), (a)(6), (a)(7), and (a)(8); and

■ d. Adding a new paragraph (i).

The revisions and additions read as follows:

§ 2550.80 What are the duties of the State entities?

* * * * *

(a) *Development of a three-year, comprehensive national and community service plan and establishment of State priorities.* The State entity must develop and annually update a Statewide plan for national service covering a three-year period, the beginning of which may be set by the State, that is consistent with the Corporation's broad goals of meeting human, educational, environmental, and public safety needs and meets the following minimum requirements:

* * * * *

(5) The plan must ensure outreach to, and coordination with, municipalities and county governments regarding the national service laws.

(6) The plan must provide for effective coordination of funding applications submitted by the State and other organizations within the State under the national service laws.

(7) The plan must include measurable goals and outcomes for national service programs funded through the State consistent with the performance levels for national service programs.

(8) The plan is subject to approval by the chief executive officer of the State.

* * * * *

(i) *Supplemental State Service Plan for Adults Age 55 or Older.* To be eligible to receive a grant or allotment under subtitles B or C of title I of the National and Community Service Act (42 U.S.C. 12501 *et seq.*), or to receive a distribution of approved national service positions under subtitle C of title I of that Act, a State must work with appropriate State agencies and private entities to develop a comprehensive State service plan for service by adults age 55 or older. This plan must:

(1) Include the following elements:

(i) Recommendations for policies to increase service for adults age 55 or older, including how to best use such adults as sources of social capital, and how to utilize their skills and experience to address community needs;

(ii) Recommendations to the State agency on aging (as defined in section 102 of the Older Americans Act of 1965, 42 U.S.C. 3002) on a marketing outreach plan to businesses and outreach to nonprofit organizations, the State educational agency, institutions of higher education, and other State agencies;

(iii) Recommendations for civic engagement and multigenerational activities, including early childhood education and care, family literacy, and

other after school programs, respite services for adults age 55 or older and caregivers, and transitions for older adults age 55 or older to purposeful work in their post-career lives;

(2) Incorporate the current knowledge base regarding—

(i) The economic impact of the roles of workers age 55 or older in the economy;

(ii) The social impact of the roles of such workers in the community;

(iii) The health and social benefits of active engagement for adults age 55 or older; and

(3) Be made available to the public and transmitted to the Corporation.

■ 40. Revise § 2550.110 to read as follows:

§ 2550.110 What grants will be available from the Corporation to assist in establishing and operating a State Commission, Alternative Administrative Entity, or Transitional Entity?

(a) *Administrative Grants.* The Corporation may make administrative grants to States in an amount no less than $250,000 and up to $1 million for the purpose of establishing or operating a State Commission or AAE; these grants will be available to States which have Corporation-approved Transitional Entities only if those States commit to establishing a Corporation-approved State Commission or AAE prior to the expiration of the transitional period.

(b) *Limitation on Federal share.* Except as provided in paragraph (c) of this section, the amount of a grant that may be provided to a State under this subsection, together with other Federal funds available to establish or operate the State Commission or AAE, may not exceed 50 percent of the total cost to establish or operate the State Commission or AAE.

(c) *Alternative Match Schedule.* The Corporation may permit a State that demonstrates hardship or a new State Commission to meet alternative matching requirements for such a grant as follows:

Grant amount	Match requirement
(1) First $100,000	No match requirement.
(2) Amounts above $100,000 but less than $250,000	$1 of non-Federal funds for every $2 provided by the Corporation in excess of $100,000.
(3) Amounts greater than $250,000	$1 of non-Federal funds for every $1 provided by the Corporation in excess of $250,000.

PART 2551—SENIOR COMPANION PROGRAM

■ 41. The authority citation for part 2551 continues to read as follows:

Authority: 42 U.S.C. 4950 *et seq.;* 42 U.S.C. 12651b–12651d; E.O. 13331, 69 FR 9911.

■ 42. Revise § 2551.11 to read as follows:

§ 2551.11 What is the Senior Companion Program?

The Senior Companion Program provides grants to qualified agencies and organizations for the dual purpose of engaging persons 55 and older, particularly those with limited incomes, in volunteer service to meet critical community needs; and to provide a high quality experience that will enrich the lives of the volunteers. Program funds are used to support Senior Companions in providing supportive, individualized services to help older adults with special needs maintain their dignity and independence.

§ 2551.23 [Amended]

■ 43. Amend paragraph (f) of § 2551.23 by removing the term ''§ 2551.45'' and adding ''2551.46'' in its place.

§ 2551.41 [Amended]

■ 44. Amend paragraph (a)(1) of § 2551.41 by removing the term ''60'' and adding ''55'' in its place.

■ 45. Revise § 2551.42 to read as follows:

§ 2551.42 What types of criminal convictions or other adjudications disqualify an individual from serving as a Senior Companion or as a Senior Companion grant-funded employee?

Any individual who is registered, or who is required to be registered, on a State sex offender registry, or who has been convicted of murder, as defined under Federal law in section 1111 of title 18, United States Code, is deemed unsuitable for, and may not serve in, a position as a Senior Companion or as a Senior Companion grant-funded employee.

■ 46. Amend § 2551.43 by revising paragraph (a) to read as follows:

§ 2551.43 What income guidelines govern eligibility to serve as a stipended Senior Companion?

(a) To receive a stipend, a Senior Companion may not have an annual income from all sources, after deducting allowable medical expenses, which exceeds the program's income eligibility guideline for the State in which he or she resides. The income eligibility guideline for each State is 200 percent of the poverty line, as set forth in 42 U.S.C. 9902 (2).

* * * * *

§ 2551.101 [Amended]

■ 47. Amend § 2551.101 by removing the term ''60'' and adding ''55'' in its place.

PART 2552—FOSTER GRANDPARENT PROGRAM

■ 48. The authority citation for part 2552 continues to read as follows:

Authority: 42 U.S.C. 4950 *et seq.;* 42 U.S.C. 12651b–12651d; E.O. 13331, 69 FR 9911.

■ 49. Revise § 2552.11 to read as follows:

§ 2552.11 What is the Foster Grandparent Program?

The Foster Companion Program provides grants to qualified agencies and organizations for the dual purpose of engaging persons 55 and older, particularly those with limited incomes, in volunteer service to meet critical community needs; and to provide a high quality experience that will enrich the lives of the volunteers. Program funds are to be used to support Foster Grandparents in providing supportive, person to person service to children with exceptional needs, or in circumstances that limit their academic, social, or emotional development.

■ 50. Amend § 2552.23 by:

■ a. Revising paragraph (a);

■ b. In paragraph (f), removing the term ''2552.45'' and adding ''2552.46'' in its place.

The revised text reads as follows:

§ 2552.23 What are a sponsor's program responsibilities?

* * * * *

(a) Focus Foster Grandparent resources on providing supportive services and companionship to children with special and exceptional needs, or

in circumstances that limit their academic, social, or emotional development within the project's service area.

* * * * *

§ 2552.41 [Amended]

■ 51. Amend § 2552.41(a)(1) by removing the term ''60'' and adding ''55'' in its place.

■ 52. Revise § 2552.42 to read as follows:

§ 2552.42 What types of criminal convictions or other adjudications disqualify an individual from serving as a Foster Grandparent or as a Foster Grandparent grant-funded employee?

Any individual who is registered, or who is required to be registered, on a State sex offender registry, or who has been convicted of murder, as defined under Federal law in section 1111 of title 18, United States Code, is deemed unsuitable for, and may not serve in, a position as a Foster Grandparent or as a Foster Grandparent grant-funded employee.

■ 53. Amend § 2552.43 by revising paragraph (a) to read as follows.

§ 2552.43 What income guidelines govern eligibility to serve as a stipended Foster Grandparent?

(a) To receive a stipend, a Foster Grandparent may not have an annual income from all sources, after deducting allowable medical expenses, which exceeds the program's income eligibility guideline for the State in which he or she resides. The income eligibility guideline for each State is 200 percent of the poverty line, as set forth in 42 U.S.C. 9902 (2).

* * * * *

■ 54. Revise § 2552.81 to read as follows:

§ 2552.81 What type of Children are eligible to be served?

Foster Grandparents serve only children and youth with special and exceptional needs, or in circumstances that limit their academic, social, or emotional development, who are less than 21 years of age.

■ 55. Amend § 2552.82 by:

■ a. In paragraph (a) introductory text, by removing the term ''mentally retarded child'' and adding the term ''child with a disability'' in its place;

■ b Revising paragraph (b); and

■ c. In paragraph (c), by removing the term'' mentally retarded child'' and adding the term ''child with a disability'' in its place.

Revised text reads as follows:

§ 2552.82 Under what circumstances may a Foster Grandparent continue to serve an individual beyond his or her 21st birthday?

* * * * *

(b) In cases where the assigned Foster Grandparent becomes unavailable to serve a particular individual, the replacement of that Foster Grandparent shall be made through mutual agreement by all parties involved.

* * * * *

§ 2552.101 [Amended]

■ 56. Amend § 2552.101 by removing the term ''60'' and adding ''55'' in its place.

PART 2553—RETIRED AND SENIOR VOLUNTEER PROGRAM

■ 57. The authority citation for part 2553 continues to read as follows:

Authority: 42 U.S.C. 4950 *et seq.;*

■ 58. Amend § 2553.25 by adding paragraph (i) to read as follows:

§ 2553.25 What are a sponsor's administrative responsibilities?

* * * * *

(i) Conduct criminal history checks on all grant-funded staff employed on or after October 1, 2009, in accordance with the requirements in 45 CFR 2540.200–207.

Dated: September 2, 2009.

Frank R. Trinity,

General Counsel.

[FR Doc. E9–21671 Filed 9–9–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 040205043–4043–01]

RIN 0648–XR06

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-grouper Fishery of the South Atlantic; Closure of the July-December 2009 Commercial Fishery for Vermilion Snapper in the South Atlantic

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the commercial fishery for vermilion snapper in the exclusive economic zone (EEZ) of the South Atlantic. NMFS has determined that the quota for the commercial fishery for vermilion snapper will have been reached by September 18, 2009. This closure is necessary to protect the vermilion snapper resource.

DATES: Closure is effective 12:01 a.m., local time, September 18, 2009, through 11:59 p.m., local time, on December 31, 2009.

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

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. Those regulations set the commercial quota for vermilion snapper in the South Atlantic at 302,523 lb (137,222 kg) for the current fishing period, July 1 through December 31, 2009, as specified in 50 CFR 622.42(e)(4)(ii).

Under 50 CFR 622.43(a), NMFS is required to close the commercial fishery for a species or species group when the quota for that species or species group is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. Based on current statistics, NMFS has determined that the available commercial quota of 302,523 lb (137,222 kg) for vermilion snapper will be reached on or before September 18, 2009. Accordingly, NMFS is closing the commercial fishery for vermilion snapper in the South Atlantic EEZ from 12:01 a.m., local time, on September 18, 2009, through 11:59 p.m., local time, on December 31, 2009. The operator of a vessel with a valid commercial vessel permit for snapper-grouper having vermilion snapper onboard must have landed and bartered, traded, or sold such vermilion snapper prior to 12:01 a.m., local time, September 18, 2009.

During the closure, the bag limit and possession limits specified in 50 CFR 622.39(d)(1)(v) and (d)(2), respectively, apply to all harvest or possession of vermilion snapper in or from the South Atlantic EEZ, and the sale or purchase of vermilion snapper taken from the EEZ is prohibited. The prohibition on sale or purchase does not apply to sale or purchase of vermilion snapper that were harvested, landed ashore, and sold prior to 12:01 a.m., local time,

September 18, 2009, and were held in cold storage by a dealer or processor. For a person on board a vessel for which a Federal commercial or charter vessel/headboat permit for the South Atlantic snapper-grouper fishery has been issued, the sale and purchase provisions of the commercial closure for vermilion snapper would apply regardless of whether the fish are harvested in state or Federal waters, as specified in 50 CFR 622.43(a)(5)(ii).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such prior notice and opportunity for public comment is unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself has already been subject to notice and comment, and all that remains is to notify the public of the closure. Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect the fishery since the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30–day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

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

Dated: September 4, 2009.

Alan D. Risenhoover,

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

[FR Doc. E9–21823 Filed 9–4–09; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281–0369–02]

RIN 0648–XR32

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the commercial fishery for king mackerel in the exclusive economic zone (EEZ) in the western zone of the Gulf of Mexico. This closure is necessary to protect the Gulf king mackerel resource.

DATES: The closure is effective noon, local time, September 12, 2009, through June 30, 2010.

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

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, and, in the Gulf of Mexico only, dolphin and bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The commercial fishery for the Gulf of Mexico migratory group of king mackerel in the western zone is managed under a commercial quota of 1.01 million lb (0.46 million kg) (66 FR 17368, March 30, 2001) for the current fishing year, July 1, 2009, through June 30, 2010.

Under 50 CFR 622.43(a), NMFS is required to close any segment of the king mackerel commercial fishery when its quota has been reached, or is projected to be reached, by filing a notification at the Office of the Federal Register. NMFS has determined the commercial quota of 1.01 million lb (0.46 million kg) for Gulf group king mackerel in the western zone will be reached by September 12, 2009. Accordingly, the commercial fishery for Gulf group king mackerel in the western zone is closed effective noon, local time, September 12, 2009, through June 30, 2010, the end of the fishing year. The boundary between the eastern and western zones is 87°31′06″ W. long., which is a line directly south from the Alabama/Florida boundary.

Except for a person aboard a charter vessel or headboat, during the closure, no person aboard a vessel for which a commercial permit for king mackerel has been issued may fish for or retain Gulf group king mackerel in the EEZ in the closed zones or subzones. A person aboard a vessel that has a valid charter vessel/headboat permit for coastal migratory pelagic fish may continue to retain king mackerel in or from the closed zones or subzones under the bag and possession limits set forth in 50 CFR 622.39(c)(1)(ii) and (c)(2), provided the vessel is operating as a charter vessel or headboat. A charter vessel or headboat that also has a commercial king mackerel permit is considered to be operating as a charter vessel or headboat when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

During the closure, king mackerel from the closed zones or subzones taken in the EEZ, including those harvested under the bag and possession limits, may not be purchased or sold. This prohibition does not apply to trade in king mackerel from the closed zones or subzones that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such prior notice and opportunity for public comment is unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself has already been subject to notice and comment, and all that remains is to notify the public of the closure. Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect the fishery since the capacity of

the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30–day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

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

Dated: September 4, 2009.

Alan D. Risenhoover,

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

[FR Doc. E9–21832 Filed 9–4–09; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 174
Thursday, September 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 40

[PRM–40–27; NRC–2008–0453]

State of Colorado and the Organization of Agreement States; Consideration of Petition in the Rulemaking Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking: Resolution and closure of petition docket.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received a petition for rulemaking dated May 10, 1999, filed by the State of Colorado and the Organization of Agreement States. The petition was docketed by the NRC and was assigned as PRM–40–27. The petitioners requested that the NRC regulations governing small quantities of source material be amended to eliminate the exemption for source material general licensees from the requirements that specify standards of protection against radiation, and require notification and instruction of individuals who participate in licensed activities. The petitioners believe that no basis exists for the existing exemption for these licensees from these requirements and that the licensee could exceed dose limits, in certain situations, that would normally apply to licensed operations. The NRC reviewed the petition and determined that this petition merits further consideration. Therefore, the concerns and issues raised in the petition will continue to be considered through an ongoing rulemaking.

DATES: The docket for the petition for rulemaking, PRM–40–27, is closed on September 10, 2009.

ADDRESSES: Public comments and NRC actions on the issues raised by this petition are accessible at the Federal rulemaking Web site, *http://www.regulations.gov*, by searching on Docket ID NRC–2008–0453. Rulemaking documents that will further consider the issues related to PRM–40–27 may be located by searching on Docket ID NRC–2009–0084 at the Federal rulemaking Web site. The NRC also tracks all rulemaking actions in the ''NRC Regulatory Agenda: Semiannual Report (NUREG–0936).'' The Regulatory Agenda is a semiannual compilation of all rules on which the NRC has recently completed action, has proposed action, or is considering action, and of all petitions for rulemaking that the NRC is working to resolve.

You can access publically available documents related to this petition for rulemaking using the following methods:

Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under the following Docket ID: NRC–2008–0453.

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

NRC's Agency-wide Document Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the 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 Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Kimyata Morgan Butler, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–0733, e-mail: *Kimyata.MorganButler@nrc.gov* or Gary Comfort, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–8106, e-mail: *Gary.Comfort@nrc.gov*.

SUPPLEMENTARY INFORMATION:

The Petition

On July 7, 1999 (64 FR 36615), the NRC published a notice of receipt of a petition for rulemaking filed by the State of Colorado and the Organization of Agreement States. The petitioners requested that the NRC amend its regulations to eliminate an exemption from the requirements of 10 CFR Parts 19 and 20 that currently applies under the general license for small quantities of source material found in 10 CFR 40.22(b) and require notification and instruction of individuals who participate in licensed activities. The petitioners believe that generally licensed quantities of source material may not have been regarded as a health and safety hazard when the exemption was enacted. However, the petitioners contend that industry experience has revealed that source material general licensees:

(1) Can expose workers to levels of radiation that would normally require monitoring;

(2) Dispose of radioactive materials in a manner that would not be acceptable for other licensees;

(3) Produce contamination that exceeds release limits; and

(4) Potentially exceed public dose limits to individuals other than those working at their facilities.

The petitioners support their claims with examples of two cases that they believe illustrate the problem of the blanket exemption in 10 CFR 40.22(b).

Public Comments on the Petition

The notice of receipt of the petition for rulemaking invited interested persons to submit comments. The comment period closed on September 20, 1999. The NRC received ten comment letters. Comment letters were submitted by two members of the public, one private company, and seven Agreement States. All of the commenters supported the petition. In addition, one comment letter was also considered as a separate petition for rulemaking (PRM–40–28) on depleted uranium counterweights and subsequently resolved separately from this petition.

Most of the commenters reiterated the claims presented in the original petition. One commenter suggested that persons distributing source material should notify the recipients of the hazards of the material and the

distributor should report shipments of ''larger'' quantities to appropriate regulatory agencies. The same commenter also suggested that the 15-pound limit should potentially be reduced to a lower limit that was more appropriate for use under a general license. Two commenters provided additional examples of cases when the use of source material under the general license could have resulted in exposures in excess of the limits specified in 10 CFR Part 20.

Reasons for Closure of the Petition

Although the NRC is not aware of widespread issues with the current general license requirements in 10 CFR 40.22, the NRC has collected and evaluated data on practices allowed under the general license which indicate that it may be possible in certain situations for exposures to occur when the requirements in 10 CFR Parts 19 and 20 would normally apply. The NRC concluded that the underlying issue of re-evaluating the safety significance of granting exemption for source material general licenses from 10 CFR Parts 19 and 20 is an important one and merits further consideration through rulemaking. The NRC will continue consideration of this issue as part of a proposed rulemaking on ''Distribution of Source Material to Exempt Persons and General Licensees and Revision of 10 CFR 40.22 General License (Part 40),'' RIN 3150–AH15. Further information on the rulemaking may be tracked through *http://www.regulations.gov* under Docket ID NRC–2009–0084.

Although the NRC will continue to consider the issues raised by the petition in the rulemaking process, the petitioners' concerns may not be addressed exactly as the petitioners have requested. During the rulemaking process, the NRC will solicit comments from the public and will consider all comments before finalizing the rule.

For the reasons cited in this document, the NRC closes the docket for PRM–40–27.

Dated at Rockville, Maryland, this 20th day of August 2009.

For the Nuclear Regulatory Commission.

Bruce S. Mallett,

Acting Executive Director for Operations.

[FR Doc. E9–21860 Filed 9–9–09; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

10 CFR Part 609

RIN 1901–AB27

Loan Guarantees for Projects That Employ Innovative Technologies

AGENCY: Office of the Chief Financial Officer, Department of Energy (DOE).

ACTION: Proposed rule; extension of public comment period.

SUMMARY: This notice announces that the period for submitting comments on the proposed rule to amend the regulations implementing the loan guarantee program authorized by section 1703 of Title XVII of the Energy Policy Act of 2005 is extended to September 22, 2009. In the proposed rule, DOE considers certain changes to: Provide flexibility in the determination of appropriate structures, collateral packages to secure guaranteed loan obligations, and other credit support; facilitate collateral sharing and related inter-creditor arrangements with other project lenders; and provide a more workable interpretation of certain statutory provisions regarding DOE's treatment of collateral.

DATES: Comments must be postmarked no later than September 22, 2009.

ADDRESSES: Any comments submitted must reference the proposed rule to amend the regulations implementing the Title XVII loan guarantee program and RIN number 1901–AB21. Comments may be submitted using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: lgprogram@hq.doe.gov.* Include RIN number 1901–AB21 in the subject line of the message.
- *Postal Mail:* David G. Frantz, Director, Loan Guarantee Program Office, Office of the Chief Financial Officer, U.S Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* David G. Frantz, Director, Loan Guarantee Program Office, Office of the Chief Financial Officer, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed original paper copy.

FOR FURTHER INFORMATION CONTACT: David G. Frantz, Director, Loan Guarantee Program Office, Office of the Chief Financial Officer, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–8336, e-mail: *lgprogram@hq.doe.gov;* or Susan S. Richardson, Chief Counsel for the Loan Guarantee Program, Office of the General Counsel, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–8336, *e-mail: lgprogram@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On August 7, 2009, DOE published a proposed rule in the **Federal Register** to make certain changes to: (1) Provide flexibility in the determination of appropriate structures, collateral packages to secure guaranteed loan obligations, and other credit support; (2) facilitate collateral sharing and related inter-creditor arrangements with other project lenders; and (3) provide a more workable interpretation of certain statutory provisions regarding DOE's treatment of collateral. (74 FR 39565) The proposed rule provided for the submission of comments by September 8, 2009. In response to a request for additional time to comment on the proposed rule, DOE hereby extends the comment period and will consider any comments postmarked no later than September 22, 2009. DOE deems any comments received after publication of the proposed rule and by the September 22, 2009 postmark deadline to be timely submitted.

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

Steve Isakowitz,

Chief Financial Officer.

[FR Doc. E9–21756 Filed 9–9–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0540; Airspace Docket No. 09–ASW–17]

Proposed Amendment of Class E Airspace; Altus, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace for the Altus, OK area. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Altus/Quartz Mountain Regional Airport, Altus, OK. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) aircraft operations at Altus/Quartz Mountain Regional Airport.

DATES: Comments must be received on or before October 26, 2009.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2009–0540/Airspace Docket No. 09–ASW–17, at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: (817) 321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2009–0540/Airspace Docket No. 09–ASW–17.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration (FAA), Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), part 71 by adding additional controlled Class E airspace in the Altus, OK airspace area. Specifically, that airspace extending upward from 700 feet above the surface for SIAPs operations at Altus/Quartz Mountain Regional Airport, Altus, OK.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9S, dated October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would add additional controlled airspace to the Altus, OK airspace area.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, dated October 3, 2008, and effective October 31, 2008, is amended as follows:

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

* * * * *

ASW OK E5 Altus, OK [Amended]

Altus AFB, OK
(Lat. 34°39′59″ N., long. 99°16′05″ W.)
Altus VORTAC
(Lat. 34°39′46″ N., long. 99°16′16″ W.)
Altus/Quartz Mountain Regional Airport, OK
(Lat. 34°41′56″ N., long. 99°20′19″ W.)
Tipton Municipal Airport, OK
(Lat. 34°27′31″ N., long. 99°10′17″ W.)
Frederick Municipal Airport, OK
(Lat. 34°21′08″ N., long. 98°59′02″ W.)
Altus AFB ILS Runway 17R Localizer
(Lat. 34°38′32″ N., long. 99°16′26″ W.)

That airspace extending upward from 700 feet above the surface within a 9.1-mile radius of Altus AFB and within 1.6 miles each side of the 185° radial of the Altus VORTAC extending from the 9.1-mile radius to 11.9 miles south of Altus AFB and within 3 miles west and 2 miles east of the Altus AFB ILS Runway 17R Localizer north course extending from the 9.1-mile radius to 15 miles north of Altus AFB; and within a 6.5-mile radius of Altus/Quartz Mountain Regional Airport; and within 2 miles each side of the 000° bearing from Altus/Quartz Mountain Regional Airport extending from the 6.5-mile radius to 11.4 miles north of

Altus/Quartz Mountain Regional Airport; and within a 5.4-mile radius of Tipton Municipal Airport; and within a 7.2-mile radius of Frederick Municipal Airport; and within 2.5 miles each side of the 180° bearing from the Frederick Municipal Airport extending from the 7.2-mile radius to 7.7 miles south of Frederick Municipal Airport; and within a 12-mile radius of Altus AFB beginning at a point 3 miles west of the Altus VORTAC 019° radial, thence clockwise along the 12-mile radius of Altus AFB, ending at a point 3 miles west of the Altus VORTAC 185° radial.

* * * * *

Issued in Fort Worth, TX, on August 27, 2009.

Ronnie L. Uhlenhaker,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. E9–21767 Filed 9–9–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 633

[Docket No.: FTA–2009–0030]

RIN 2132–AA92

Capital Project Management

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: In an effort toward greater transparency and to ensure integrity in public investments, FTA today publishes an advance notice of proposed rulemaking on capital project management. The Federal Transit Administration (FTA) is considering a revision of its Project Management Oversight (PMO) rule, shifting its focus from project oversight only to project management and oversight. A revised Part would more clearly identify necessary project management skills needed to be demonstrated by project sponsors for all fixed guideway capital projects, as well as additional requirements that would apply only to the more complex major capital projects, and distinguish project characteristics that would require documentation of project plans and implementation strategies in a project management plan, as well as the use of FTA's Project Management Oversight Contractors (PMOCs). Beginning the rulemaking process to update its project management rule will aid some key agency priorities. It will help ensure integrity and accountability in its construction grant programs, and it will provide data the agency can use in its efforts to streamline its discretionary capital project approval process. FTA seeks to elicit a broad array of comments from project sponsors, the industry, other stakeholders, and the public on a number of subjects.

DATES: Comments must be received by November 9, 2009. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may submit comments identified by the docket number (FTA–2009–0030) by any of the following methods:

Federal eRulemaking Portal: Go to *www.regulations.gov*. Follow the online instructions for submitting comments.

U.S. Mail: U.S. Department of Transportation, Docket Operations, West Building, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

Hand Delivery: U.S. Department of Transportation, Docket Operations, West Building, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Fax: (202) 493–2251.

Instructions: You must include the agency name (Federal Transit Administration), and docket number (FTA–2009–0030) or Regulatory Identification Number (RIN 2132–AA92) for this rulemaking at the beginning of your comments. All comments received will be posted, without change and including any personal information provided, to *www.regulations.gov* and *http://dms.dot.gov*, where they will be available to internet users. *Please see* the Privacy Act.

You should submit two copies of your comments if you submit them by mail. If you wish to receive confirmation that FTA received your comments, you must include a self-addressed, stamped postcard. Due to security procedures in effect since October 2001 regarding mail deliveries, mail received through the U.S. Postal Service may be subject to delays. Parties submitting comments should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand.

For access to the DOT docket to read materials relating to this notice, please go to *http://dms.dot.gov* at any time or the Docket Management System.

FOR FURTHER INFORMATION CONTACT: For program questions, please contact Aaron C. James, Sr. at (202) 493–0107 or *aaron.james@dot.gov*, or Carlos M. Garay at (202) 366–6471 or *carlos.garay@dot.gov*. For legal questions, please contact Jayme L. Blakesley at (202) 366–0304 or *jayme.blakesley@dot.gov*. The principal office of FTA is located at 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Introduction, Background, and Purpose
- A. Introduction
- B. Background
- C. Purpose of This ANPRM

II. Applicability
- A. Fixed Guideway Capital Project
- B. Major Capital Project
- C. Questions

III. Principles and Requirements for Fixed Guideway Capital Projects
- A. Fixed Guideway Capital Projects
  - 1. Technical Capacity and Capability
  - 2. Satisfactory Continuing Control
  - 3. Maintenance of Facilities and Equipment
  - 4. Financial Plan
  - 5. Grant Project Description, Budget and Milestones
- B. Major Capital Projects
  - 1. Technical Capacity and Capability
  - 2. Project Management Plan (PMP)
  - 3. Project Implementation
  - 4. Performance Requirements
  - 5. Reporting
  - 6. Exceptions for Past Performance
- C. Questions

IV. FTA Oversight of Fixed Guideway and Major Capital Projects
- A. Fixed Guideway Capital Projects
- B. Major Capital Projects
  - 1. Roles and Responsibilities
  - 2. Risk-Informed Project Management Oversight Approach
- C. Questions

I. Introduction, Background, and Purpose

A. Introduction

In this Advance Notice of Proposed Rulemaking (ANPRM), and to ensure integrity in its public investments through transparency and accountability, FTA begins the process of revising its Project Management Oversight rule at 49 CFR Part 633. The end result would be a Project Management rule governing all FTA-funded fixed guideway capital projects as well as additional requirements for major capital projects, emphasizing a set of standards and principles for sound project management. Specifically, FTA seeks to restructure the current Part 633 to incorporate the best practices in the transit industry with respect to reasonable project performance measures. When final, this project management rule should articulate the criteria and skills expectations necessary to assure a project sponsor's successful implementation of a fixed guideway capital project, including a major capital project. The new Part 633 also would be updated to reflect

oversight tools and methodologies that have been developed since the original rule went into effect.

Updating its project management rule at this time will aid FTA as it also considers streamlining its discretionary capital construction program. FTA seeks to establish methods that help ensure integrity and accountability in its capital grant programs before simplifying its competitive construction grant programs.

As a first step in this rulemaking process, and in the spirit of openness and transparency, FTA is publishing this ANPRM to get as broad input as possible before developing a Notice of Proposed Rulemaking. This ANPRM presents ideas and concepts and solicits comments and suggestions on FTA's proposed requirements that are meant to help ensure that grantees deliver capital projects on time, within budget, and with the promised scope, while assuring a quality product and the safety and security of the riding public. This ANPRM does not seek to alter existing New Starts guidance previously published by FTA but instead to enhance engineering and project management aspects of all major capital projects. Through this ANPRM FTA seeks to obtain the views of its project sponsors, the industry, other stakeholders, and the public on a number of subjects related to project management and project management oversight.

B. Background

FTA awards over $10 billion annually for the purchase of all sizes and types of public transportation rolling stock, as well as the construction, rehabilitation, maintenance, and improvement of public transportation facilities and systems throughout the United States. Fixed guideway capital projects, including those traditionally defined as major capital projects, reflect significant investments by FTA, and typically are the largest and most challenging projects sponsored by FTA grantees.

FTA (as the Urban Mass Transit Administration (UMTA)) issued the original Project Management Oversight (PMO) rule on September 1, 1989, 49 CFR Part 633 (54 FR 36708). This rule prescribed the standards necessary at that time to carry out the responsibilities of UMTA's Project Management Oversight Contractors (PMOCs) program; set forth basic requirements for project management plans for major capital projects; and implemented section 324 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, that permitted UMTA to use up to ½ of 1 percent of the funds available in each fiscal year for the agency's capital programs for project management oversight of major capital projects. At the time the original rule was published, FTA's annual program was less than $3 billion, and the PMO program had in effect 25 task orders for Project Management Oversight Contractors.

The basic oversight framework at 49 CFR Part 633 has served the agency well, focusing on the assignment of project management oversight contractors to major capital projects and requiring project sponsors to develop a comprehensive project management plan (PMP) to guide the planning and implementation of their major capital projects. The PMPs, combined with the PMOC deliverables have been critical to FTA for evaluating whether a project sponsor has the technical capacity and capability to execute a major capital project, verifying that projects proceed within schedule, scope, and budget, and mitigating problems as they arise.

Today, the dollar value of the Federal transit program has tripled, and the number of active PMOC task orders has doubled, indicating several things. First, there has been a significant increase in local decisions to invest in public transportation. Second, there has been a proliferation of project sponsors of major capital projects and an emerging need for more specific and systematic expectations for the industry in executing these types of projects. Third, FTA is participating in a larger number of ''mega projects''—projects of a total cost of $1,000,000,000 or more—which entail unique challenges to the agency as the steward of Federal tax dollars. Further, FTA research into the factors contributing to cost escalation in capital projects indicates that in many instances cost increases resulted from lack of management capabilities or project controls at the sponsor level.

Given the growth of the program, as well as the increasing number of relatively inexperienced transit agencies now seeking to execute complex infrastructure construction projects, FTA seeks to broaden the scope of its project management rule to include performance expectations for project sponsors seeking financial assistance in building major capital projects with significant FTA investment.

C. Purpose of This ANPRM

The purpose of this ANPRM is to provide general information about the direction, scope, and content of a possible revision to FTA's project management oversight rule contained in Part 633 of its regulations, and to seek answers to questions that will help the agency make decisions about the appropriate direction to take in its future rulemaking. Ultimately, this rulemaking will help improve grantees' project delivery success rate by establishing an effective regulatory framework for the management of project scope, schedule, cost, and quality for all fixed guideway projects. The overriding goals of this ANPRM and any subsequent rulemaking are to encourage grantees to apply more effective means of project management and for FTA to provide more effective oversight to its grantees and guidance to its PMOCs.

With this ANPRM, FTA seeks comment and suggestions for alternative approaches on the specific topics discussed below that may be the subject of a proposed and final rule, including its applicability, the definition of ''major capital project,'' the technical capacity and capability of project sponsors, the use of project management plans, requirements for successful implementation of fixed guideway capital projects, and FTA's project management oversight process.

II. Applicability

Anticipating a new project management rule generates several questions pertaining to the scope and applicability of the rule—i.e., what types of projects or project sponsors should the rule apply to and what aspects of project management should be subject to the more rigid requirements of a rule. FTA seeks comments on the approach described below. This approach would define two categories of projects—fixed guideway capital projects and major capital projects—with greater oversight being applied to major capital projects. We would apply 'baseline' competencies/skills requirements to all fixed guideway capital projects funded under the discretionary and formula programs at 49 U.S.C. 5309(b)(1) and (b)(2), based principally on the statutory requirements, with some focus on non-statutory areas that agency experience has identified as impediments to timely execution of fixed guideway grants. More extensive demonstrations of technical skills and project management expertise would be required for projects categorized as major capital projects under the new regulation.

A. Fixed Guideway Capital Project

A fixed guideway capital project would include any project funded with section 5309(b)(1) or (b)(2) funds. This would include all New Starts projects, Small Starts Projects (including Very Small Starts), and Fixed Guideway

Modernization formula projects. However, projects that also fall within the category of a major capital project would be subject to the more detailed requirements outlined below.

The fundamental distinction between a fixed guideway capital project and a major capital project are complexity, scale, and experience of the project sponsor. For example, some grants, despite exceeding $100 million, may only be for a single purpose, such as running rail and rail ties. Thus, even though this grant may have a very large dollar value, the necessary elements of a high risk capital project (i.e., interdependent parts, schedules, resources, and finances) do not exist. On the other hand, there are circumstances in which a series of fixed guideway modernization improvements, which individually might be under $100 million, would be managed together as a single investment with interdependent parts, thus falling within the definition of a major capital project.

Conversely, another project might qualify as a major capital project but be treated simply as a fixed guideway capital project because of certain characteristics that indicate lower risk. For instance, a small starts project or extension of a small start, executed by an experienced grantee, using the same technology and veteran in-house staff that had completed a previous project on time and on budget would represent a higher probability that it already has the requisite management skills to complete the new project on time and on budget.

Regardless of the project specifics, a defined baseline of technical skills and products would apply to all fixed guideway capital projects, and are discussed in more detail below. In particular, FTA seeks comments and suggestions on exactly what baseline products and skills demonstration should be applied to all of these projects.

B. Major Capital Project

A major capital project would include the following types of fixed guideway capital projects: (1) New fixed guideway construction or extension of an existing fixed guideway at any cost, but for which the project sponsor seeks $75 million or more in Section 5309 New Starts funds; or (2) fixed guideway construction, reconstruction, rehabilitation or modernization with a total project cost of $100 million or more, using funds under 49 USC section 5309(b), that identifies a set of activities and tasks that are interdependent to accomplish a specific objective with specific time, cost, and performance constraints; or (3) a project that the Administrator finds would benefit from the FTA project management oversight program, or presents certain characteristics that indicate the project would benefit from enhanced project management, engineering, and documentation of plans and processes. FTA seeks comment on what criteria it should use to determine whether a fixed guideway project should also be classified as a major capital project.

C. Questions

1. Is the distinction between a fixed guideway capital project and a major capital project clear enough? Please provide detail about how you would define any of the terms differently. Please explain your rationale.

2. Are there other characteristics—for either project category above—you believe should be called out? What are they and why?

3. Should a Project Management rule contain provisions that apply to non-fixed guideway capital projects, for example, bus projects under section 5309(b)(3)? Should the rule apply to projects above a certain dollar threshold only?

4. Under consideration is an expanded list of circumstances under which the Administrator could designate a project a ''major capital project'', triggering additional skills demonstration and process planning and project implementation documentation. A list of examples follows. Please provide your opinion and regarding whether FTA should consider the following criteria for designating a project as a major capital project:

- The project sponsor has limited experience in design, construction, rehabilitation, or modernization of fixed guideways;
- The project sponsor has a history of exceeding project budget or schedule targets on other fixed guideway capital projects;
- The project involves acquisition, maintenance, or rehabilitation of vehicles or rolling stock that is not routine for the sponsor;
- The project is of significant expense or unique complexity for the sponsor;
- The success of the project will depend upon the sponsor's timely transaction of third-party agreements;
- The project involves new technology, design or construction elements that increase risk to the project cost or schedule.

III. Principles and Requirements for Fixed Guideway Capital Projects

A. Fixed Guideway Capital Projects

Following is a description of the existing baseline requirements for fixed guideway capital projects and how FTA proposes to modify the requirements.

1. Technical Capacity and Capability

By law, before FTA can award grant funds for a capital fixed guideway grant, the project sponsor must certify, consistent with 49 U.S.C. 5309(c)(1)(B), that it ''has or will have the legal, financial, and technical capacity to carry out its proposed program of projects, including safety and security aspects of that program'' throughout the life of the project. In many cases, FTA accepts the annual certification of the project sponsor as sufficient evidence that it possesses adequate technical capacity and capability. In some instances, however, FTA has reason to question the sponsor's technical capacity to manage the scale, expense, or complexity of the proposed project, thus, FTA must make an independent assessment of the sponsor. Through this rulemaking, FTA expects to set specific performance standards for technical capacity and capability. When assessing technical capacity, FTA may consider the results of its routine oversight reviews. Recurring and specialized reviews give FTA an opportunity to verify the grantee's Certifications and Assurances (see Circular C 5010.1D, Chapter II.3, Responsibilities of Grant Management). In cases where FTA finds that a project sponsor's certifications are inaccurate, FTA may withhold grant approval until it can verify the accuracy of the sponsor's certifications.

Technical capacity and capability is interpreted to mean evidence of an effective management approach, appropriate organizational structure, sufficient experienced staff, adequate internal and external controls and other resources (project partners, consultant support, and other non-sponsor agency) to administer the complexities of the capital project. FTA is seeking comment on what is the appropriate minimum demonstration of capacity and capability and whether there are times when FTA should seek more information to demonstrate capacity.

2. Satisfactory Continuing Control

A statutory requirement contained in 49 U.S.C. 5309(c)(1)(B) is that FTA must assure itself that the project sponsor will have satisfactory continuing control over the use of the equipment or facilities. In short, this means that the project sponsor must own the assets,

have a long-term lease, or otherwise be able to ensure that the federal investment will endure for the useful life of the investment. FTA's circulars contain guidance on satisfactory continuing control.

3. Maintenance of Facilities and Equipment

The section 5309(c)(1)(B) requirement concerning this provision requires not only that the project sponsor have the capability to maintain the equipment or facilities, but that the project sponsor demonstrates the willingness to do so. Again, the FTA has typically relied on a certification for this requirement, except in the case of New Starts, where there is a statutory requirement that the sponsor demonstrate adequate financial resources to maintain and operate the existing system while expanding its capacity. We are considering requiring project sponsors to develop and apply an asset management plan for all fixed guideway capital projects. FTA proposes to use its current state of good repair (SGR) initiative to further refine its definition of asset management plan. However, FTA believes that an asset management plan would assist grantees in project identification and prioritization by showing the condition of existing facilities, equipment, and rolling stock, and by producing schedules for major maintenance or replacement along with estimated replacement, rehabilitation, and repair costs.

4. Financial Plan

The statute currently requires an annual financial plan for all projects exceeding $1 billion. FTA is considering whether to require some type of financial plan for all fixed guideway capital projects. Such a plan may include the identification of all Federal, State, and local resources anticipated to be used for the project. FTA invites comment on what should be the minimum expectations for financial plans of fixed guideway capital projects.

5. Grant Project Description, Budget and Milestones.

FTA Circulars require that a grant application contain sufficient project description, budget and milestones for both the sponsor and FTA to know what is included in the project and the timeframe for implementation. However, there is considerable disparity in the kind of information submitted and this can often cause delay in grant approvals. In order to assure consistency and transparency, FTA is considering enhancing the current grant project description, budget and milestone information it collects for fixed guideway capital projects. The agency is further considering the best way to elicit adequate detail to provide valuable oversight of project planning and implementation. FTA has found that project implementation delays are often caused by poor or incomplete planning, which means issues get addressed during implementation usually with both a time and cost impact. By including a more detailed description of the planning aspects of the project, FTA could assure appropriate oversight of these activities and that the project experiences fewer implementation delays.

B. Major Capital Projects

The design and construction of a major capital project is a challenging undertaking from a variety of perspectives, including the large number of organizations involved in delivering the project, the diverse interests of the organizations and individuals that have a stake in the project, the potential imbalance between the quantity of human resources with the right skill sets required to deliver a project and the current organizational resources of the project sponsor, and the timing and cost of procuring goods and services in a competitive market. Additional challenges include integrated work flow processes and controls that are internal and external to the owner's organization, and management of the people, processes, physical and financial resources needed to successfully complete the project. Based on FTA's experience, projects that exceeded their budget or schedule forecast typically encountered problems obtaining experienced staff in a timely manner or failed to properly manage cost increases that were within their control, including contract change orders.

Therefore, FTA proposes to strengthen its requirements for major capital project sponsors by requiring them to demonstrate that they have sufficient staff in place to demonstrate the capacity and capabilities to successfully implement their proposed projects, as opposed to simply relying on a plan to acquire the needed personnel. Other changes would be aimed toward improving the effectiveness of the FTA-required project management plan by requiring processes to be in place, as described below, and proposing criteria to be used to measure grantees' success in achieving desired outcomes or output and reporting the results to FTA.

1. Technical Capacity and Capability

FTA's minimum expectations for a sponsor to demonstrate technical capacity and capability include a set of policies and procedures inclusive of resources and authority, defined, implemented, and maintained by the sponsor's project management organization that demonstrates its ability to: (1) Manage the project at each stage of development, including the transitions between stages of development and implementation; (2) conform to grant agreements, applicable statutes, codes, ordinances, and safety and security standards; (3) comply with FTA requirements on the part of agencies, consultants, contractors, and subcontractors working under approved third party contracts or inter-agency agreements; (4) maintain the project work schedule agreed to by FTA and the sponsor and constantly monitor grant activities to assure that schedules are met and other performance goals are being achieved; (5) keep expenditures within the latest approved project budget; (6) select and implement appropriate project delivery methods; (7) implement an effective communications program to assure that all project functions work effectively towards project delivery; (8) demonstrate continuous in-house administrative and management direction of project implementation; and (9) conduct adequate technical inspection and supervision by qualified professionals of all work in progress.

FTA would expect most, if not all, of the matters identified above to be addressed in the project management plan, or alternatively in a separate document that is clearly identified in the PMP and incorporated by reference.

2. Project Management Plan (PMP)

The project sponsor must submit a formal and documented management approach that embodies the agency's policies, practices and procedures. Ideally, the PMP should outline in detail the sponsor's plan for developing and implementing the project, including the monitoring that will take place to ensure that each major phase or stage in the project development process will be duly executed. The PMP should basically define what the project is, the person responsible for implementation, and when the work will be performed. The plans required should not be interpreted as ''procedures.'' Procedures define how the work or functions are to be implemented in conformance to a plan that sets out the underlying philosophy and approach to each process. While the procedures might

identify who does something and when, the plan would describe why and what the action means.

FTA is considering placing additional emphasis on the PMP as a primary tool in the sponsor's management of the project. The PMP should demonstrate that the sponsor has thoroughly considered all phases of the project, giving careful thought, in particular, both to the methods used to execute the project and the interfaces between various participants. The PMP should explicitly define the objectives of the project and the methods and resources needed to meet those objectives. It should lay out the overall management strategy, including project controls, and the responsibilities, authorities, and measures of performance for all parties involved. Additionally, the PMP should reflect the unique characteristics of each project, such as the exact scope of work and specific resources, budget, and schedule. The PMP may be a compilation of associated plans or ''sub'' plans. Each sub plan should be incorporated into the PMP by reference and a copy appended, if practical, or as a minimum the signature page of the sub plan should be provided. Additionally, FTA may require that the PMP and associated sub plans packaged in a single or separate volume be supported by individual procedures or references to existing procedures. For example, a Test and Inspection Plan would be supported by detailed test procedures and QA/QC procedures, but the procedures would be made available to FTA on request instead of being submitted with the PMP.

FTA envisions that project sponsors will submit a core PMP document for all major capital projects, tailored for the type of project for which it is used, and including, at a minimum, the following sections or stand-alone volumes or references to existing plans that serve the same purpose: (1) General Project Overview (description, objectives, performance measures, management approach, etc.); (2) Defined Scope, Budget and Project Master Schedule; (3) Quality Assurance/Quality Control (QA/QC) Plan; (4) Procurement Plan; (5) Safety and Security Management Plan; (6) Risk and Contingency Management Plan; (7) Staffing Plan (organizational chart, staff roles and responsibilities); and (8) Project Controls and Systems. FTA expects the project sponsor's responsible office supervisor/manager would approve the plan for his/her respective office prior to submittal to FTA for approval. For example, the head of QA/QC would approve the QA/QC Plan for the proposed major capital project. This allows an integrated approach to developing the PMP and is expected to result in a more effective and efficient document. FTA would require each associated sub plan and the overall PMP to be updated as needed and resubmitted for FTA's approval.

In addition to the above core PMP and associated plans, the following sub plans are examples of what a project sponsor would develop and integrate into the PMP: (1) Real Estate Management Plan; (2) Fleet Management Plan; (3) Noise and Vibration Control Plan; (4) Rail Activation Plan; and (5) Geotechnical Risk Management Plan.

In the forthcoming Notice of Proposed Rulemaking (NPRM), FTA will provide further guidelines on when each plan within the PMP should be submitted for approval.

Currently for New Starts projects the sponsor establishes a PMP before entry into Preliminary Engineering and updates the PMP before advancing into the Final Design, construction, and start-up phases of a major capital project. FTA seeks comment on whether the requirement for Small Starts projects that are designated as major capital projects should establish a less detailed PMP than for New Starts projects. A less detailed PMP would be required before entry into project development and would be updated before advancing into construction.

FTA is also seeking comment on whether all or portions of the project management plan should apply to some or all fixed guideway capital projects or whether you would suggest a different approach to project management, keeping in mind that FTA must ensure that project sponsors manage their projects effectively and deliver projects on time and within budget, while at the same time achieving projected benefits and meeting quality standards.

3. Project Implementation

FTA may require project sponsors to demonstrate readiness to advance their projects to the next phase or stage in the project development process by successfully implementing the prerequisite requirements. Currently, a typical New Starts project moves through six major phases—Alternative Analysis, Preliminary Engineering, Final Design, Full Funding Grant Agreement, Construction, and Revenue Service Operations. A typical Small Starts project moves through five major phases, with Preliminary Engineering and Final Design being collapsed into a single phase called Project Development. FTA has developed checklists for grantees to use as a quick reference guide and to evaluate readiness to move into the next phase of project implementation. To view existing checklists for Preliminary Engineering, Final Design, and Full Funding Grant Agreements (FFGA) go to: *http://www.fta.dot.gov/planning/newstarts/planning_environment_218.html.* If the proposals outlined in this ANPRM are implemented, FTA would create new checklists for all major capital projects as a guide to project implementation. FTA seeks your comments on whether this would be useful.

4. Performance Requirements

FTA would like project sponsors to use the PMP as a tool to create a series of performance measures that they could report against. FTA would use this information to report on the success of major capital projects.

5. Reporting

FTA intends to propose specific reporting requirements for recipients of federal funding for major capital projects, including but not limited to, value engineering reports, safety and security management reports, monthly progress reports, and cost updates for FTA's cost databases. We seek comments both as to the appropriateness of these reporting requirements as well as the potential content of such reporting requirements. Please make your comments specific to each of the suggested reports.

6. Exceptions for Past Performance

FTA is considering relaxing requirements for project sponsors who have successfully completed other major capital projects within the past 7 to 10 years if, for example, it can be demonstrated that the organization has retained critical resources like the project manager, the organization's business processes and procedures have not been significantly altered, and the project involves the same or similar technology. In the above context, determining the successful completion of a major capital project would be based on FTA-established criteria such as cost and schedule performance contained within a percentage of the baseline cost estimate or revenue service date. We seek comment on whether you agree with this approach. Are there other factors that might justify relaxing FTA's requirements?

C. Questions

1. If a project budget is under $100 million, what is the appropriate demonstration of capacity and capability? Are there circumstances under which FTA should seek

additional demonstration of the project sponsor's technical capacity and capability for a project categorized as a fixed guideway capital project beyond what is described in this document?

2. What plans or requirements should FTA consider for a single purpose grant like a fixed guideway major capital project? Should a portion of the PMP apply?

3. Should the requirement for demonstrating satisfactory continuing control be different for a fixed guideway capital project than the regular FTA formula grant?

4. Are more detailed milestones and budget detail in a TEAM grant a feasible mechanism for managing and providing oversight to a fixed guideway capital grant? What other tools should be considered?

5. What minimum requirements should be contained in an asset management plan?

6. Would checklists for all fixed guideway capital projects be useful?

7. Should all or portions of the project management plan apply to some or all fixed guideway capital projects? What portions would apply to what specific types of fixed guideway capital projects? Please be as specific as possible.

8. Would you suggest a different approach to project management, keeping in mind that FTA must ensure that project sponsors manage their projects effectively and deliver projects on time and within budget, while at the same time achieving projected benefits and meeting quality standards?

9. Please comment on FTA's integrated project management plan approach discussed above. Do you think the integrated approach is more practical? If not, how would you structure the PMP to facilitate its usefulness?

10. Do you agree with FTA's plan to relax technical capacity and capability requirements for more experienced project sponsors that meet certain criteria? If you agree, are there other factors that FTA should consider?

11. Should FTA require all sponsors of major capital projects to develop and update PMPs for every project at corresponding stages in project development?

12. Other than the statutory evaluation process that applies to New Starts and Small Starts, should financial plans for all major capital projects meet the same minimum standards?

13. For major capital projects other than Section 5309 New Starts, should FTA specify a minimum number of years that a grantee's financial plan should cover? For example, is a financial plan covering three to five years of sufficient length to determine a grantee's financial capacity? Or should FTA require that the financial plan extend through the time period required for completion of the major capital project?

IV. FTA Oversight of Fixed Guideway and Major Capital Projects

A. Fixed Guideway Capital Projects

Not all fixed guideway projects are major capital projects. Consequently, the oversight of many Fixed Guideway Capital Projects is performed primarily by FTA staff in its regional offices. PMOCs are currently utilized to assist FTA in providing oversight of Major Capital Projects only.

B. Major Capital Projects

In the early 1980's several FTA-funded transit projects suffered major setbacks due to problems with quality, cost overruns, and delays in schedules. Thus, FTA received its project management oversight program mandate and funding from Congress in the Surface Transportation and Uniform Relocation Act of 1987. Congress directed FTA (then UMTA) to establish the Project Management Oversight (PMO) Program. This program has grown correspondingly with the growth of the overall FTA program.

1. Roles and Responsibilities

Since the inception of its Project Management Oversight program in 1989, FTA has supplemented its own staff with Project Management Oversight Contractors (PMOCs) to provide oversight for major capital projects. The primary role and responsibility of the PMOC is to help FTA ensure that such projects are on time, within budget, and in conformance with Federal requirements; are constructed to grantees' approved plans and design specifications; and are efficiently and effectively implemented. An initial, important role of the PMOC is to review the project sponsor's project management plan on behalf of FTA, and to make recommendations concerning its adequacy.

During the design, construction, start-up and operational phases of a project, on behalf of FTA, the PMOC monitors and reports on the project's development and implementation, consistent with its approved project management plan and accepted engineering and project management practices.

The PMOC performs routine project management oversight monitoring through on-site reviews and off-site document reviews. FTA uses these reviews to oversee the project and to conduct quarterly review meetings with the project sponsor. Periodic reports are submitted to FTA documenting project status, activities, and open issues including, but not limited to, the following:

- Timely management decisions.
- Delegations of authority.
- Management of project scope.
- Internal controls.
- Schedule analysis.
- Cost estimates and trends, including forecasting.
- Delivery of a quality product.
- Project security/safety.
- Continuing technical capacity.
- Risk assessment and contingency management.

FTA's primary objectives for providing Project Management Oversight of major capital projects are to assess grantees' technical capacity and capability and project management experience to successfully implement major capital projects and to monitor projects to ensure that they are progressing on time, within budget, and in accordance with the grantees' approved plans.

While FTA's program has grown significantly since 1989, its staff size has stayed the same. The PMOCs help to fill this resource gap as well as to provide specialized expertise when needed. While the oversight program has grown based on its percentage takedown of an expanding program, the need for oversight has increased even faster than the available funding because the larger program has generated both higher demand and more complex projects. FTA seeks comment on how it should best use its PMOCs to supplement its limited staff resources.

2. Risk-Informed Project Management Oversight Approach

Over the last five years, FTA has refined its approach to oversight to integrate risk analyses and transit specific databases to help the grantee deliver a successful project. By means of a Full Funding Grant Agreement (FFGA) for New Starts, or Project Construction Grant Agreement (PCGA) for Small Starts, both FTA and a grantee mutually agree on the scope, cost and schedule of a particular project. Management of the project to ensure that all three are delivered successfully begins early in the project development phase.

FTA has increased its use of risk assessment, management and mitigation strategies to ensure that Major Capital projects are constructed on-time and within budget. FTA relies on a portfolio of risk management tools to prevent project costs from escalating, to assess

the magnitude of risks in a project, and to help the project sponsor predict and establish a project budget and schedule. The most important objective of risk assessment and management protocols is to help the project sponsor predict the budget and schedule and to ensure that the sponsor can complete the project within the budget and schedule identified in the FTA grant award.

Project risks track the project development process. In general terms, they can be described as follows:

- Requirements Risk. The first step in project development is to identify the requirements—risks associated with definition of basic project needs and transit system requirements to meet those needs;
- Design Risk. The second step is project design—risks involving the adequacy of the information available at each stage of design and engineering, geotechnical conditions in particular, and the impact of redesign;
- Market Risks. The third step is to identify market risks—risks associated with both the procurement approach and the market conditions that can affect the cost of materials and the availability of bidders for construction services, materials, real estate, and manufactured products like vehicles; and
- Construction Risks. The final step is to identify construction risks—those risks associated with the actual construction and start-up of the system.

Once risks are identified, FTA and project sponsors must determine the best method for managing those risks. The preferred methods for managing risk are avoidance, reduction, and mitigation. Because they are really only ways of providing more up-front funding or reducing overall costs but do not reduce risk, less preferred risk management techniques include increasing contingency, reducing project scope, or reducing the level of service. FTA works with each project sponsor to determine the most feasible strategy for each project.

Project sponsors document this risk-informed management process in the project management plan. Including these strategies can help ensure that the project sponsor has the requisite technical capacity and capability to deliver the project on time and within budget by ensuring that the project sponsor understands methods for addressing risks and that it implements strategies to avoid future delays.

FTA can tailor these risk assessment and management tools to take into account the unique circumstances of a project, such as sponsor organization and technical capacity and capability, and the project complexity or status.

C. Questions

1. Should FTA assign PMOCs to oversee projects other than Major Capital Projects? Please provide the rationale for your recommendations including how oversight of these projects should alternatively be provided if PMOCs are not utilized.
2. At what stage in the development process should FTA assign PMOCs to New Starts projects? Explain the basis for your recommendation.
3. Other than a detailed review of a grantee's financial plan, what other methods might FTA utilize to ensure a grantee has the financial capacity to construct and operate a major capital project?
4. Please comment on FTA's Risk Management approach. If you do not agree with FTA's approach, please recommend an alternative and provide a basis for your recommendation.

Following the close of the comment period on this ANRPM, FTA will summarize and respond to the comments and issue a Notice of Proposed Rulemaking that posits explicit text for a rewrite of the regulation at 49 CFR Part 633. We expect to publish such a Notice of Proposed Rulemaking in 2009.

Issued this 4th day of September, 2009.

Peter M. Rogoff,

Administrator, Federal Transit Administration.

[FR Doc. E9–21849 Filed 9–9–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2009–0006]
[MO 922105 0082–B2]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition to List *Astragalus anserinus* (Goose Creek milkvetch) as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of a 12–month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce our 12–month finding on a petition to list *Astragalus anserinus* (Goose Creek milkvetch) as a threatened or endangered species under the Endangered Species Act of 1973, as amended (Act). After a thorough review of all available scientific and commercial information, we find that listing *A. anserinus* under the Act is warranted. However, listing is currently precluded by higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants. We have assigned a listing priority number (LPN) of 5 to this species, because the threats affecting it have a high magnitude, but are non-imminent. Upon publication of this 12–month petition finding, *A. anserinus* will be added to our candidate species list. We will develop a proposed rule to list *A. anserinus* as our priorities allow. Any determinations on critical habitat will be made during development of the proposed rule.

DATES: The finding announced in this document was made on September 10, 2009.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS–R1–ES–2009–0006. Supporting documentation we used to prepare this finding is available for public inspection, by appointment during normal business hours at the U.S. Fish and Wildlife Service, Utah Field Office, 2369 West Orton Circle Suite 50, West Valley City, Utah 84119. Please submit any new information, materials, comments, or questions concerning this finding to the above address or via electronic mail (e-mail) at *http://www.fw1srbocomments@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Larry Crist, Field Supervisor, U.S. Fish and Wildlife Service, Utah Field Office (see **ADDRESSES**)); by telephone at 801–975–3330; or by facsimile at 801–975–3331. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*) requires that, for any petition containing substantial scientific and commercial information that listing may be warranted, we make a finding within 12 months of the date of receipt of the petition on whether the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted, but immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are threatened or endangered, and expeditious progress is being made to add or remove qualified species from

the Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding; that is, requiring a subsequent finding to be made within 12 months. We must publish these 12–month findings in the **Federal Register**.

Previous Federal Actions

On February 3, 2004, we received a petition dated January 30, 2004, from Red Willow Research, Inc., and 25 other concerned parties (the Prairie Falcon Audubon Society Chapter Board, Western Watersheds Project, Utah Environmental Congress, Sawtooth Group of the Sierra Club, and 21 private citizens) requesting that we list *Astragalus anserinus* as threatened or endangered, emergency list the species, and designate critical habitat concurrently with the listing (Red Willow Research Inc, in litt. 2004). We acknowledged the receipt of the petition in a letter to the petitioners in a letter dated February 19, 2004. In that letter, we advised the petitioners that our initial review of the petition determined that emergency listing was not warranted, and that if conditions change we would reevaluate the need for emergency listing. We informed the petitioner that in light of resource constraints, we anticipated making our initial finding in Fiscal Year 2005 as to whether the petition contained substantial information indicating that the action may be warranted.

On August 16, 2007, we published a notice of 90–day finding (72 FR 46023) that the petition presented substantial scientific or commercial information indicating that listing *A. anserinus* may be warranted, and that we were initiating a status review of the species. For more information, refer to the 90–day finding that was published in the **Federal Register** on August 16, 2007 (72 FR 46023). We received information from the Bureau of Land Management, Idaho Department of Fish and Game, Red Willow Research Inc. (the petitioner), and the Cassia County Weed Control office in response to the 90–day finding. All information received has been fully considered in this finding.

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with 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 the 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. In fulfilling our trust responsibilities for government-to-government consultation with Tribes, we met with the Shoshone Paiute Tribes regarding the process taken to conduct a 12–month status review of *Astragalus anserinus*. As an outcome of our government-to-government consultation, we recognize the strong cultural significance of *A. anserinus* to the Shoshone Paiute Tribes and acknowledge that in this 12–month finding. This notice constitutes the 12–month finding on the January 30, 2004, petition to list *A. anserinus* as threatened or endangered.

Species Information

Astragalus anserinus was first collected in 1982 by Duane Atwood from a location in Box Elder County, Utah, and subsequently described in 1984 (Atwood *et al.* 1984, p. 263). The species is known only from tuffaceous (ashy) soils found near Goose Creek on the Idaho, Nevada, and Utah border, an area approximately 20 miles (mi)(32.5 kilometers (km)) long and 4 mi (6.4 km) wide. *A. anserinus* is a low-growing, matted, perennial forb (flowering herb) in the pea or legume family (Fabaceae), with grey hairy leaves, pink-purple flowers, and brownish-red curved seed pods (Mancuso and Moseley 1991, p. 4). This species is distinguished from *A. calycosus* (Torrey's milkvetch), *A. purshii* (woollypod milkvetch), and *A. newberryi* (Newberry's milkvetch), the three other mat-forming *Astragalus* species found in the Goose Creek drainage, primarily by its smaller leaflets and flowers, as well as the color and shape of the seed pods (Baird and Tuhy 1991, p. 1; Mancuso and Moseley 1991, pp. 4–5). In our August 16, 2007, 90–day finding (72 FR 46023), we used the common name for the species, ''Goose Creek milk-vetch.'' Here we use ''*Astragalus anserinus*'' for accuracy, and ''Goose Creek milkvetch'' (un-hyphenated) to make the taxonomy more consistent with today's botanical nomenclature.

Biology, Distribution, and Abundance

Astragalus anserinus typically flowers from late May to early June. The species is assumed to be insect-pollinated, but the specific pollinators are unknown (Baird and Tuhy 1991, p. 3). Fruit set begins in early June with fruits remaining on the plants for several months. Mechanisms of seed dispersal are also unknown, but may include wind dispersion of seed pods and insect or bird agents (Baird and Tuhy 1991, p. 3). Because *A. anserinus* often grows on slopes and because the seed pods are found close to the ground below the vegetative portions of the plant, water or gravity dispersal may also be a dispersal mechanism. In 2004 and 2005, clusters of seedlings were occasionally observed on abandoned ant hills, which could suggest some ant dispersal. Little scientific research specific to *A. anserinus* has been conducted beyond a basic species description and various survey efforts.

Limited information is available regarding *Astragalus anserinus* longevity. In September 2004, the U.S. Bureau of Land Management (BLM) Field Office in Burley, Idaho (BLM-Idaho), permanently marked 10 seedlings in a wash at the base of a tuffaceous outcrop (soils comprised of volcanic ash and particulates) at one site (Site 1), 8 seedlings and 7 adults at the base of a slope at a second site (Site 2), and 12 seedlings and 10 adults at a third site (Site 3) (A. Feldhausen, Burley BLM, in litt. 2007a, pp. 8–9). The results of this effort are summarized in Table 1 below. In a separate monitoring effort, BLM-Idaho conducted annual counting of *A. anserinus* individuals at two sites (Big Site 1 and Big Site 7) from 2004 to 2007. These results are depicted in Table 2 below. In combination, these two studies demonstrate large fluctuations in the number of individuals between years, with Table 2 reflecting almost a doubling or halving in magnitude between the numbers of individuals observed in successive years.

TABLE 1. SHORT-TERM TRACKING OF *Astragalus anserinus* INDIVIDUALS (2004–2006) (A. FELDHAUSEN, IN LITT. 2007A, PP. 8–9).

Year	Site 1	Site 2		Site 3	
	Seedlings	Seedlings	Adults	Seedlings	Adults
2004	10 seedlings	8 seedlings	7 adults	12 seedlings	10 adults
2005	4 dead, 2 small seedlings (15 leaves each), 4 small adult plants with pods	6 dead, 1 small seedling (12 leaves), 1 young adult	1 dead, 6 alive	1 stake missing, 5 dead, 6 small adults (3 with pods)	1 dead, 9 with desiccated leaves and numerous pods
2006	All 6 remaining plants swept away by water in a wash		Of the 7 remaining adult plants, 2 dead and 5 alive	Of the 6 remaining stakes: 1 stake missing, 4 dead, 1 adult	7 dead, 3 stakes missing

TABLE 2. MONITORING OF *Astragalus anserinus* AT TWO SITES IN IDAHO (A. FELDHAUSEN, IN LITT. 2007A, PP. 8–9; IDAHO CONSERVATION DATA CENTER (IDCDC) 2007A, ELEMENT OCCURRENCE (EO) 003).

Year	Big Site 1	Big Site 7
2004	123 total (2 dead, 73 seedlings, 48 adults)	138 total (42 seedlings, 96 adults)
2005	136 total (8 dead, 13 seedlings, 115 adults)	67 total (3 dead, 6 seedlings, 58 adults)
2006	88 total	135 total
2007	73 total	69 total

These wide-ranging fluctuations in the number of *Astragalus anserinus* individuals observed suggests that the species is either short-lived or that adult plants may remain dormant during some growing seasons. If the species is short-lived, corresponding augmentation of seedlings to replace lost individuals would be expected; however, this has not been observed. During spring census efforts, seedlings (defined as young developing plants having 3 or fewer leaves) made up 1,433 of the 30,281 individuals that were counted in 2005 (4.7 percent), and 167 of the 4,087 individuals counted in 2008 (4.1 percent) (Service 2008a, p. 1). The definition of seedlings used for purposes of Table 2 is different than that used in the 2004, 2005, and 2008 census efforts; with seedlings in Table 2 being defined by young developing plants with cotyledons (the first leaves to emerge from the ground) present. Seedlings made up 59.3 percent of the total individuals at Big Site 1 in 2004, and 9.6 percent of the total individuals in 2005. Seedlings also made up 30.4 percent of the total individuals at Big Site 2 in 2004, and 8.9 percent of the total individuals in 2005 (J. Tharp, Burley BLM, in litt., 2008a, p. 1). Although we have no direct information on *A. anserinus* seedling germination, it would likely be more or less abundant depending on the time of year sampled. We expect spring would be the most likely time to observe *A. anserinus* seedlings, like many other plants, and the seedlings could be more numerous in years when climatic conditions are more amenable to their germination and establishment. One such climatic factor could be annual precipitation; the amount and timing of this precipitation over the course of a year could influence seed germination and seedling recruitment.

During field surveys, several smaller *Astragalus anserinus* plants were partially excavated and observed to be attached to large woody roots. Parts of some individual plants frequently appeared to be dead, with only a small green portion remaining. This suggests that vegetative growth may vary during successive years, and that plant size may not necessarily correspond to the age of the individual. This also suggests that some *A. anserinus* individuals may remain dormant for an entire growing season. In at least one other species of *Astragalus* (*A. ampullarioides*), adult plants can exhibit dormancy (an inactive state) during a growing season, and the perennial rootstock allows the plant to survive dry years (Van Buren and Harper 2003b in Service 2006a, p. 8). However, monitoring studies to determine whether *A. anserinus* also has this ability have not been conducted.

Table 2 also demonstrates that fluctuations in the number of *Astragalus anserinus* individuals can vary across sites during a given year. For example, the number of individuals counted at Big Site 1 decreased from 136 to 88 between 2005 and 2006, whereas the number of individuals counted at Big Site 7 increased from 67 to 135 during the same time period. However, between 2006 and 2007, the number of individuals counted at Big Site 1 decreased from 88 to 73 and the number of individuals counted at Big Site 7 decreased 135 to 69. Since these sites are approximately 0.5 mi (0.8 km) apart on similar aspects, this suggests that local weather patterns may not be a predominant factor influencing plant abundance and annual survival.

Although we acknowledge there are some uncertainties with regard to longevity, plant dormancy, and the effect of climatic factors on *A. anserinus*, the observed population trend has been a decrease in the number of observed individuals.

Astragalus anserinus is endemic to the Goose Creek drainage in Cassia County, Idaho; Elko County, Nevada; and Box Elder County, Utah. The Goose Creek drainage occurs within the Great Basin ecosystem; this drainage receives an annual rainfall average of less than 12 inches (30 centimeters). Element Occurrences (EOs) are areas where a species was or is recorded to be present. The known EOs of *A. anserinus* occur at elevations ranging between 4,900 to 5,885 feet (ft) (1,494 to 1,790 meters (m)) (Idaho Conservation Data Center (IDCDC) 2007b, p. 2; Smith 2007, Table 1). Most *A. anserinus* EOs are within an approximate 20-mi (32-km) long by 4-mi (6.4-km) wide area, oriented in a southwest to northeasterly direction along Goose Creek. However one *A. anserinus* EO has been documented outside of the Goose Creek watershed approximately 2 mi (3.2 km) south of any other EOs. The geographic range of the species has not been extended from that presented in the 90–day finding (72 FR 46023; August 16, 2007). Based on new information from surveys

conducted in Nevada in 2006, during which several new EOs were discovered, gaps in the range have been filled with the 6 new EOs extending toward the 1 EO outside of the Goose Creek drainage.

Astragalus anserinus occurs in a variety of habitats, but is typically associated with dry tuffaceous soils from the Salt Lake Formation that have a silty to sandy texture (Mancuso and Moseley 1991, p. 12). In Utah, soil series where *A. anserinus* has been located include Bluehill fine sandy loam, Codquin gravelly sandy loam, Cottonthomas fine sandy loam, and Tomsherry fine sandy loam (Hardy 2005, p. 4). The species has been observed growing on steep or flat sites, with soil textures ranging from silty to sandy to somewhat gravelly. These habitats can vary from stable areas with little erosion to washes or steep slopes where erosion is common. It appears that the species tolerates, and may proliferate with, some level of disturbance, based on its occurrence on steep slopes where downhill movement of soil is common, within eroded washes, and along road margins and edges of cattle trails. However, individuals have not been observed where vehicle or livestock travel is frequent or where water flows through washes on a regular basis.

Astragalus anserinus is generally not found on north-facing slopes, but is found on most other slope aspects within sparsely vegetated areas in sagebrush and juniper habitats. The estimated total plant cover (of all species) at sites where *A. anserinus* occurs is between 10 and 35 percent (Hardy 2005, p. 4; Smith 2007, p. 2). The dominant native species within the general surrounding plant community include *Artemisia tridentata* ssp. *wyomingensis* (Wyoming big sagebrush), *Juniperus osteosperma* (Utah juniper), *Chrysothamnus viscidiflorus* (green or yellow rabbitbrush), *Poa secunda* (Sandberg's bluegrass), and *Hesperostipa comata* (needle and thread grass). *A. anserinus* is frequently associated with a suite of native species that reside on the tuffaceous sand (Baird and Tuhy 1991, pp. 2–3) including: *Achnatherum hymenoides* (Indian ricegrass), *Chaenactis douglasii* (Douglas' dustymaiden), *Cryptantha humilis* (roundspike cryptantha), *Eriogonum microthecum* (slender buckwheat), *Eriogonum ovalifolium* (cushion buckwheat), *Ipomopsis congesta* (= *Gilia congesta*; ballhead gilia), *Mentzelia albicaulis* (whitestem blazingstar), and *Phacelia hastata* (silverleaf phacelia). Several nonnative species also co-occur with *A. anserinus* (see *Nonnative Introduced Species* under **Summary of Factors Affecting the Species Rangewide: Factor A**, below). Another Goose Creek drainage endemic, *Penstemon idahoensis* (Idaho penstemon), is found near *A. anserinus*, but these species are seldom found immediately adjacent to one another. Other sensitive species in the area include *Arabis falcatoria* (= *Boechera falcatoria*; falcate rockcress), and *Potentilla cottamii* (Cottam's cinquefoil) (Franklin 2005, pp. 9–10, 159–160).

The Heritage/Conservation Data Center programs in Idaho, Nevada, and Utah rank *Astragalus anserinus* as a G2 species, indicating the species is ''imperiled throughout its range because of rarity or other factors that make it vulnerable to extinction,'' and S1 (critically imperiled) in the three states (IDCDC 2007b, p. 2). Heritage/Conservation Data rankings do not offer any sort of protection, but are often used to guide other agencies and entities in designating sensitive species. The BLM has assigned different status designations to the species in the three states where it occurs. In Idaho, *A. anserinus* is designated as a type 2 species, which reflects a rangewide or globally imperiled species with a high endangerment status. In Utah, the species is designated as a sensitive plant species (Fortner 2003 in Franklin 2005, p. 17), and in Nevada the species is designated as a special status species (Morefield 2001, p. 1). BLM policy provides that species which are designated as a ''sensitive species'' shall be protected as candidate species for listing under the Act (BLM 2001, p. 06C1).

Astragalus anserinus is currently known from 19 EO records (5 in Idaho, 10 in Nevada, and 4 in Utah) (IDCDC 2007b, p.4; Smith 2007, p. 1; Utah Conservation Data Center (UCDC) in litt. 2007, map; Service 2008b, 17 pp.). The number of currently known EOs (19) differs from the 24 EOs identified in the 90–day finding published on August 16, 2007 (72 FR 46023). Recently published NatureServe guidelines for designating EOs in Idaho and Utah (IDCDC 2007b, p. 1; R. Fitts, Utah Conservation Data Center, in litt. 2008, p. 1) state that sites (occupied points, lines, or polygons) that occur within 0.6 mi (1 km) of each other are within the same EO. Accordingly, several occupied sites that were designated as individual EOs in our August 16, 2007, 90–day finding were combined. In addition, six new EOs were discovered in Nevada as a result of survey efforts in 2006. We developed a naming convention to help us manage and compare EO data for recently consolidated sites before and after implementation of the NatureServe guidelines. For example, the designation U001–4–17 identifies Utah EO 001, which was previously identified as Utah EO 004. The suffix 17 reflects a site number that has been assigned according to the sequence the site was counted in 2004 or 2005. We use our naming convention as described, as well as EO number in various places throughout this finding, depending on the context of the particular site being referenced.

The majority of *Astragalus anserinus* sites in Idaho, Utah, and Nevada occur on Federal lands managed by the BLM (Service 2008, 17 pp.). In 2004 and 2005, we conducted a multiagency census and survey effort for *A. anserinus* with the BLM, USFS, and natural resource agencies from the States of Idaho, Nevada, and Utah. Our objective was to count (census) known sites, survey additional areas, and document any new populations. In 2004, we examined 33 sites in 5 EOs in Idaho (3,467 individuals were counted); 6 sites in 3 EOs in Nevada (2,252 individuals were counted); and 11 sites in 2 EOs in Utah (7,558 individuals were counted) (Service 2008, 17 pp.). In 2005, we examined 5 sites at 1 EO in Nevada (3,074 individuals were counted), and 64 sites in 1 EO in Utah (27,207 individuals were counted) (Service 2008, 17 pp). During the 2004 and 2005 census efforts, 40,858 individual plants of the estimated 60,000 individual plants range-wide (68 percent) were counted at 119 sites in 12 EOs.

Estimating the total *Astragalus anserinus* population size is complicated because of the variability in the species annual abundance, and the different census and survey methods that have been employed. For example, plant abundance at one site in Idaho over a 4–year period varied significantly: 138 plants were counted in 2004; 67 plants in 2005; 135 plants in 2006; and 69 plants in 2007 (Service 2008, 17 pp.). Census efforts in 2008 at 3 sites that were not affected by a significant wildfire in 2007 demonstrated a general decrease from plant counts when compared to the 2004 or 2005 data; 1 site increased by 5.4 percent (652 to 687), 1 site decreased by 76.3 percent (1,458 to 346), and 1 site decreased by 79.0 percent (3,081 to 647) (Service 2008c, Table 2). Using the best available data for each *A. anserinus* site, we estimate that there were approximately 60,000 individuals distributed across the three states prior to the 2007 wildfires (Service 2008, 17 pp.). However, we recognize the inherent variability associated with

estimating population size, because of large fluctuations observed between successive monitoring years and the differing census and survey methods that have been employed. Generally, the 2004 and 2005 census counts yielded higher numbers than had been estimated by previous surveys (Service 2008, pp. 1–6), however, monitoring efforts have not occurred regularly enough or over a long enough period to allow us to statistically analyze population trends.

Based on pre-2007 (pre-wildfire) individual plant count data, approximately 10 percent of all known *Astragalus anserinus* individuals occur in Idaho (5,500 plants), 25 percent occur in Nevada (15,500 plants), and 65 percent occur in Utah (39,000 plants) (Service 2008c, Table 1). State-specific information on the population status of *A. anserinus* is described below.

Idaho

Prior to 2004, seven EOs (which are now combined into four EOs under the NatureServe guidelines) were monitored by the IDCDC, who reported the number of *Astragalus anserinus* individuals at most sites as estimations. The first *A. anserinus* EO was documented in 1985 (1 year after the species was described (Atwood *et al.* 1984, p. 263)), but systematic or comprehensive surveys were not conducted in Idaho until 1991 (Mancuso and Moseley 1991, p. iii). In 1991, the *A. anserinus* population in Idaho was estimated at over 914 individuals (Mancuso and Moseley 1991, pp. 2, 13–14).

During the 2004 census effort, the four known *Astragalus anserinus* EOs in Idaho were revisited and three new sites were located (two sites were within an existing EO and one new site was considered to be a new EO). In total, 5,052 *A. anserinus* individuals were counted, with 2,460 of these individuals observed within the original 4 Idaho EOs (Service 2006b, Table 1). Based on pre-2007 EO revisions, census data from 2004 indicated: (a) stable plant numbers at four EOs; (b) an increase in plant numbers at one EO (compared to pre-2004 survey numbers); and (c) an unknown change at two EOs (participants were unable to conduct a complete census because part of the EOs are on private property) (Service 2006b, Table 1). However, because of the different survey methodologies employed before 2004, it is difficult to conclusively compare survey and census results or estimate long-term population trends for *A. anserinus* in Idaho (Service 2006b, Table 1).

In 2007, the IDCDC standardized its methodology for designating *Astragalus anserinus* EOs to conform to the above referenced NatureServe guidelines. Under the new methodology, the four existing EOs and the three new sites found in 2004 were combined into five EOs (EOs 1, 6 and 7 were deleted and added to EO 3; EO 9 was added as a new EO (IDCDC 2007b, p. 4)). The IDCDC methodology also ranks the health of the EOs based on a weighted formula made up of three elements: EO size (33 percent); EO condition (based on the abundance of native plants, introduced plants, and anthropogenic disturbance) (33 percent); and EO landscape context (based on the degree of habitat fragmentation) (33 percent). Rankings are categorized from A through D, with ''A'' ranked EOs generally representing higher numbers of individuals and higher quality habitat, and ''D'' ranked EOs generally representing lower numbers of individuals and lower quality (or degraded) habitat. Under this ranking system, the IDCDC assigned an ''A'' ranking to one EO, ''B'' rankings to two EOs, and ''C'' rankings to two EOs (IDCDC 2007b, p. 4).

Monitoring efforts and results in Idaho that have been used to inform this status assessment for *Astragalus anserinus* include: (a) the collection of plant community data and establishment of photo-points in 2000 and 2001 at 3 sites (Mancuso 2001a, pp. 8–9; Mancuso 2001b, p. 2); (b) census efforts at all Idaho EOs on public land in 2004 (Service 2008b, 17 pp.); (c) conducting annual census efforts at 2 sites in Idaho since 2004, as summarized in Table 2 above (A. Feldhausen, in litt. 2007a, pp. 8–9; IDCDC 2007a, EO 003); (d) the permanent marking and monitoring of *A. anserinus* individuals at 3 sites from 2004 to 2006 as summarized in Table 1 (A. Feldhausen, in litt. 2007a, pp. 8–9); and (e), establishing *A. anserinus – Penstemon idahoensis – Euphorbia esula* (leafy spurge) control study plots at 11 sites in 2007 by BLM-Idaho (A. Feldhausen in. litt. 2007a, p. 3).

Nevada

Astragalus anserinus surveys in Nevada were first conducted in 1991 and 1992, resulting in the documentation of 4 EOs, with an estimated plant abundance of 827 individuals (Morefield 2001, p. 1). Subsequent census efforts in 2004 and 2005 failed to locate any new sites until 2006, when 6 new EOs with approximately 11,000 individuals were discovered. The 6 new EOs represent 18.3 percent of the estimated range-wide population total of 60,000 individuals (Service 2008b, 17 pp.). There are presently ten known EOs in Nevada, as documented by the Nevada Natural Heritage Program (NNHP) (Smith 2007, p. 1). Site visits to 4 EOs were conducted during the 2004 and 2005 census efforts, and 4,930 *A. anserinus* individuals were counted. However, because of the different survey methodologies employed prior to 2004, it is difficult to conclusively compare survey and census results or estimate long-term population trends for the species in Nevada (Service 2006b, Table 1). In 2008, we counted individuals at two sites during our post-2007 wildfire assessment study, including EO 001 (which partially burned), and site 1 of EO 004 (which did not burn). We observed that the number of individuals in EO 001 decreased by 68 percent, while the number of individuals in EO 004 increased by 5.4 percent (Service 2008c, Table 2) (see the discussion under *Wildfire* below for further details on the 2008 study).

Monitoring efforts and results in Nevada that have been used to inform this status assessment include census efforts conducted in 2004 and 2005 at four EOs (Service 2008b, 17 pp.), and post-wildfire census efforts in 2008 at two EOs (one that partially burned, and one that did not burn) (Service 2008c, Table 2, Map 2).

Utah

There were 9 known *Astragalus anserinus* EOs in Utah with an estimated 7,617 individuals, based on the results of initial surveys conducted in 1990 and 1991 (Baird and Tuhy 1991, p. 2; Morefield 2001, p. 1). Eight of these EOs were documented by the UCDC, and one EO was documented in the Nevada Natural Heritage Program database, although it was not reflected in the UCDC database (Mancuso and Moseley 1991, p.2). There were additional Utah surveys in 1993 (Hardy 2005, p. 4), however we do not know whether they were resurveys of known sites and do not believe the results are included in the UCDC database. The BLM Salt Lake City, Utah field office (BLM-Utah) staff indicates that they are aware of data from at least one additional site that has not been submitted to the UCDC (Hardy 2005, p. 4). In addition, surveys were conducted in Utah by BLM in 2000, 2001, and 2004 to evaluate the environmental effects of a waterline and livestock water tank construction project to the species (Hardy 2005, p. 5); no sensitive plants were discovered along the proposed water line.

Site visits conducted to what was then 6 known EOs, and 1 new site during 2004 and 2005 census efforts recorded a total of 33,476 *Astragalus*

anserinus individuals, although only partial plant counts were conducted at 3 of the 6 known EOs. Two other documented EOs that had the greatest numbers of individuals weren't counted during the 2004 and 2005 census efforts because of limitations on access and time constraints (Service 2006b, Table 1). The 2004 and 2005 census data indicated higher *A. anserinus* count numbers than the previous estimates at five of the known EOs. However, because of the different survey methodologies that were used before 2004, we are unable to conclusively compare survey and census results or estimate long-term population trends for the species in Utah (Service 2006b, Table 1).

In early 2007, the UCDC reconfigured *Astragalus anserinus* EOs in Utah to conform to the general EO standards guidebook, IDCDC methodology, and NatureServe guidelines, resulting in the combining of the nine previously documented EOs into four EOs (R. Fitts, in litt. 2008). Based on 2005 census estimates, the largest Utah EO (EO 001) supported over 37,000 plants, making up over 60 percent the known individuals range-wide (Service 2008b, 17 pp.).

In 2008, re-census efforts were conducted as part of a post-wildfire assessment at ten sites in Utah where we had information on the number of individuals from 2004 or 2005 surveys. We surveyed two sites that did not burn, four sites that were partially burned, and four sites that were completely burned. At the 2 sites that did not burn, the individual numbers of plants decreased by 76.3 percent and 79 percent. At the 4 sites that partially burned, the individual numbers of plants decreased by 34.9 percent, 89.7 percent, 91.1 percent, and 92.6 percent. The individual plant counts at the 4 sites that completely burned decreased by 94.9 percent, 98.1 percent, 98.2 percent, and 100 percent (Service 2008c, Table 2) (see the *Wildfire* discussion under factor A, below, for further information on the 2008 post-wildfire assessment efforts).

Monitoring efforts and results in Utah that have been used to inform this status assessment include: (a) census efforts conducted in 2004 and 2005 at portions of 2 EOs (Service 2008b, 17 pp.); (b) installation of 4 small chicken-wire exclosure cages over 5 individual plants in 2004 to monitor effects of a waterline construction project (all individuals were still present in 2007) (Hardy 2008, pp. 1–2); (c) documentation of 2 individual plants within a 300-foot long belt transect in 2006 (scheduled to be resurveyed in 2010 (Hardy 2008, p. 2)); (d) establishing a study plot in 2007 near a waterline constructed in 2004 that includes 231 *A. anserinus* individuals, which may be fenced in the future (Hardy 2008, p. 1); and (e) conducting field inspectionsat 10 sites during the 2008 post-wildfire re-census effort (Service 2008c, Table 2, Map 2).

Summary of Factors Affecting the Species Rangewide

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations at 50 CFR 424, set forth procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section (4) of the Act, we may determine a species to be endangered or threatened based on any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial, recreation, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. In making this finding on a petition to list *Astragalus anserinus*, information regarding the status of, and threats to, *A. anserinus* in relation to the five factors provided in section 4(a)(1) of the Act is discussed below.

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

Wildfire

Organisms adapt to disturbances such as historical wildfire regimes (fire frequency, intensity, and seasonality) with which they have evolved (Landres *et al.* 1999, p. 1180), and different rare species respond differently to wildfire (Hessl and Spackman 1995, pp. 1–90). In general, fire regimes within forest and steppe habitats in the western United States have been highly disrupted from historical patterns (Whisenant 1990, pp. 4–10; D'Antonio and Vitousek 1992, pp. 63–87; Weddell 2001, pp. 1–24). In some instances, fire suppression has allowed grasslands to be invaded by trees (Burkhardt and Tisdale 1976, pp. 472–484; Lesica and Martin 2003, p. 516), and in many grassland and shrub habitats, fire frequencies have increased due to the expansion and invasion of annual nonnative grasses (Whisenant 1990, pp. 4–10; D'Antonio and Vitousek 1992, pp. 63–87; Hilty *et al.* 2004, pp. 89–96). These invasive annual nonnative grasses become established in unvegetated areas that would normally separate native vegetation, dramatically increasing the ability of wildfire to spread.

Our understanding of the historical wildfire regime in the Goose Creek drainage, and specifically within *Astragalus anserinus* habitat, is limited. In general, the average wildfire return interval within the sagebrush-steppe ecosystem as a whole has been reduced from between 60 and 110 years, to often less than 5 years (Whisenant 1990, p. 4; Wright and Bailey 1982, p. 158; Billings 1990, pp. 307–308; USGS 1999, pp. 1–9; West and Young 2000, p. 262). Recent wildfires often tend to be larger and burn more uniformly across the landscape, leaving fewer unburned areas, which can affect the post-fire recovery of native sagebrush-steppe vegetation (Whisenant 1990, p. 4; Knick and Rotenberry 1997, pp. 287, 297; Brooks *et al.* 2004, pp. 682–683). The result of this altered wildfire regime has been the conversion of vast areas of sagebrush-steppe ecosystem into nonnative annual grasslands (USGS 1999, pp. 1–9). The proportion of annuals in the sagebrush-steppe ecosystem increases dramatically at higher fire frequencies, while all other vegetative life forms decrease. Sagebrush can reestablish from seed following fire, however the seeds are short-lived and if a second fire occurs before the new plants produce seed (4 to 6 years), the species may face local extirpation. This would be less of a problem if the fires occurred over relatively small areas, because seed from adjacent unburned areas would be naturally transported back into burned areas. As fires become larger, the opportunity for seed migration into burned areas is dramatically decreased (Whisenant 1990, p. 8–9). Based on our observations, *Astragalus anserinus* seedling germination does not appear to be stimulated by wildfire. Accordingly, fewer individuals and fewer seeds would be available for recruitment if wildfire were to return before the species is able to recover from earlier wildfire impacts to the population. As a result, there would be a corresponding decline in the overall number of individuals.

Wildfire was not documented within *Astragalus anserinus* habitat prior to 2000 (A. Feldhausen, in litt. 2007, p. 3; R. Hardy, Salt Lake City BLM, in litt. 2008, p. 1), although undoubtedly they occasionally occurred in the past. *Astragalus anserinus* habitat is normally sparsely vegetated (e.g., typically 10 to 30 percent total vegetative cover), which likely makes it less vulnerable to wildfire because of the lack of fuels to sustain fire over large areas. We are aware of a wildfire that occurred in *A.*

anserinus habitat in Idaho in 2000, and another wildfire that occurred in Nevada and Utah in 2007. The 2000 Idaho wildfire affected two EOs (EO 007 and EO 009), however at the time, EO 009 had not been documented and *A. anserinus* was not affected by the 2000 wildfire at EO 007 (A. Feldhausen, in litt. 2007a, p. 11). Accordingly, before 2008, we had no pre-wildfire data with which to assess the impact of wildfires on *A. anserinus*. Our knowledge of the effects from wildfire was limited to observations at EO 009 from 2004. Based on the best available information, EO 009 is made up of 3 separate occupied sites that contain 10, 36, and 749 individuals based on 2004 surveys/census efforts. The EO 009 site with 749 individuals is within a sparsely vegetated slope with mature junipers and shrubs, and may not have burned during the 2000 wildfire.

Based on pre-fire data, a single wildlfire in 2007 in Nevada and Utah completely burned 3 EOs and portions of 5 other EOs containing approximately 53 percent of all known *Astragalus anserinus* individuals (31,500 of 60,000 individuals). The 2007 wildfire also burned 25 percent of the known occupied habitat (100 acres (ac) (41 hectares (ha)) out of an estimated 400 ac (164 ha)) (Service 2008c, Table 1).

In Nevada, 3 EOs were completely within the burned area footprint (1,512 total individuals), and three other EOs were partially burned, but had an estimated loss of approximately 72 percent of the individuals within those 3 EOs (5,394 of 7,508 individuals). In Utah, portions of two EOs were burned in the wildfire (EOs 001 and 009). The wildfire in EO 001, which contained more than 60 percent of the known individuals (37,000 of 60,000 individuals), was estimated to have burned approximately 40 percent of the known individuals (24,000), and approximately 18 percent of the total occupied acreage (71 ac (29 ha)) (Service 2008b, 17 pp.). Please note that since six of the 10 currently known EOs in Nevada were not discovered until 2006 (EOs 005 through 010), and only population estimates and point data have been collected, the total number of individuals and the acreage affected by the 2007 wildfire are only estimates. Estimating the number of individuals and acres with greater precision is difficult because of the various methods that have been employed by prior survey and census efforts.

Based on initial field visits and reports following the 2007 wildfire (Howard 2007, pp. 1–2), we initially understood that the wildfire burned intensely and almost continuously across the landscape. However, our 2008 field inspection determined that the wildfire burned as a mosaic rather than continuously, and did not affect some small patches of *Astragalus anserinus* occupied habitat. We observed that 21.3 percent, 81.1 percent, and 94.6 percent of the total acreage was burned at 3 *A. anserinus* sites, however estimates were not made for 2 other sites within the burned area perimeter that were only partially burned (Service 2008c, Table 2). Our inspection also documented the bunchgrasses *Hesperostipa comata* (needle and thread), *Poa secunda* (Sandberg's bluegrass), *Pascopyron smithii* (western wheatgrass), *Agropyron cristatum* (crested wheatgrass), and *Achnatherum hymenoides* (Indian ricegrass), as well as the shrub *Chrysothamnus viscidiflorus* (green or yellow rabbitbrush) re-sprouting from roots that survived the 2007 wildfire. These species generally made up approximately 20 percent of the total vegetative cover at the burned sites, and it was estimated that 75 to 90 percent of the bunchgrasses had survived the wildfire (M. Mancuso, Mancuso Botanical Services, in litt. 2008, p. 1).

In June, 2008, we conducted post-wildfire re-census efforts to specifically evaluate the effects of the 2007 wildfire and determine the response of *Astragalus anserinus* to this event. We counted individual plants at 12 sites where we had count data from either 2004 or 2005, including Nevada EO 001, Nevada EO 004, and 10 sites within Utah EO 001 (which represents the largest EO). Three of the sites that were surveyed were not burned, 5 of the sites were partially burned (including Utah EO 001–4–17 which supported 7,486 individuals prior to the fire based on 2005 data), and 4 of the sites were completely burned. Using pre-2007 information, we estimate that we resurveyed habitat containing approximately half of the estimated 31,500 individuals burned in the 2007 wildfire (Service 2008c, Tables 1 and 2). Generally, individual plant counts in almost all burned and unburned areas were less than those recorded in 2004 and 2005.

Table 3 provides pre- and post-fire survey data from the 12 sites. For the 3 unburned sites, the number of individuals increased by 5.4 percent at the first site (652 in 2004 to 687 in 2008), decreased by 76.3 percent at the second site (1,458 in 2004 to 346 in 2008), and decreased by 79.0 percent at the third site (3,081 in 2005 to 647 in 2008) (Service 2008c, Table 2). For the 4 sites that completely burned, the number of individuals decreased by 94.9 percent at the first site (3,695 in 2005 to 188 in 2008); 98.1 percent at the second site (314 in 2005 to 6 in 2008); 98.2 percent at the third site (1,115 in 2005 to 20 in 2008), and 100 percent at the fourth site (224 in 2005 to 0 in 2008) (Service 2008c, Table 2).

TABLE 3. CENSUS RESULTS FROM THE 2008 POST-WILDFIRE SURVEYS.

EO Number and Site Number	Burned or Unburned	2004 or 2005	2004/2005 Number of Individuals	2008 Number of Individuals	Individuals Percent Change	2004 or 2005 Percent Area Burned
N004–1	Unburned	2004	652	687	+5.4	
U001–7–3	Part-Burned	2004	1,742	1,134	-34.9	21.3
N001–1	Part-Burned	2004	541	173	-68.0	unknown
U001–6–1	Unburned	2004	1,458	346	-76.3	0
U001–4–35	Unburned	2005	3,081	647	-79.0	0
U001–4–17	Part-Burned	2005	7,486	772	-89.7	94.6
U001–4–33	Part-Burned	2005	349	31	-91.1	unknown

TABLE 3. CENSUS RESULTS FROM THE 2008 POST-WILDFIRE SURVEYS.—Continued

EO Number and Site Number	Burned or Unburned	2004 or 2005	2004/2005 Number of Individuals	2008 Number of Individuals	Individuals Percent Change	2004 or 2005 Percent Area Burned
U001–4–30	Part-Burned	2005	175	13	-92.6	81.1
U001–NV–1	Burned	2005	3,695	188	-94.9	100
U001–4–12	Burned	2005	314	6	-98.1	100
U001–NV–2	Burned	2005	1,115	20	-98.2	100
U001–4–34	Burned	2005	224	0	-100.0	100

During our field surveys at the 5 sites that were partially burned, we observed a 34.9 percent to 92.6 percent decrease between the number of *Astragalus anserinus* individuals counted in 2004 or 2005 and the number counted in 2008. The sites that had the most burned area generally reflected larger decreases in the number of individual plants (Table 3) (Service 2008c, Table 2). Extant *A. anserinus* individuals were also more frequently associated with unburned areas in the partially burned sites. For example, approximately 94.6 percent of the occupied area within site U001–4–17 was burned during the 2007 wildfire (this site represented the site with the most individuals counted prior to the 2007 wildfire (7,486)). We observed that 562 of the 772 individuals counted in U001–4–17 in 2008 (68.1 percent) occurred in the 5.4 percent of the site that did not burn. Prior to the 2007 wildfire, *A. anserinus* densities were generally higher within the more sparsely vegetated areas of occupied sites. It is likely that the number of individuals detected within the burned and unburned areas was influenced by their pre-wildfire distribution, particularly since sparsely vegetated areas were less likely to burn. Because the density of individuals at any particular site was not measured at a fine enough resolution in the 2004, 2005, or 2007 surveys, it is difficult to conclusively compare pre-2007 wildfire densities to post wildfire densities.

We also compared the acreage occupied by *Astragalus anserinus* between that recorded during the 2004 and 2005 census efforts and what we observed in June 2008. The occupied acreage decreased at each of the 12 sites, which included both burned and unburned areas, with a range of 37.9 to 100 percent (Service 2008c, Table 2). The occupied acreage at the 3 sites that did not burn decreased 62.1 percent, 60.5 percent, and 77.4 percent (average = 66.6 percent); the reason for the decrease is unknown. The occupied acreage at the 5 partially burned sites decreased 37.9 percent, 59.9 percent, 97.3 percent, 86.8 percent, and 99.4 percent (average = 73.3 percent). The occupied acreage at the 4 sites that completely burned decreased 90.2 percent, 77.0 percent, 96.0 percent, and 100 percent (average = 90.8 percent) (Service 2008c, Table 2). Since explicit data collection protocols were not established to differentiate between map points at which an individual was recorded and map polygons which indicate an area within which one or more individuals were recorded, we considered plants to be within the same polygon if they were within 33 to 66 ft (10 to 20 m) of one another. For this reason, determining fire effects by comparing the burned, unburned, and partially burned acreage is not as accurate as comparing the numbers of individuals that were actually counted.

Despite the significant declines in the number of individuals and occupied acreage detected in the 2008 surveys, some *Astragalus anserinus* individuals did survive the effects of the fire. Plants can survive wildfires in several ways. Adult plants can survive, plants may re-sprout from the base, or plants can re-establish from seed (Brown and Smith 2000, p. 33). Field surveys conducted in November 2007 (after the 2007 wildfire), documented that most of the above-ground vegetation had been removed at several *A. anserinus* sites. During the subsequent 2008 field surveys, we observed that some adult plants that survived inside burned areas were attached to large woody roots that likely survived the wildfire. This suggests that the *A. anserinus* individuals that survived the 2007 wildfire likely re-sprouted after the wildfire. If *A. anserinus* is able to remain dormant during a growing season, the low plant numbers we observed in 2008 in unburned sites may indicate that some plants were dormant at that time, although we do not have any information regarding this capability.

We also compared the number of *Astragalus anserinus* seedlings counted in 2008 between burned areas and areas that did not burn. We observed that seedlings made up 11.4 percent of *A. anserinus* plants (76 of 665) in burned areas, 11.5 percent (23 of 200) in partially burned areas, and 2.1 percent (68 of 3,222) in unburned areas (Service 2008a, Table 1). Seedlings can become re-established from surviving plants, seed dispersal from off-site plants, wildfire stimulated seed banks, or plants that re-sprout after a wildfire (USFS 2000, p. 33). The increased number of seedlings within burned and partially burned areas may demonstrate that seed germination was stimulated by the 2007 wildfire. However, even if this is true, this response did not offset the observed individual plant losses resulting from the 2007 wildfire. We are unaware of any available information on *A. anserinus* seed bank longevity, and do not fully understand the effect wildfire may have on this species. Seed bank studies for other *Astragalus* species indicate that the group generally possesses hard impermeable seed coats with a strong physical germination barrier. As a result, the seeds are generally long-lived in the soil and only a small percentage of seeds germinate each year (summarized in Morris *et al.* 2002, p. 30). However, we do not know if the seed germination strategy for other *Astragalus* species is comparable to that employed by *A. anserinus*.

We observed an average 50 percent decline in the number of *Astragalus anserinus* plants counted at the 3 sites that were not burned in the 2007 wildfire, compared to pre-fire site data for those areas. For sites that were completely burned by the 2007 wildfire, average plant numbers declined 97.8 percent from the number of individuals counted in 2004 or 2005. In some plant species, seed dormancy is broken by wildfire (e.g., *Pinus contorta*, lodgepole pine), and after a wildfire numerous seedlings sprout because this seed dormancy has been broken. However, we did not see a significant number of new seedlings within burned areas.

Because of the low numbers of observed individuals and the lack of a source for a large flush of seedlings, it is likely that *A. anserinus* recovery will depend on the successful re-colonization of burned areas. Because of the generally low number of seedlings counted, where data are available, we suspect that this re-colonization may take several years and be dependent upon suitable environmental conditions.

We believe that wildfire frequency will increase within *Astragalus anserinus* habitat. Wildfire return intervals in the sagebrush-steppe ecosystem, which includes the Goose Creek drainage, have been significantly reduced from between 60 and 110 years to often less than 5 years. The fact that the 2007 wildfire was the second wildfire recorded within a 7–year period in the Goose Creek drainage, with no previously recorded wildfires in this area, appears to present supporting evidence for increased fire frequency. Wildfire kills *Astragalus anserinus*, and seedling germination does not appear to be stimulated by wildfire. Accordingly, increased fire frequency will result in fewer *A. anserinus* individuals, and less seed availability for recruitment. The ongoing and cumulative effects of wildfire on *A. anserinus* include a substantial reduction in the amount of available habitat, and range-wide population-level effects caused by the loss of approximately 98 percent of the individual plants in the burned areas (which were roughly 53 percent of the pre-2007 wildfire total known individuals). Future wildfires in the area will likely result in similar detrimental effects on the remaining population.

It is likely that *Astragalus anserinus* recovery will depend on the successful re-colonization of burned areas, which will probably occur slowly over time. However, because wildfire frequency has increased in this area, recovery may be constrained by additional wildfires in the relatively near future. Therefore, we find the magnitude of this threat to be high.

Wildfire Management

Wildfire management can include prescribed burning, and activities associated with fighting wildfires such as the construction of fire lines and staging areas, retardant application, and post-wildfire restoration efforts such as disking and seeding. In 2008, disking and seeding associated with soil stabilization activities occurred over portions of 11 *Astragalus anserinus* sites in Utah in response to the 2007 wildfire (Service 2008c, Tables 2–4, Map 4; Service, in litt. 2008, photos 1–3). It is likely that numerous individual plants were lost to site re-seeding efforts and road construction activities. We also observed in some cases that *A. anserinus* root systems had been exposed, and believe that it is likely that individual plants were turned over and buried during the disking operations. These actions likely killed individual plants, thereby compounding the ongoing detrimental effects of the wildfire itself on the *A. anserinus* population.

Firefighting Activities

Firefighting activities such as prescribed burning, road and fire line construction and retardant application can destroy habitat and kill or injure individual *Astragalus anserinus* plants. Such activities occurred during the response to the wildfire in 2007. Advance *A. anserinus* surveys were not conducted because of the immediate need to respond to the 2007 wildfire (M. Gates, Salt Lake City BLM, in litt. 2008a). During a brief field inspection of the area affected by firefighting activities prior to our 2008 post-fire surveys, we observed that at least one new road had been constructed along a ridge, and that several fire lines had been excavated by hand adjacent to *A. anserinus* habitat. We also observed that a wide fire line had been constructed between 2 known EOs. During our 2008 post-wildfire surveys over 18 *A. anserinus* occupied sites, we observed that fire retardant had been applied at 1 site over an area approximately 10 ft (3 m) in radius (U001–4–35). We also observed that a new access road had been constructed through site U001–7–3, and evidence of tire tracks in occupied areas at site U001–4–33.

One study of the effects of fire retardant chemical (Phos-Chek G75-F) and fire suppressant foam (Silv-Ex) application, alone and in combination with fire, on Great Basin shrub steppe vegetation found that growth, resprouting, flowering, and incidence of galling insects on *Chrysothamnus viscidiflorus* (yellow rabbitbrush) and *Artemisia tridenta* (Big sagebrush) were not affected by any chemical treatment. In general, the study found that species richness declined, especially after Phos-Check application, but by the end of the growing season, species richness did not differ between treated and control plots (Larson *et al.* 1999, p. 115). We are unaware of the specific retardant used in the 2007 fire response, or whether *A. anserinus* would be similarly unaffected. However, based on the limited extent of the area that was treated with retardant, we do not anticipate any significant long-term impacts to the overall *A. anserinus* population. In addition, since advance *A. anserinus* surveys were not conducted because of an immediate need to respond to the wildfire, we do not know if the other activities adversely affected the species. Some fire fighting activities could present a future threat to *A. anserinus*, depending on their specific location and scale; however, we are unable to assess the magnitude of those potential threats at this time.

Post Wildfire Emergency Stabilization and Restoration

Post-wildfire restoration activities can also destroy habitat, kill or harm individuals, and introduce nonnative species, which may outcompete *Astragalus anserinus* for resources. The following is a discussion of restoration activities that occurred after the 2008 fires.

2007 Wildfire Emergency Stabilization and Restoration in Nevada: Following the 2007 wildfire season, the BLM Elko Nevada Field Office (BLM-Nevada) developed a soil stabilization plan for implementation in 2008 that included reseeding several areas affected by the fire. A native grass restoration seeding effort was planned near EO 005, but was not conducted (Howard 2007, p 3). Post-fire aerial seeding of *Artemisia tridentata* var. *wyomingensis* (Wyoming sagebrush), which is native to Goose Creek, was undertaken within drainages at or near the site instead of the native grass restoration seeding effort (K. Fuell, Elko BLM, in litt. 2008, p. 1). This action may be beneficial to *Astragalus anserinus*, however we are unaware of the specific treatment locations, whether the efforts were successful, or whether they affected *A. anserinus* in EO 005.

2007 Wildfire Emergency Stabilization and Restoration in Utah: Restoration seeding activities in Utah were conducted in late May and early June, 2008, as part of an Emergency Stabilization Plan (ESP) that was developed by BLM to treat areas affected by the 2007 wildfire. A fencing project and juniper removal chaining efforts (using a chain connected between two tractors) were included as elements of this plan. Under the ESP, disk seeding with a mix of native and nonnative species (see ''Nonnative Invasive Species—seeded'' below) was conducted within *Astragalus anserinus* habitat in an area west of Grouse Creek Road to stabilize the soils, prevent erosion, and minimize competition by *Bromus tectorum* (cheatgrass) in the burned area. Areas to be avoided were identified in advance with flagging to

prevent impacts to *A. anserinus* from planned juniper removal chaining operations and seeding efforts (M. Gates, in litt. 2008b, p. 1). However, not all *A. anserinus* sites were avoided.

The rangeland drills employed in the Utah seeding effort were fitted with metal cutting discs measuring at least 1.0 ft (0.30 m) to 1.5 ft (0.46 m) in diameter, that were spaced on approximate 8 inch (20 centimeter) centers. The tractors used in the restoration activities would generally pull two rangeland drills at once, breaking the soil horizon to a depth of approximately 5 inches (13 centimeters) and a width of roughly 20 ft (6.1 m) (Service, in litt. 2008, p. 4, 5). Although living *Astragalus anserinus* individuals were observed between disk furrows during our site inspections (Service, in litt. 2008, p. 11–14), we did not observe any individual plants within the disk furrows themselves. Our assumption is that any *A. anserinus* individuals that may have been previously established in these areas were turned over and buried by the furrowing activities.

The above drilling and seeding activities were conducted one week before our 2008 re-census surveys. Since the work had been recently accomplished, we were able to observe evidence of several live *Astragalus anserinus* individuals whose woody roots had been exposed during the drilling effort. It is unlikely that these individuals with exposed roots will survive the physical and physiological stress of that exposure (Service, in litt. 2008, p. 12, 14). At two sites, the drilling and seeding efforts affected clusters of live *A. anserinus* individuals that had not been exposed to wildfire (Service 2008c, Maps 4, 9). During our 2008 surveys, we were unable to quantify the direct effects of seeding efforts to *A. anserinus* for several reasons: 1) the wildfire reduced plant numbers such that there were very few plants left with which to analyze effects, 2) it was difficult to separate the effects from drilling and seeding from those associated with the wildfire, and 3) many of the 2004 and 2005 census polygons did not completely align with the areas that were drilled and seeded, which made comparisons difficult. Because there were no post-wildfire project-specific surveys conducted in advance, it is possible that the remedial drilling and seeding efforts in Utah affected previously unknown and unsurveyed *A. anserinus* sites.

Although the ESP included plans to remove dead juniper trees from several burned areas near *Astragalus anserinus* habitat by using a chain connected between two tractors, we did not observe any evidence that this activity had been conducted during our June 2008 field inspection.

Summary: During our 2008 post-wildfire re-census in Utah, we documented 11 occupied sites within Utah EO 001 (the largest known *Astragalus anserinus* EO) that were impacted by wildfire management actions (Service 2008c, Table 3). The 11 affected sites contained an estimated 11,000 individual plants (representing 18 percent of the estimated pre-fire rangewide population and 34.5 percent of the pre-fire population numbers within burned areas). On average, 47.1 percent of the total occupied area of a site was seeded (Service 2008c, Tables 1, 4), with a range of 13.6 percent to 100 percent of the occupied acreage at each of the 11 sites affected by disking and seeding activities (Service 2008c, Table 4). The 11 sites comprised roughly 13 percent (54 of 405 ac (22 of 164 ha)) of the total area rangewide, with roughly 25 ac (10 ha) or 6 percent of the total area rangewide being impacted by disking and seeding activities (Service 2008c, Table 4). It is likely that some *A. anserinus* individuals that were established in these areas were killed either because of mechanical damage or burial during the disking operations. However, we did see live plants between the furrows that appeared intact and are likely to survive. Because 4 of the 11 sites were not surveyed in 2004 and 2005 (U001–6–2, U001–6–3, U001–6–4, and U001–6–New), we do not have reliable baseline acreage estimates for these areas. The seeding efforts conducted under the ESP affected more than 50 percent of the occupied acreage at site U001–4–17, the site with the highest number of individuals counted in 2005 (7,486 plants). In addition, 117 of the 772 individuals (15.2 percent) counted at this site in 2008 were within areas impacted by the seeding activities (Service 2008c, Tables 3, 4).

We were unable to quantify the direct effects of remedial seeding activities to *Astragalus anserinus* because there were so few plants left after the 2007 wildfire, and it was difficult to differentiate the drilling and seeding effects from the fire effects. However, it is likely that numerous individual plants were lost because of the post-wildfire stabilization efforts. The effects of wildfire control activities and seeding efforts were detrimental to several affected *A. anserinus* sites and may continue to be detrimental because of the overall reduced recruitment capacity. This could be exacerbated if future wildfires result in similar or more aggressive post-fire remedial seeding activities in areas occupied by *A. anserinus*, which could negatively impact the population by further reducing the number of individuals. However, the magnitude of that potential impact could vary widely, depending on the specific location and scale of activity and the specific *A. anserinus* EO affected. Therefore, we are unable to assess the magnitude of those potential threats at this time.

Nonnative Introduced Species—Unseeded

Invasive nonnative plants (weeds) invade and alter diverse native communities, often resulting in nonnative plant monocultures that support little wildlife. Many experts believe that following habitat destruction, invasive nonnative plants are the next greatest threat to biodiversity (Randall 1996, p. 370). Invasive nonnative plants alter different ecosystem attributes including geomorphology, fire regime, hydrology, microclimate, nutrient cycling, and productivity (Dukes and Mooney 2004, p. 4). Invasive nonnative plants can also detrimentally affect native plants through competitive exclusion, alteration of pollinator behaviors, niche displacement, hybridization, and changes in insect predation. Examples are widespread among taxa and locations or ecosystems (D'Antonio and Vitousek 1992, pp. 74–75; Olson 1999, pp. 6–18; Mooney and Cleland 2001, pp. 5446–5451).

Nonnative plants that were not intentionally seeded and are known to occur at *Astragalus anserinus* sites include *Alyssum desertorum* (desert madwort), *Bromus tectorum* (cheatgrass), *Descurainia sophia* (flixweed), *Euphorbia esula* (leafy spurge), and *Halogeton glomeratus* (halogeton). In 2008, we also located one *Hyoscyamus niger* (black henbane) individual within one *A. anserinus* site. In previous years, this species had only been observed as a few plants along Goose Creek road. With regard to the above nonnative species, the two of most concern to *A. anserinus* are *B. tectorum* because of possible effect in altering the wildfire regime (see *Wildfire* above), and *E. esula* because of its invasive capabilities (DiTomaso 2000, p. 255).

Prior to the 2007 wildfire, *Bromus tectorum* was observed throughout the range of *Astragalus anserinus*, but was generally encountered at low density. *Bromus tectorum* is documented at all 5 EOs in Idaho, and 3 of the 4 EOs in Utah. Although habitat information is available for only 4 of the 10 EOs in Nevada, *B. tectorum* is documented at 3. One Utah EO has not been visited since

1990, and nonnative species presence has not been reported (Service 2008b, 17pp.). *Bromus tectorum* was generally found at less than 5 percent cover when it occurred with *A. anserinus*, based on estimates from the 2004 and 2005 census efforts. At *A. anserinus* sites with either a southern slope exposure or where livestock trampling was observed to be more prevalent, the *B. tectorum* percent cover was generally higher (e.g., between 10 to 20 percent, although as high as 70 to 80 percent in a few cases) (Service 2008b, 17 pp.). We do not yet know how the 2007 wildfire may have affected *B. tectorum* abundance, but are aware that the species often proliferates as a result of wildfire (D'Antonio and Vitousek 1992, pp. 74–75). The net effect of *B. tectorum* invasion is a ''positive feedback from the initial colonization in the interstices of shrubs, followed by fire, to dominance by *B. tectorum* and more frequent fire'' (D'Antonio and Vitousek 1992, pp. 74–75). However, field observations during the 2008 re-census effort suggest that *B. tectorum* infestations were generally similar to what they were before the 2007 fire within and outside of areas burned, although these observations were not well quantified. This may imply that *B. tectorum* may not be a threat to *A. anserinus* at this time. However, wildfire frequency is tightly linked with annual grass abundance. If wildfire frequency increases, it is expected that *B. tectorum* will also increase in abundance.

Euphorbia esula (leafy spurge) is a perennial forb with a deep and extensive spreading root system, which can be up to 20 ft (6 m) long. *E. esula* also spreads by seeds that are explosively dispersed as much as 15 ft (4.5 m). This species has been designated as a noxious weed by the state of Idaho, meaning it has the potential to cause injury to public health, crops, livestock, land or other property (Idaho Statute 22–2402). It reduces species diversity (Selleck *et al.* 1962, p.21; Butler and Cogan 2004, p. 308), forms almost homogeneous plant communities (Belcher and Wilson 1989, p. 174), poses a threat to other rare plant species such as *Platanthera praeclara*, (western prairie fringed orchid) (Kirby *et al.* 2003, p. 466), and is known from 42 of the 44 counties in Idaho (Invaders Database System 2008). It generally forms monocultures with very little native vegetation in the areas where it is found in the Goose Creek drainage.

Euphorbia esula has not been documented at *Astragalus anserinus* sites in Nevada; however, it has been documented at 4 of 5 *A. anserinus* EOs in Idaho and within the largest EO in Utah (Service 2008b, 17 pp.). In general, most *E. esula* sites are small in size, dispersed throughout *A. anserinus* EOs, and impact only small portions of some sites. In Utah EO 001, *E. esula* occurs in 1 of the 54 known occupied sites, and from 10 to 200 ft (3 to 61 m) away at 6 other sites (Service 2008b, 17 pp.). In Idaho EO 003, it is present in 13 of the 26 *A. anserinus* sites, although we have not established that all of these exposures directly overlie *A. anserinus* sites. It has also been documented as occurring in the area at seven other sites in Idaho (Service 2008b, 17 pp.). Based on field observations in 2004 and 2005, we estimate that *E. esula* co-occurs with *A. anserinus* at less than 2 percent of the total range-wide occupied area. In 2008, we observed two leafy spurge sites that had been disked and seeded during the post fire restoration effort in Utah (Service 2008c, Maps 7, 9; Service, in litt. 2008, pp. 15–16). This action may result in a substantial increase in *E. esula*, since one study examining the effects of tilling on *E. esula* found a three-fold increase in the number of stems per square meter after tilling was conducted (Selleck *et al.* 1962, p. 14).

Euphorbia esula control efforts within the Goose Creek drainage have been underway for several years; from 1999 through 2007, control efforts were conducted at over 500 sites in Idaho. Approximately 40 percent of the *E. esula* sites documented between 1999 and 2006 at Idaho EO 003 were no longer present in 2007 as a result of these efforts (A. Feldhausen, in litt. 2007, pp. 5–6). However, despite a rather intense control program in Utah, the species presence is increasing (Hardy 2005, p. 2). In 2007, increasingly aggressive control and monitoring efforts targeting *E. esula* were expanded and implemented at several *Astragalus anserinus* and *Penstemon idahoensis* sites in Utah and Idaho. BLM-Idaho established 11 small study plots to determine the effectiveness of *E. esula* treatments and to monitor any effects to *A. anserinus* and *P. idahoensis* (A. Feldhausen, in litt. 2007a, p. 3). Control efforts have expanded in the Goose Creek drainage in Idaho and Utah, but *E. esula* is still found in or near at least 20 *A. anserinus* sites in 5 EOs in Idaho and Utah (Service 2006b, p.4; A. Feldhausen, in litt. 2007a, p. 3; Service 2008b, 17pp.). In the Nevada portion of the Goose Creek drainage, BLM-Nevada has not conducted any invasive species management activities and none are planned (Howard 2007, p. 3).

The potential for *Euphorbia esula* and *Bromus tectorum* to become established throughout the entire Goose Creek drainage poses a threat to *Astragalus anserinus*. However, infestations of both species are currently limited and do not impact all occupied sites. In Idaho, control efforts appear to have been effective in eliminating *E. esula* at some sites and in controlling its spread. We recognize that this threat could become greater in the future, if wildfire frequency increases such that it promotes the spread of *B. tectorum* into *A. anserinus* EOs, since *B. tectorum* is highly invasive, highly flammable, dies and dries out in the spring, and spreads fire rapidly (D'Antonio and Vitousek 1992, p. 74). The magnitude of the potential threat presented by *B. tectorum* or *E. esula* competition would vary depending on the location and scale of the infestations, the specific *A. anserinus* EO(s) affected, and the effectiveness of any control treatments. As a result, we are unable to assess the likelihood or magnitude of future threats at this time.

Nonnative Introduced Species—Seeded

Agropyron cristatum (crested wheatgrass) was planted in the Goose Creek drainage before 1970 (Hardy 2005, p. 2; A. Feldhausen, in litt. 2007, p. 10; Howard 2007, p. 3). It was planted extensively near *Astragalus anserinus* sites during range seeding operations in the 1950s and 1960s, and also during wildfire restoration activities conducted within the Goose Creek drainage in 2007. Although *A. cristatum* is by far the most common intentionally seeded nonnative species, other nonnative species have also been introduced, including *Agropyron fragile* (Vavilov Siberian wheatgrass), *Elymus junceus* (Russian wildrye), *Elymus lanceolatus* ssp. *lanceolatus* (Critana thickspike wheatgrass), *Linum perenne* (Apar blueflax), *Medicago sativa* (Ladak alfalfa), and *Thinopyrum ponticum* (= *Agropyron elongatum*, tall wheatgrass) (M. Gates, in litt. 2008e, p. 1; R. Hardy, in litt. 2008, p. 1).

Agropyron cristatum is often used for rangeland seedings because seed is widely available, it establishes easily, provides suitable forage for livestock, provides some erosion control, and controls competition from other invasive nonnative plants (Walker and Shaw 2001, p.56). *A. cristatum* is extremely competitive and can out-compete other vegetation in several ways (Pellant and Lysne 2005, pp. 82–83). *A. cristatum* seedlings are better than some native species at acquiring moisture at low temperatures (Lesica and DeLuca 1998, p. 1; Pyke and Archer 1991, p. 4; Bunting *et al.* 2003, p. 82), and *A. cristatum* plantings are very stable and may inhibit or retard the development of a native plant

community (Marlette and Anderson 1986, p. 173). Range surveys conducted in 1966 in southern Idaho documented that *A. cristatum* had persisted in some areas for 30 to 50 years and was spreading into adjacent habitats (Hull and Klomp 1966, p. 7; 1967, p. 227). Increasing plant diversity within *A. cristatum* sites is challenging, and requires the implementation of measures to reduce its ability to compete before native species can be introduced (Pellant and Lysne 2005, pp. 84–87).

Prior to 2008, *Agropyron cristatum* had been documented at 2 of 5 *Astragalus anserinus* EOs in Idaho, and 1 of the 4 EOs in Nevada where we had habitat information. *A.gropyron cristatum* has the largest extent of area in *A. anserinus* habitat in Utah, where it was found extensively in the largest Utah EO (EO 001) (Service 2008b, 17 pp.). Although not quantified, some of the new EOs found in 2006 in Nevada were observed to be occupied by *A. cristatum* (Howard 2007, p. 3; Smith 2007, p.2). However, where both species co-occur they are typically separated, with *A. cristatum* growing on flatter areas and *A. anserinus* on slopes (Service 2006b, p. 5). Maps obtained from BLM-Utah indicate that *A. cristatum* had been seeded directly over numerous *A. anserinus* EOs, although, based on our field observations during the 2004 and 2005 census efforts, we were unable to confirm whether this actually occurred. *A. cristatum* was seldom observed where *A. anserinus* occurred, which indicates that the steep slopes may have been too difficult to plant and were avoided (Service 2006b, p. 5). We observed that *A. anserinus* density appeared to be higher on flat areas below tuffaceous outcrops where *A. cristatum* was not seeded (Service 2008b, 17 pp.) than on flat areas where *A. cristatum* was seeded. Two sites surveyed in 2005 (U001–NV–1 and U001–NV–2) were unusual in that we observed a high density of *A. anserinus* individuals in flat areas, as opposed to sloping areas where they are typically observed; these areas had not been seeded with *A. cristatum*.

Areas disturbed in 2004 during construction of a livestock watering pipeline that impacted one *Astragalus anserinus* site in Utah (see *Livestock Use* below) were reseeded with several nonnative species, including *Agropyron fragile, Elymus junceus*, *Elymus lanceolatus* ssp. *lanceolatus, Medicago sativa*, and *Thinopyrum ponticum* (M. Gates, in litt. 2008e, p. 1). We are unaware of the effect this activity may have had on *A. anserinus* since we have not inspected the pipeline subsequent to its construction. The monitoring associated with this project was limited to tracking effects of reseeding on five *A. anserinus* individuals in livestock exclusion cages.

Some areas in Utah that burned during the 2007 wildfire were reseeded in 2008 with *Achillea millefolium* (western yarrow)—a native forb; *Pascopyrum smithii*—a native grass; canby bluegrass (*Poa secunda* Canbar)—a native grass; *Agropyron cristatum*—a nonnative grass; *Elymus junceus*—a nonnative grass; *Linum perenne*—a nonnative forb; and *Medicago sativa*—a nonnative forb (M. Gates, in litt. 2008b, p. 1). Although the intention of these restoration efforts was to avoid known occupied *A. anserinus* habitat (M. Gates, in litt. 2008b, p. 1), we observed during our 2008 survey that 11 sites within Utah EO 001 (the largest EO) had been drilled and seeded (Service 2008c, Table 3) (see the ''2007 Wildfire Emergency Stabilization and Rehabilitation in Utah'' section above for more details).

We do not fully understand the effects of the seeding efforts on occupied *Astragalus anserinus* areas. The available literature has documented that *Agropyron cristatum*, which is frequently used to stabilize soils disturbed by fire, is able to out-compete slower-developing native species because of its drought tolerance, fibrous root system, and good seedling vigor (USDA 2006, p. 1). The seedings of *A. cristatum* that were conducted prior to 2008 were generally separated from *A. anserinus* areas, and did not appear to be spreading significantly from the areas where the species was planted. Because of this separation, populations of *A. cristatum* established due to the pre-2008 seeding activities were not considered to be a threat to *A. anserinus*.

The 2008 seeding activities took place directly over areas that supported approximately 10 percent of the pre-wildfire *Astragalus anserinus* individuals, although we are unable to conclusively determine the ongoing or cumulative effect of this activity on *A. anserinus* because of the short time that has elapsed. In addition, we are not aware of any specific studies on the competitive relationship between *A. cristatum* and any other *Astragalus* species, although *A. cristatum* is known to be an effective competitor with other aggressive introduced plants during the establishment period (USDA 2006, p. 1).

Summary: The 2008 *Agropyron cristatum* seeding activities occurred directly over areas that supported 18 percent of the pre-2007 wildfire *Astragalus anserinus* rangewide population numbers. We observed *A. anserinus* density to be higher in areas where *A. cristatum* was not seeded (Service 2008b, 17 pp.). We believe *A. cristatum* may be outcompeting *A. anserinus* in flat areas where *A. cristatum* was seeded directly over *A. anserinus* during the 1950s and 1960s. The available literature has documented that *A. cristatum* is highly competitive with other species (USDA 2006, p. 1). We believe that the reduced population level effects that resulted from the 2007 wildfire are being exacerbated by the ongoing competitive effects of nonnative seeded plants that were introduced for rangeland improvement and fire response activities. After fully considering each of the above factors, we find the threat presented by nonnative invasive species to *A. anserinus* to be moderate in magnitude, because of the likelihood of more frequent wildfire in the area combined with the cumulative population-level effects on recruitment and recovery from past seeding activities.

Livestock Use (Trampling, Water Developments, and Habitat Degradation)

Threats related to livestock use include the physical effects of trampling of plants, and the effects from range improvement projects and livestock water developments that degrade habitat and concentrate animals. We are unaware of any research that has evaluated the effects of livestock use on *Astragalus anserinus* specifically; however, the effects of livestock on other plant species is well documented (Milchunas and Lauenroth, 1993, pp. 327–366; Jones 2000, pp. 155–164). To our knowledge, the effects of livestock use on *A. anserinus* pollinators have not been investigated. However, one study of another Great Basin *Astragalus* species hypothesized that sheep use and grazing affected the pollinators for that species through the destruction of potential nest sites, destruction of existing nests and contents, direct trampling of adult bees, and removal of food resources (Sugden 1985, p. 309).

Livestock use has occurred within the Goose Creek drainage for more than 150 years, although it was likely much greater during the late 1800s (Hardy 2005, p. 1). The Goose Creek drainage was a stopping area for pioneers traveling the California National Trail because of the availability of water, which increased livestock presence in the area (Howard 2007, p. 3). However, without pre-livestock baseline population information on *Astragalus anserinus*, it is difficult to assess the effects of this activity to the species over time.

The presence of livestock trails and evidence of trampling has been documented at every *Astragalus anserinus* EO (Howard 2007, p. 3; A. Feldhausen, in litt. 2007a, p. 4; Service 2008b, 17 pp.). In addition, all *A. anserinus* sites on public land are within active livestock grazing allotments. None of these sites have been fenced or otherwise excluded from livestock use, other than some allotments that were recently closed in Nevada as a result of the 2007 wildfire (Bluff Creek, Grouse Creek, and Little Goose Creek) (B. Fuell, Elko BLM, in litt. 2008, p. 1). One livestock exclusion fence that is proposed for construction east of the 2007 wildfire perimeter in Utah has not yet been installed; however, BLM has indicated that they believe that *A. anserinus* would be largely undisturbed by this activity (M. Gates, in litt. 2008c, p. 1; 2008d, p. 1). This fence, if installed, would protect *A. anserinus* sites from livestock use within areas burned by the 2007 wildfire.

The intensity of livestock use varies throughout the Goose Creek drainage, depending on the terrain, location, and proximity to water sources. For example, flat areas (especially those planted with *Agropyron cristatum*) generally receive more livestock use than the steep tuffaceous outcrops where *A. anserinus* normally occurs. Based on field observations from the 2004 and 2005 census efforts, we estimate that less than 5 percent of any particular *A. anserinus* site is being used as livestock trails, with the exception of one site located approximately 328 ft (100 m) from a water development. The fact that *A. anserinus* individuals have not been observed within well-used trails suggests that plants are lost to trampling. However, the species is sometimes observed to be abundant along trail margins. The relatively sparse vegetation within most occupied sites and the species' apparent ability to tolerate some level of disturbance has likely helped it persist.

Water tanks, placement of salt licks, and fence construction may alter livestock grazing patterns and influence the effects of trampling at some *Astragalus anserinus* sites by concentrating animals. In general, the few fences that occur within *A. anserinus* habitat occur on private lands. Although salt licks can increase livestock use in an area, we are only aware of one salt lick, which was placed approximately 330 ft (100 m) from EO (N004) in Nevada. We are also aware of two fences within the Goose Creek drainage in Utah. One was installed adjacent to Pole Creek to protect the creek from livestock (Service 2005a, p. 3), although its effects, if any, to *A. anserinus* are unknown. A new fence is proposed for construction east of the 2007 wildfire perimeter to protect burned areas from livestock entry but is not expected to affect *A. anserinus* (M. Gates, in litt. 2008c, p. 1; 2008d, p. 1).

We are aware of five livestock water tanks located within 1 mi (1.6 km) of *Astragalus anserinus* sites. The availability of watering locations can influence livestock grazing patterns by concentrating animals in certain areas, affecting native vegetation. During our 2004 plant census, we observed that an area extending approximately 150 ft (45 m) around the tanks had been completely denuded of vegetation from livestock use. A water pipeline constructed in Utah in 1987 delivers water to two livestock tanks sited within *A. anserinus* habitat (Hardy 2005, p. 3). One of the tanks is located within 330 ft (100 m) of an occupied *A. anserinus* site. Thirteen *A. anserinus* plants were observed immediately outside the denuded area around this tank, although we are unaware as to whether the species was present prior to construction because this was a recently discovered site at an existing EO (Service 2006b, p. 2). A site within this same EO but approximately 450 ft (140 m) away from the closest water tank was partially protected from livestock access because of its location on a steep bluff. More than 850 *A. anserinus* individuals were recorded within this partially protected EO.

Another livestock watering tank was constructed in 2004 on an extensive flat area within Utah EO 003. Although the nearest *Astragalus anserinus* individuals are located approximately 1,600 ft (485 m) from the tank itself (Service 2006b, p. 3), the pipeline serving this and another water tank went through the upper portion of EO 003. Although no *A. anserinus* plants were observed in the construction area during BLM's 2000 and 2002 site surveys, plants were subsequently discovered during a 2004 pre-construction survey. However, no *A. anserinus* individuals were lost during project implementation (Service 2005a, p. 3). The areas that were disturbed by construction were seeded with nonnative forage species (see *Nonnative Invasive Species seeded* section), and monitoring efforts are underway to detect any changes to *A. anserinus*. As part of the pipeline monitoring efforts, four livestock exclosure cages measuring approximately 3 ft by 3 ft (0.9 m by 0.9 m) were established. Vegetation is being monitored to detect changes to *A. anserinus* within and outside of the cages (Hardy 2005, p. 7; Service 2005a, p. 3). In addition, BLM proposes to construct a livestock exclosure around 1 ac (0.4 ha) of occupied habitat at this location and conduct a census of *A. anserinus* within and adjacent to the exclosure (Hardy 2005, p. 7).

Another water tank has been in place for over 15 years between two *Astragalus anserinus* EOs on BLM land in Idaho (EOs 004 and 009), but is located is at least 3,000 ft (900 m) away from any known *A. anserinus* individuals (Service 2005b, p. 3). An above-ground pipeline and opening valve was constructed within EO 004, but plans are being developed to relocate the pipeline beneath an existing unimproved road. This pipeline also distributes water to several water tanks on the Sawtooth National Forest, but those tanks are not within any known *A. anserinus* locations. The pipeline relocation project has not been accomplished to date (J. Tharp, in litt. 2008b, p. 1), and an environmental assessment will be completed prior to implementation to identify and develop appropriate measures to avoid or minimize any adverse effects of this activity to *A. anserinus* (Service 2005b, p.3). An additional water tank (the Delano Well site), is located approximately 1,200 ft (370 m) from Nevada EO 002, where 10 individual plants were counted in 2006 (Howard 2007, p. 2). However, since we don't have any pre-construction survey information, we don't know whether the construction of the Delano Well site affected *A. anserinus*. We are unaware of any future plans by BLM to develop water tanks within *A. anserinus* habitat.

In addition to direct consumption (see discussion of herbivory under **Factor D** below) and trampling impacts, habitat degradation and alterations to the ecosystem associated with livestock use may also be a concern (Milchunas and Lauenroth, 1993, pp. 327–366; Jones 2000, pp. 155–164). Jones (2000) analyzed 54 studies and 16 variables to assess grazing on North American arid ecosystems across elevations, from forest ecosystems to grasslands, and across different grazing systems. The author found that 11 of the 16 variables that were evaluated revealed significant detrimental effects from cattle grazing (Jones 2000, p. 159). Some of the adverse effects from livestock that have been documented in studies include changes in the timing and availability of pollinator food plants (Kearns and Inouye 1997, pp. 298–299); changes to insect communities (Kearns and Inouye 1997, pp. 298–299; Debano 2006, pp.

2553–2554); changes in water infiltration due to soil compaction (Jones 2000, Table 1); disturbance to soil microbiotic crusts (Belnap *et al.* 1999, p. 167; Jones 2000, Table 1); subsequent weed invasions (Parker *et al.* 2006, pp. 1459–1461); and soil erosion from hoof action (Jones 2000, Table 1). Portions of at least 1 EO in Idaho, 2 EOs in Nevada, and the largest EO in Utah (EEO 001) show evidence of soil microbiotic crusts that have been trampled by livestock (Service 2008b, 17 pp). In addition, at least 1 EO in Idaho, 1 EO in Nevada, and the largest EO in Utah (EO 001) exhibit deeply incised washes (Service 2008b, 17 pp.). Given that all EOs on public lands are within active grazing allotments, the possibility of such effects occurring to *Astragalus anserinus* is high.

Summary: Livestock use has been documented at every *Astragalus anserinus* EO, and all sites on public land are within active grazing allotments. Livestock can trample plants, however, many of the *A. anserinus* sites are on sloping hillsides that livestock generally avoid. Since *A. anserinus* individuals have not been observed within well-used trails, any individuals that may have been present within the trail footprint prior to livestock use were likely lost to trampling. The fact that the species is sometimes abundant along trail margins suggests it is able to persist at some lower level of disturbance. Based on these factors, even though grazing is ongoing, the magnitude of livestock-related threats (including fence construction and water tank construction) is considered low to moderate. The magnitude of this threat could increase in the future if livestock management activities or new water developments are implemented in a manner that concentrates animals around *A. anserinus* EOs.

Development (Road Construction and Maintenance, Utilities, Garbage Dumps, Private Properties)

In general, the Goose Creek drainage in Idaho, Utah, and Nevada where *Astragalus anserinus* is found is sparsely populated, and the effects of development are relatively minor. Across the range of the species, we estimate there are fewer than ten human-inhabited areas (each with fewer than five buildings). Mancuso and Moseley (1991, p. 22), indicate that some *A. anserinus* habitat was likely destroyed during the construction of secondary access roads that cross much of the Goose Creek drainage. We have documented roads affecting small portions of 3 of 5 EOs in Idaho, 1 of the 4 EOs in Nevada (for which we have habitat information), and 2 of 4 EOs in Utah, including the largest EO (EO 001) (Service 2008b, 17 pp.). In addition, new roads and fire lines associated with the 2007 wildfire impacted some sites in Utah (see *Wildfire Management* and *Firefighting Activities* above). Most of the land adjacent to Goose Creek is privately owned, and has been largely converted to livestock pasture. The status of *A. anserinus* on private land is largely unknown, because most of the known sites have not been visited since the early 1990s. Because of the remoteness of the Goose Creek drainage, development impacts on *A. anserinus* have been few and localized to date. Most *A. anserinus* EOs are made up of several sites within 0.6 mi (1 km) of each other, so population-level effects often associated with habitat fragmentation are not anticipated. In this regard, we do not anticipate any significant continuing or cumulative effects to *A. anserinus* from the existing roads or development. Since we are also unaware of any future development plans in the area, we consider the magnitude of this threat to be low.

Recreation (Off-Highway Vehicle Use)

Recent census and survey efforts have not documented any impacts to *Astragalus anserinus* because of recreational use (Service 2008b, 17 pp.). Accordingly, we consider this potential threat to be low in magnitude and non imminent.

Mining

One expired mineral exploration permit did overlap with a portion of EO 002 in Nevada (Howard 2007, p. 3), and another mineral development firm has expressed interest in exploring areas south of the Goose Creek drainage near an existing *Astragalus anserinus* EO in Nevada (M. Hemker, Idaho Fish and Wildlife Office, in litt. 2006). However, we are unaware of any other mining efforts that could potentially affect *A. anserinus* or its habitat. Based on the limited mining interest that has been identified in the Goose Creek vicinity to date, we consider this threat to be low in magnitude and non-imminent.

Summary of Factor A

The 2007 wildfire severely constrained the range and numbers of the population, significantly reducing the number of *Astragalus anserinus* plants available for recruitment. This threat is exacerbated by the increased fire return interval in the sagebrush-steppe ecosystem, which increases the possibility that another wildfire will occur before the species can recover from the loss of individuals associated with the 2007 wildfire. Accordingly, we find the negative rangewide, population-level effects both from the 2007 wildfire and potential future wildfires to be high in magnitude. However, this threat is not considered to be imminent since we cannot predict when the next fire may occur.

The threat presented from competition by seeded and unseeded nonnative plant species will likely add to the negative wildfire effects on the *Astragalus anserinus* population, further reducing its ability to recover. Accordingly, we have determined that this threat is also moderate in magnitude. The mechanical damage to *A. anserinus* individuals from construction activities and the disking and seeding efforts related to wildfire management activities were also detrimental to several affected *A. anserinus* populations. These effects may continue to impact the species' overall recruitment capacity; however, we find them to be moderate to low in magnitude and non-imminent because of their localized impact and the uncertain timing of future activities of this nature.

Livestock-related threats could increase in magnitude if new water developments or management activities are implemented that significantly concentrate animals around *Astragalus anserinus* EOs, but we are unaware of any plans in this regard. Accordingly, we have determined that livestock use presents a threat that is low to moderate in magnitude, but non-imminent. The threats presented by development, recreation, and mining use in the Goose Creek drainage and *A. anserinus* EOs are considered low in magnitude and non-imminent because of the limited use of the area for these types of activities.

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

We are not aware of any threats involving the overutilization or collection of *Astragalus anserinus* for any commercial, recreational, scientific, or educational purposes at this time.

Factor C. Disease or Predation

During the 2004 and 2005 census efforts, few *Astragalus anserinus* plants exhibited signs of herbivory. Those that did were observed to be eaten near the ground (e.g., at a height of 1 inch (2 centimeters)), which indicates that rabbits may have been responsible (G. Glenne, Idaho Fish and Wildlife Office, in litt. 2006). We are unaware of any herbivory attributable to livestock, native ungulates, or birds, although in

2004, numerous green caterpillars and webs were found on plants at one site in Idaho (Service 2008b, 17 pp.). In addition, several plants were observed withering, particularly after the heavy rains in May of 2005 (IDCDC 2007a, p.3), which was attributed to either a fungus or caterpillar damage.

Summary of Factor C

With very little herbivory by wildlife or livestock observed or documented, predation does not appear to pose a significant threat to *Astragalus anserinus*. We have no reason to suspect this poses a significant threat to the species. Accordingly, we find the threat to the species resulting from herbivory to be low in magnitude and non-imminent. There is no evidence that disease, such as fungal damage, poses a significant threat to the species.

Factor D. Inadequacy of Existing Regulatory Mechanisms

There are no State regulations in Idaho, Utah, or Nevada that protect *Astragalus anserinus*. All *A. anserinus* sites on public land are within active livestock grazing allotments. The status of *A. anserinus* on private land is largely unknown, because most of the known sites have not been visited since the early 1990s. The BLM has promulgated regulations, policies, and guidelines to protect sensitive species on Federal lands, control wildfire and rehabilitate burned areas, and implement rangeland assessments, standards, and guidelines to assess rangeland health. In Idaho, *A. anserinus* occurs within four livestock grazing allotments, although we do not know the extent to which the standards or assessments are being met (A. Feldhausen, in litt. 2007, p.4). Trespass cattle were removed from one of these allotments in 2007 as an administrative matter not related to a resource concern (A. Feldhausen, in litt. 2007b, p. 1); we have no information regarding whether these cattle may have impacted *A. anserinus*. In Nevada, *A. anserinus* occurs within three livestock grazing allotments, although none of the livestock management plans for these allotments have identified *A. anserinus* as a species of concern (Howard 2007, p. 3). Generally, all allotments require biannual pasture rotations (Howard 2007, pp. 3–4), but do not specifically address *A. anserinus* management. We do not have any information regarding the implementation of rangeland standards or assessments within these allotments, whether the allotments have been surveyed for *A. anserinus*, or whether these rotations benefit *A. anserinus*. In Utah, *A. anserinus* sites occur within one allotment (Hardy 2005, p. 1); the Utah Goose Creek Ranch was established as a private grazing unit in 1928 and the Goose Creek Allotment fence was constructed in 1953. Livestock use on most key forage species within this allotment is generally ''light to moderate'' but has been ''heavy to severe'' in some areas in some years (especially during drought years) (Hardy 2005, p. 2). A rangeland standards assessment was conducted in the Utah Goose Creek drainage in May of 1999, and determined the western portion of Goose Creek to be ''functional,'' and the central portion to be ''stable'' with the hydrological aspects ''functional''. However, the central portion's biotic integrity was determined to be ''at risk'' because of a lack of vegetative diversity (Hardy 2005, p. 3). This area was primarily occupied by *Artemisia tridentata* ssp. *wyomingensis* and *Agropyron cristatum*, but lacked forbs and other grasses. Consequently, the western portion of the Basin was rated as being in the late-seral stage, but the middle part was rated as being in the mid-seral stage. BLM guidelines within Utah require that areas not be grazed for two growing seasons after a fire treatment (M. Gates, in litt. 2008d, p. 1), although we frequently observed livestock within the area burned in the 2007 fire during our 2008 surveys in Utah. We have been advised that BLM-Nevada has closed all burned areas to livestock use until further notice (B. Fuell, in litt. 2008, p. 1).

As discussed under Factor A, two livestock water tank and pipeline projects in Utah and Idaho were surveyed by the BLM for *Astragalus anserinus* prior to construction. Survey and monitoring efforts specific to *A. anserinus* are discussed above; however range-wide trend monitoring has not been conducted. The species special designation status by the BLM requires that they follow specific management guidelines; however, we have no information regarding whether or how the guidelines are being implemented.

Summary of Factor D

We do not have information on how BLM standards and guidelines are being met within livestock allotments that contain *Astragalus anserinus*, nor do we have any information that allotment management plans address *A. anserinus*. We consider the threat presented by inadequate regulatory mechanisms to be moderate to low in magnitude, but non-imminent, because the native vegetation at *A. anserinus* sites appears to be relatively intact and it appears the standards and guidelines are probably protective of the species.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

We have no information concerning pollinators, genetic diversity, or germination that is specific to *Astragalus anserinus*. As such, we are unable to determine whether these or any other presently unknown natural or manmade factors could potentially affect the ability of this species to survive into the foreseeable future. With regard to climate change, *Bromus tectorum* and other C3 grasses (C3 refers to one of three alternative photosynthetic pathways) are likely to thrive as atmospheric carbon dioxide increases, likely influencing wildfire frequency (Mayeux *et al*. 1994, p. 98). Further, as the climate changes, the abundance and distribution of native flora and fauna will also likely change. While the extent to which climate change may affect *A. anserinus* habitat is not fully understood, those effects could result in physiological stress or the loss or alteration of habitat. In addition, an increased occurrence of extreme events, such as fire and drought, could also impact the remaining populations. Endemic species with limited ranges and adapted to localized conditions would be expected to be more severely impacted by climate change (Midgley *et al*. 2002, p. 448) than those considered habitat generalists. Because the specific effects of probable climate change are unknown at this time, we are not able to predict the foreseeable magnitude of this potential threat with confidence.

Since most EOs are comprised of many sites that are within 0.6 mi (1 km) of each other, genetic exchange should still be possible given appropriate pollination vectors, although the scale at which it occurs may be reduced because of a reduced number of individuals. One exception may be Nevada EO–005, which was small and isolated to begin with and burned in 2007. Our 2008 field inspection observed only two plants, so the genetic bottleneck effects typically relevant to small population sizes may be evident in this EO. However, the surrounding area has not been thoroughly searched for additional plants.

Summary of Factor E

We are unaware of any other natural or manmade factors affecting the species' continued existence that present a current threat to *Astragalus anserinus*. We are unable to predict the magnitude of the threat presented by probable climate change to *A. anserinus* at this time. We also consider the

potential genetic bottleneck effects to *A. anserinus* to be low in magnitude, since it may only apply to one EO, which has not been thoroughly surveyed for the presence of other individuals.

General Threats Summary

Ongoing threats to remaining *Astragalus anserinus* individuals include future habitat degradation and modifications to the sagebrush-steppe ecosystem in which it occurs because of an altered wildfire regime (i.e., fires are increasing in frequency, size, and duration); diminished recruitment capacity resulting from the 2007 wildfire that eliminated 53 percent of the known individuals (31,500 of 60,000) and burned 25 percent of the known occupied habitat (100 ac (41 ha) of 400 ac (164 ha)); loss of additional individuals and diminished recruitment capacity from future wildfires; and ongoing effects of habitat competition from both seeded and unseeded nonnative plant species. Other factors that may threaten *A. anserinus* to a lesser extent include livestock use, recreation, mining, development, and the inadequacy of regulatory mechanisms. Climate change effects to Goose Creek drainage habitats are possible, but we are unable to predict the specific impacts of this change to *A. anserinus* at this time.

The continuing effect of the 2007 wildfire to the species' recruitment capabilities, and the potential for similar effects to remaining populations from future fires present the greatest threats to *Astragalus anserinus* at this time. The fact that our post-fire surveys documented a 50 percent decline in the number of known *A. anserinus* individuals in areas that did not burn versus a 98 percent decline in the number of known individuals in areas that did burn suggests strongly that fire may kill *A. anserinus*. We did not observe any evidence that *A. anserinus* seed dormancy is broken by wildfire during our field inspections, which occurs in some other plant species. Based on the best available information, the species' capacity to replace the number of individuals lost to the 2007 wildfire will likely depend on recruitment, which we believe occurs slowly based on the average number of seedlings that were observed during our post-wildfire surveys. Given what we believe to be an increasing fire frequency, it is possible that recruitment will not restore these populations before the next fire event. In addition to the threats related to increased fire frequency, wildfires now tend to be larger and burn more uniformly across the landscape, leaving fewer unburned areas, which affects the post-fire recovery capacity of native sagebrush-steppe vegetation (Whisenant 1990, p. 4; Knick and Rotenberry 1997, pp. 287, 297; Brooks *et al.* 2004, pp. 682–683). These cascading effects increase the likelihood that the species will become endangered within the foreseeable future throughout all or a significant portion of its range.

The establishment of *Euphorbia esula* and *Bromus tectorum* throughout the Goose Creek drainage also represents a potential but not imminent invasive competition threat to *Astragalus anserinus*. *E. esula* represents a potential threat primarily because of its invasive capabilities and its ability to displace native plants. *B. tectorum* represents an additional threat because of its ability to alter and shorten the wildfire return regime. However, infestations for both species are currently localized, limited in size, and do not impact all *A. anserinus* occupied sites. Further, *E. esula* control efforts have increased in recent years, and *B. tectorum* invasion appears to be primarily confined to southern portions of the Goose Creek drainage. Nevertheless, if wildfire frequency is increasing as suggested by the occurrence of two wildfire events in the last 7 years, the threat presented by *B. tectorum* expansion would likely increase in magnitude.

Astragalus anserinus normally occurs in sparsely-vegetated sites, where it is able to tolerate the physiological stresses of living in tuffaceous soils that are apparently not conducive to supporting other plant species. The 2008 wildfire response included seeding *Agropyron cristatum* directly over areas that supported approximately 18 percent of the pre-wildfire *A. anserinus* individuals. *A. cristatum* is known to be an effective competitor with other aggressive introduced plants (USDA 2006, p. 1), and we presume that it may be an even more effective competitor with less aggressive plants. If *A. cristatum* plants which are seeded during fire restoration activities are able to outcompete *A. anserinus*, it may displace the species over time. This threat could increase in magnitude if seeding activities are conducted to respond to future wildfires in *A. anserinus* habitat.

Finding

As discussed in the Summary of Factors section, we determined that any future threat resulting from the effects of wildfire would be high in magnitude, based on the continuing population-level effects resulting from the 2007 wildfire on recruitment. That threat would be exacerbated by fire fighting response and restoration activities, including drilling, disking, and seeding efforts in burned areas, which could introduce competitive species as discussed in Factor A.

The wildfire return interval in the Goose Creek watershed may now be on the average of every decade (versus every 60 to 110 years), based on the two recent occurrences. However, we acknowledge the uncertainty associated with establishing trends based on the limited data available, particularly since we have no historical records of wildfire frequency in the Goose Creek watershed. Preliminary data suggest that within the 4 sites that were completely burned by the 2007 wildfire, *Astragalus anserinus* numbers declined 98 percent from the 2004 and 2005 counts (Service 2008c, Table 2). The primary threats to the species center on the ongoing and cumulative effects of the 2007 wildfire and future wildfires to recruitment capacity, compounded by competition from nonnative species. Based on our analysis of the best available information, we have no reason to believe that population trends will improve, nor that the effects of the primary threats acting on the species will be ameliorated in the foreseeable future.

Climate change projection models are not reasonably accurate for the localized range of *Astragalus anserinus*, and therefore we cannot reasonably predict that climate change will pose a threat in the future. Accordingly, because the specific effects of climate change are unknown, we are unable to project with any certainty whether climate change may lead to such on the ground effects as changing wildfire regimes or increasing size and number of invasive plant populations, which might impact *A. anserinus*.

As required by the Act, we considered the five potential threat factors to assess whether *Astragalus anserinus* is threatened or endangered throughout all or a significant portion of its range. When considering the listing status of the species, the first step in the analysis is to determine whether the species is in danger of extinction throughout all of its range. If this is the case, then we list the species in its entirety. For instance, if the threats to a species are directly acting on only a portion of its range, but they are at such a large scale that they place the entire species in danger of extinction, we would list the entire species. If, however, we determine a species is not endangered throughout its range, we would then evaluate whether the species is threatened throughout all or a significant portion of its range.

Threats affecting *Astragalus anserinus* and its habitat are at a magnitude that threatens the species throughout all of its range. We acknowledge there are uncertainties regarding (1) the post-wildfire recovery abilities of the species over the long-term; (2) the return interval of future wildfires; (3) the effects of post-fire restoration seeding activities in occupied areas; and (4) the extent of invasive nonnative plant competition that will occur as a result of wildfire and post-fire restoration activities. Based on the best available information, the threats of greatest concern to *A. anserinus* include the continuing effects to its recruitment capacity due to: (1) the loss of 98 percent of the known individuals in areas burned in the 2007 wildfire, versus the loss of 50 percent of the known individuals in areas that did not burn; (2) the potential inability of the species to recover those losses through recruitment of new individuals before the next wildfire occurs; and (3) competition from nonnative plants. Decreased genetic exchange may present a threat to Nevada EO–005, which was a small and isolated site to begin with and burned in 2007. However, the genetic bottleneck effects of small population size would not be a factor at this time for the other EOs, since they are composed of several sites within 0.6 mi (1 km) of each other. Accordingly, genetic exchange between them should remain possible provided sufficient pollination vectors are available.

In summary, we have carefully assessed the best available scientific and commercial information available regarding the past, present, and future threats faced by *Astragalus anserinus* in developing this 12- month finding. We have reviewed the petition, information in our files, information supplied to us by State and Federal agencies, peer-reviewed literature, and other unpublished documents. We evaluated both the extent of the occupied area that was burned and the decline in the total number of individual plants that resulted from the 2007 wildfire. We also evaluated the 2008 fire rehabilitation activities, and the effects of competition from nonnative plants and other potential threats. Given the possibility that wildfire frequency may be increasing, the species may not have an opportunity to recover before the next wildfire event. Accordingly, we find that listing *A. anserinus* as threatened or endangered is warranted. However, as explained in more detail below, an immediate proposal of a regulation implementing this action is precluded by higher priority listing actions, and progress is being made to add or remove qualified species from the Lists of Endangered and Threatened Wildlife and Plants.

We have reviewed the available information to determine if the existing and foreseeable threats render the species at risk of extinction now such that emergency listing is warranted. We have determined that an emergency listing is not warranted for this species at this time because there are extant populations in Idaho, Nevada, and Utah, and we do not believe there are any potential threats of such great immediacy, severity, and/or scope that would threaten all of the known populations with the imminent risk of extinction. However, if at any time we determine that emergency listing of *Astragalus anserinus* is warranted, we will initiate an emergency listing.

The Service adopted guidelines on September 21, 1983 (48 FR 43098) to establish a rational system for allocating available appropriations to the highest priority species when adding species to the Lists of Endangered or Threatened Wildlife and Plants or reclassifying threatened species to endangered status. The system places greatest importance on the immediacy and magnitude of threats, but also factors in the level of taxonomic distinctiveness by assigning priority in descending order to monotypic genera, full species, and subspecies (or equivalently, distinct population segments of vertebrates). The lower the listing priority number, the higher the listing priority (that is, a species with an LPN of 1 would have the highest listing priority).

As a result of our analysis of the best available scientific and commercial information, we have assigned *Astragalus anserinus* a Listing Priority Number of 5, based on our finding that the threats to the species are high in magnitude but not imminent. Approximately 98 percent of the individual plants that had been previously documented in the areas burned by the 2007 wildfire were killed, based on the lack of adult plants as well as seedlings in the burned areas. In addition, it is possible that the fire return interval is increasing in the Goose Creek drainage. We believe the rangewide threat from future wildfires will exacerbate the ongoing effects to the population's recruitment capacity resulting from the 2007 wildfire and is high in magnitude. However, this and other threats to the species are not imminent. While we conclude that listing *Astragalus anserinus* is warranted, an immediate proposal to list this species is precluded by other higher priority listing, which we address below.

Preclusion and Expeditious Progress

Preclusion is a function of the listing priority of a species in relation to the resources that are available and competing demands for those resources. Thus, in any given fiscal year (FY), multiple factors dictate whether it will be possible to undertake work on a proposed listing regulation or whether promulgation of such a proposal is warranted but precluded by higher-priority listing actions.

The resources available for listing actions are determined through the annual Congressional appropriations process. The appropriation for the Listing Program is available to support work involving the following listing actions: proposed and final listing rules; 90–day and 12–month findings on petitions to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists) or to change the status of a species from threatened to endangered; annual determinations on prior ''warranted but precluded'' petition findings as required under section 4(b)(3)(C)(i) of the Act; proposed and final rules designating critical habitat; and litigation-related, administrative, and program management functions (including preparing and allocating budgets, responding to Congressional and public inquiries, and conducting public outreach regarding listing and critical habitat). The work involved in preparing various listing documents can be extensive and may include, but is not limited to: gathering and assessing the best scientific and commercial data available and conducting analyses used as the basis for our decisions; writing and publishing documents; and obtaining, reviewing, and evaluating public comments and peer review comments on proposed rules and incorporating relevant information into final rules. The number of listing actions that we can undertake in a given year also is influenced by the complexity of those listing actions; that is, more complex actions generally are more costly. For example, during the past several years, the cost (excluding publication costs) for preparing a 12–month finding, without a proposed rule, has ranged from approximately $11,000 for one species with a restricted range and involving a relatively uncomplicated analysis to $305,000 for another species that is wide-ranging and involving a complex analysis.

We cannot spend more than is appropriated for the Listing Program without violating the Anti-Deficiency

Act (see 31 U.S.C. 1341(a)(1)(A)). In addition, in FY 1998 and for each fiscal year since then, Congress has placed a statutory cap on funds which may be expended for the Listing Program, equal to the amount expressly appropriated for that purpose in that fiscal year. This cap was designed to prevent funds appropriated for other functions under the Act (for example, recovery funds for removing species from the Lists), or for other Service programs, from being used for Listing Program actions (see House Report 105-163, 105th Congress, 1st Session, July 1, 1997).

Recognizing that designation of critical habitat for species already listed would consume most of the overall Listing Program appropriation, Congress also put a critical habitat subcap in place in FY 2002 and has retained it each subsequent year to ensure that some funds are available for other work in the Listing Program: ''The critical habitat designation subcap will ensure that some funding is available to address other listing activities'' (House Report No. 107 - 103, 107th Congress, 1st Session, June 19, 2001). In FY 2002 and each year until FY 2006, the Service has had to use virtually the entire critical habitat subcap to address court-mandated designations of critical habitat, and consequently none of the critical habitat subcap funds have been available for other listing activities. In FY 2007, we were able to use some of the critical habitat subcap funds to fund proposed listing determinations for high-priority candidate species. In FY 2008, while we were unable to use any of the critical habitat subcap funds to fund proposed listing determinations, we did use some of this money to fund the critical habitat portion of some proposed listing determinations, so that the proposed listing determination and proposed critical habitat designation could be combined into one rule, thereby being more efficient in our work. In FY 2009, we anticipate being able to do the same.

Thus, through the listing cap, the critical habitat subcap, and the amount of funds needed to address court-mandated critical habitat designations, Congress and the courts have in effect determined the amount of money available for other listing activities. Therefore, the funds in the listing cap, other than those needed to address court-mandated critical habitat for already listed species, set the limits on our determinations of preclusion and expeditious progress.

Congress also recognized that the availability of resources was the key element in deciding whether, when making a 12–month petition finding, we would prepare and issue a listing proposal or instead make a ''warranted but precluded'' finding for a given species. The Conference Report accompanying Public Law 97-304, which established the current statutory deadlines and the warranted-but-precluded finding, states (in a discussion on 90–day petition findings that by its own terms also covers 12–month findings) that the deadlines were ''not intended to allow the Secretary to delay commencing the rulemaking process for any reason other than that the existence of pending or imminent proposals to list species subject to a greater degree of threat would make allocation of resources to such a petition [that is, for a lower-ranking species] unwise.''

In FY 2009, expeditious progress is that amount of work that can be achieved with $8,808,000, which is the amount of money that Congress appropriated for the Listing Program (that is, the portion of the Listing Program funding not related to critical habitat designations for species that are already listed). Our process is to make our determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first and also because we allocate our listing budget on a nationwide basis. The $8,808,000 is being used to fund work in the following categories: compliance with court orders and court-approved settlement agreements requiring that petition findings or listing determinations be completed by a specific date; section 4 (of the Act) listing actions with absolute statutory deadlines; essential litigation-related, administrative, and listing program management functions; and high-priority listing actions for some of our candidate species. The allocations for each specific listing action are identified in the Service's FY 2009 Allocation Table (part of our administrative record).

In FY 2007, we had more than 120 species with an LPN of 2, based on our September 21, 1983, guidance for assigning an LPN for each candidate species (48 FR 43098). Using this guidance, we assign each candidate an LPN of 1 to 12, depending on the magnitude of threats (high vs. moderate to low), immediacy of threats (imminent or nonimminent), and taxonomic status of the species (in order of priority: monotypic genus (a species that is the sole member of a genus); species; or part of a species (subspecies, distinct population segment, or significant portion of the range)). The lower the listing priority number, the higher the listing priority (that is, a species with an LPN of 1 would have the highest listing priority). Because of the large number of high-priority species, we further ranked the candidate species with an LPN of 2 by using the following extinction-risk type criteria: International Union for the Conservation of Nature and Natural Resources (IUCN) Red list status/rank, Heritage rank (provided by NatureServe), Heritage threat rank (provided by NatureServe), and species currently with fewer than 50 individuals, or 4 or fewer populations. Those species with the highest IUCN rank (critically endangered), the highest Heritage rank (G1), the highest Heritage threat rank (substantial, imminent threats), and currently with fewer than 50 individuals, or fewer than 4 populations, comprised a list of approximately 40 candidate species (''Top 40''). These 40 candidate species have had the highest priority to receive funding to work on a proposed listing determination. As we work on proposed and final listing rules for these 40 candidates, we are applying the ranking criteria to the next group of candidates with LPN of 2 and 3 to determine the next set of highest priority candidate species.

To be more efficient in our listing process, as we work on proposed rules for these species in the next several years, we are preparing multi-species proposals when appropriate, and these may include species with lower priority if they overlap geographically or have the same threats as a species with an LPN of 2. In addition, available staff resources are also a factor in determining high-priority species provided with funding. Finally, proposed rules for reclassification of threatened species to endangered are lower priority, since as listed species, they are already afforded the protection of the Act and implementing regulations.

As discussed above, we assigned *Astragalus anserinus* an LPN of 5, based on our finding that the threats to the species are high in magnitude but not imminent. Pursuant to the 1983 Guidelines, a ''species'' facing imminent high-magnitude threats is assigned an LPN of 1, 2, or 3 depending on its taxonomic status. Therefore, work on a proposed listing determination for *A. anserinus* is precluded by work on higher priority candidate species (i.e., species with LPN of 1 through 4); listing actions with absolute statutory, court-ordered, or court-approved deadlines; and final listing determinations for those species that were proposed for listing with funds from FY 2008. This work includes all the actions listed in

the tables below under expeditious progress.

As explained above, a determination that listing is warranted but precluded must also demonstrate that expeditious progress is being made to add or remove qualified species to and from the Lists of Endangered and Threatened Wildlife and Plants. (Although we do not discuss it in detail here, we are also making expeditious progress in removing species from the list under the Recovery program, which is funded by a separate line item in the budget of the Endangered Species Program. As explained above in our description of the statutory cap on Listing Program funds, the Recovery Program funds and actions supported by them cannot be considered in determining expeditious progress made in the Listing Program.) As with our ''precluded'' finding, expeditious progress in adding qualified species to the Lists is a function of the resources available and the competing demands for those funds. Given that limitation, we find that we are making progress in FY 2009 in the Listing Program. This progress included preparing and publishing the following determinations:

FY 2009 COMPLETED LISTING ACTIONS

Publication Date	Title	Actions	FR Pages
10/15/2008	90-Day Finding on a Petition To List the Least Chub	Notice of 90–day Petition Finding, Substantial	73 FR 61007 61015
10/21/2008	Listing 48 Species on Kauai as Endangered and DesignatingCritical Habitat	Proposed Listing, Endangered; Proposed Critical Habitat	73 FR 62591 62742
10/24/2008	90-Day Finding on a Petition to List the Sacramento Valley Tiger Beetle as Endangered	Notice of 90–day Petition Finding, Not substantial	73 FR 63421 63424
10/28/2008	90-Day Finding on a Petition To List the Dusky Tree Vole *(Arborimus longicaudus silvicola*) as Threatened or Endangered	Notice of 90–day Petition Finding, Substantial	73 FR 63919 63926
11/25/2008	12-Month Finding on a Petition To List the Northern Mexican Gartersnake *(Thamnophis eques megalops*) as Threatened or Endangered With Critical Habitat; Proposed Rule	Notice 12 month petition finding, Warranted but precluded	73 FR 71787 71826
12/02/2008	90-Day Finding on a Petition To List the Black-tailed Prairie Dog as Threatened or Endangered	Notice 90–day Petition Finding, Substantial	73 FR 73211 73219
12/05/2008	90-Day Finding on a Petition To List the Sacramento Mountains Checkerspot Butterfly *(Euphydryas anicia cloudcrofti*) as Endangered with Critical Habitat	Notice 90–day Petition Finding, Substantial	73 FR 74123 74129
12/18/2008	90-Day Finding on a Petition to Change the Listing Status of the Canada Lynx	Notice 90–day Petition Finding, Substantial	73 FR 76990 76994
1/06/2009	Partial 90-Day Finding on a Petition To List 475 Species in the Southwestern United States as Threatened or Endangered With Critical Habitat	Notice 90–day Petition Finding, Not substantial	74 FR 419 427
2/05/2009	Partial 90-Day Finding on a Petition To List 206 Species in the in the Midwest and Western United States as Threatened or Endangered With Critical Habitat	Notice 90–day Petition Finding, Not substantial	74 FR 6122 6128
2/10/2009	90-Day Finding on a Petition To List the Wyoming Pocket Gopher as Threatened or Endangered With Critical Habitat	Notice 90–day Petition Finding, Substantial	74 FR 6558 6563
3/17/2009	Listing *Phyllostegia* hispida (No Common Name) as Endangered Throughout Its Range	Final Listing Endangered	74 FR 11319 11327
3/25/2009	12-Month Finding on a Petition to List the Yellow-Billed Loon as Threatened or Endangered	Notice 12 month petition finding, Warranted but precluded	74 FR 12931 12968
4/09/2009	12-Month Finding on a Petition to List the San Francisco Bay-Delta Population of the Longfin Smelt *(Spirinchus thaleichthys*) as Endangered	Notice 12 month petition finding, Not warranted	74 FR 16169 16175
4/22/2009	90-Day Finding on a Petition To List the Tehachapi Slender Salamander *(Batrachoseps* stebbinsi) as Threatened or Endangered	Notice 90–day Petition Finding, Substantial	74 FR 18336 18341
5/07/2009	90-Day Finding on a Petition To List the American Pika as Threatened or Endangered with Critical Habitat	Notice 90–day Petition Finding, Substantial	74 FR 21301 21310

FY 2009 COMPLETED LISTING ACTIONS—Continued

Publication Date	Title	Actions	FR Pages
5/19/2009	12-Month Finding on a Petition to List the Coaster Brook Trout as Endangered	Notice 12–month petition finding, Not warranted	74 FR 23376 23388
6/09/2009	90-Day Finding on a Petition To List *Oenothera acutissima* (Narrowleaf Evening-primrose) as Threatened or Endangered	Notice 90–day Petition Finding, Not substantial	74 FR 27266 27271
6/29 /2009	Proposed Endangered Status for the Georgia Pigtoe Mussel, Interrupted Rocksnail, and Rough Hornsnail with Critical Habitat	Proposed Listing, Endangered; Proposed Critical Habitat	74 FR 31113 31151
7/01/2009	90-Day Finding on a Petition to List the Northern Leopard Frog *(Lithobates* [=*Rana*] *pipiens*) in the Western United States as Threatened	Notice 90–day Petition Finding, Substantial	74 FR 31389 31401
7/07/2009	12-Month Finding on a Petition To List a Distinct Population Segment of the Roundtail Chub *(Gila robusta*) in the Lower Colorado River Basin	Notice 12–month petition finding, Warranted but precluded	74 FR 32351 32387
7/08/2009	90-Day Finding on a Petition to List the Coqui Llanero *(Eleutherodactylus juanariveroi*) as Endangered	Notice 90–day Petition Finding, Substantial	74 FR 32510 32513
7/08/2009	90-Day Finding on a Petition to List the Susan's purse-making caddisfly *(Ochrotrichia susanae*) as Threatened or Endangered	Notice 90–day Petition Finding, Substantial	74 FR 32514 32521
7/08/2009	Proposed Endangered Status for Flying Earwig Hawaiian Damselfly *(Megalagrion nesiotes*) and Pacific Hawaiian Damselfly *(M. pacificum*) Throughout Their Ranges	Proposed Listing, Endangered	74 FR 32490 32510
7/09/2009	Listing Casey's June Beetle *(Dinacoma caseyi*) as Endangered and Designation of Critical Habitat	Proposed Listing, Endangered; Proposed Critical Habitat	74 FR 32857 32875
7/22/2009	90-Day Finding on a Petition To List the White-Sided Jackrabbit *(Lepus callotis*) as Threatened or Endangered	Notice 90–day Petition Finding, Substantial	74 FR 36152 36158
8/06/2009	Initiation of Status Review for Mountain Whitefish *(Prosopium williamsoni*) in the Big Lost River, Idaho	Notice of Status Review	74 FR 39268 39269
8/11/2009	90-Day Finding on a Petition To List the Jemez Mountains Salamander *(Plethodon neomexicanus*) as Threatened or Endangered With Critical Habitat	Notice 90–day Petition Finding, Substantial	74 FR 40132 40138
8/19/2009	12-Month Finding on a Petition To List the Ashy Storm-Petrel as Threatened or Endangered	Notice 12 month petition finding, Not warranted	74 FR 41832 41860

Our expeditious progress also included work on listing actions, which we funded in FY 2009, but have not yet been completed to date. These actions are listed below. Actions in the top section of the table are being conducted under a deadline set by a court. Actions in the middle section of the table are being conducted to meet statutory timelines, that is, timelines required under the Act. Actions in the bottom section of the table are high priority listing actions. These actions include work primarily on species with an LPN of 2, and selection of these species is partially based on available staff resources, and when appropriate, include species with a lower priority if they overlap geographically or have the same threats as the species with the high priority. Including these species together in the same proposed rule results in considerable savings in time and funding as compared to preparing separate proposed rules for each of them in the future.

ACTIONS FUNDED IN FY 2009 BUT NOT YET COMPLETED

Species	Action
Actions Subject to Court Order/ Settlement Agreement	

ACTIONS FUNDED IN FY 2009 BUT NOT YET COMPLETED—Continued

Species	Action
Slickspot peppergrass	Final listing determination
Coastal cutthroat trout	Final listing determination
Mono basin sage-grouse	12–month petition finding
Sacramento Mtns. checkerspot butterfly	12–month petition finding

ACTIONS FUNDED IN FY 2009 BUT NOT YET COMPLETED—Continued

Species	Action
SW Bald eagle population	12–month petition finding
Black-tailed prairie dog	12–month petition finding
Lynx (include New Mexico in listing)	12–month petition finding
White-tailed prairie dog	12–month petition finding
American pika	12–month petition finding
Hermes copper butterfly	90–day petition finding
Thorne's hairstreak butterfly	90–day petition finding
Actions with Statutory Deadlines	
48 Kauai species	Final listing determination
Black-footed albatross	12–month petition finding
Mount Charleston blue butterfly	12–month petition finding
Goose Creek milkvetch	12–month petition finding
Mojave fringe-toed lizard[1]	12–month petition finding
Pygmy rabbit (rangewide)[1]	12–month petition finding
Kokanee – Lake Sammamish population[1]	12–month petition finding
Delta smelt (uplisting)	12–month petition finding
Cactus ferruginous pygmy owl[1]	12–month petition finding
Tucson shovel-nosed snake[1]	12–month petition finding
Northern leopard frog	12–month petition finding
Tehachapi slender salamander	12–month petition finding
Coqui Llanero	12–month petition finding
Susan's purse-making caddisfly	12–month petition finding

ACTIONS FUNDED IN FY 2009 BUT NOT YET COMPLETED—Continued

Species	Action
White-Sided Jackrabbit	12–month petition finding
Jemez Mountains Salamander	12–month petition finding
Desert tortoise – Sonoran population	12–month petition finding
4 subspecies of *Pseudocopaeodes enunus*	90–day petition finding
Southeastern pop snowy plover & wintering pop. of piping plover	90–day petition finding
Berry Cave salamander[1]	90–day petition finding
Ozark chinquapin[1]	90–day petition finding
Smooth-billed ani	90–day petition finding
Bay Springs salamander[1]	90–day petition finding
Mojave ground squirrel[1]	90–day petition finding
Gopher tortoise – eastern population	90–day petition finding
Mojave ground squirrel	90–day petition finding
Pacific walrus	90–day petition finding
32 species of snails and slugs	90–day petition finding
Calopogon oklahomensis	90–day petition finding
Striped newt	90–day petition finding
American dipper – Black Hills population	90–day petition finding
Sprague's pipit	90–day petition finding
Southern hickorynut	90–day petition finding
5 Southwest mussel species	90–day petition finding
Chihuahua scarfpea	90–day petition finding

ACTIONS FUNDED IN FY 2009 BUT NOT YET COMPLETED—Continued

Species	Action
Wrights marsh thistle	90–day petition finding
White-bark pine	90–day petition finding
Puerto Rico harlequin	90–day petition finding
Fisher – Northern Rocky Mtns. population	90–day petition finding
42 snail species (Nevada & Utah)	90–day petition finding
HI yellow-faced bees	90–day petition finding
206 species (partially completed)	90–day petition finding
475 Southwestern species (partially completed)	90–day petition finding
High Priority Listing Actions[3]	
19 Oahu candidate species (16 plants, 3 damselflies) (15 with LPN = 2, 3 with LPN = 3, 1 with LPN =9)	Proposed listing
17 Maui-Nui candidate species (14 plants, 3 tree snails) (12 with LPN = 2, 3 with LPN = 3, 3 with LPN = 8)	Proposed listing
Sand dune lizard (LPN = 2)	Proposed listing
2 Arizona springsnails (*Pyrgulopsis bernadina* (LPN = 2), *Pyrgulopsis trivialis* (LPN = 2))	Proposed listing
2 New Mexico springsnails (*Pyrgulopsis chupaderae* (LPN = 2), *Pyrgulopsis thermalis* (LPN = 11))	Proposed listing
2 mussels (rayed bean (LPN = 2), snuffbox No LPN)	Proposed listing

ACTIONS FUNDED IN FY 2009 BUT NOT YET COMPLETED—Continued

Species	Action
2 mussels (sheepnose (LPN = 2), spectaclecase (LPN = 4),)	Proposed listing
Ozark hellbender[2] (LPN = 3)	Proposed listing
Altamaha spinymussel (LPN = 2)	Proposed listing
5 southeast fish (rush darter (LPN = 2), chucky madtom (LPN = 2), yellowcheek darter (LPN = 2), Cumberland darter (LPN = 5), laurel dace (LPN = 5))	Proposed listing
8 southeast mussels (southern kidneyshell (LPN = 2), round ebonyshell (LPN = 2), Alabama pearlshell (LPN = 2), southern sandshell (LPN = 5), fuzzy pigtoe (LPN = 5), Choctaw bean (LPN = 5), narrow pigtoe (LPN = 11), and tapered pigtoe (LPN = 11))	Proposed listing
3 Colorado plants (Pagosa skyrocket *(Ipomopsis polyantha*) (LPN = 2), Parchute beardtongue *(Penstemon debilis*) (LPN = 2), Debeque phacelia *(Phacelia submutica*) (LPN = 8))	Proposed listing

[1] Funds for listing actions for these species were provided in previous FYs.

[2] We funded a proposed rule for this subspecies with an LPN of 3 ahead of other species with LPN of 2, because the threats to the species were so imminent and of a high magnitude that we considered emergency listing if we were unable to fund work on a proposed listing rule in FY 2008.

[3] Funds for these high priority listing actions were provided in FY 2008 and 2009

We have endeavored to make our listing actions as efficient and timely as possible, given the requirements of the relevant law and regulations, and constraints relating to workload and personnel. We are continually considering ways to streamline processes or achieve economies of scale, such as by batching related actions together. Given our limited budget for implementing section 4 of the Act, these actions described above collectively constitute expeditious progress.

Astragalus anserinus will be added to the list of candidate species upon publication of this 12–month finding. We will continue to monitor the status of this species as new information becomes available. This review will determine if a change in status is warranted, including the need to make prompt use of emergency listing procedures.

We intend that any proposed listing action for *Astragalus anserinus* will be as accurate as possible. Therefore, we will continue to accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding.

References Cited

A complete list of all references cited is available on the Internet at *http://www.regulations.govand* on request from the Idaho Fish and Wildlife Office (see **ADDRESSES**).

Author

The primary authors of this document are the staff members of the Idaho Fish and Wildlife Office

Authority

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

Dated: August 26, 2009

Daniel M. Ashe

Acting Director, U.S. Fish and Wildlife Service

[FR Doc. E9–21754 Filed 9–9–09; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R2-ES-2009-0060]

[92210-1111-0000-B2]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List Cirsium wrightii (*Wright's marsh thistle*) as Threatened or Endangered with Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90–day petition finding and initiation of a status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90–day finding on a petition to list *Cirsium wrightii* (Wright's marsh thistle) as threatened or endangered under the Endangered Species Act of 1973, as amended, and designate critical habitat. Following a review of the petition, we find the petition provides substantial scientific or commercial information indicating that listing this species may be warranted. Therefore, with the publication of this notice, we are initiating a status review of the species to determine if the petitioned action is warranted. To ensure that the status review is comprehensive, we request scientific and commercial data regarding *Cirsium wrightii*. At the conclusion of this review, we will issue a 12–month finding to determine if the petitioned action is warranted. We will make a determination on critical habitat if and when we initiate a listing action for this species.

DATES: We made the finding announced in this document on September 10, 2009. To allow us adequate time to conduct this review, we request that we receive information on or before November 9, 2009.

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

- Federal eRulemaking Portal: *http://www.regulations.gov*. Search for docket FWS-R2-ES-2009-0060 and then follow the instructions for submitting comments.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS-R2-ES-2009-0060; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all information received on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Information Solicited section below for more details).

FOR FURTHER INFORMATION CONTACT: Wally ''J'' Murphy, Field Supervisor, New Mexico Ecological Services Office, 2105 Osuna NE, Albuquerque, NM 87113; by telephone (505-346-2525) or by facsimile (505-346-2542). Persons who use a telecommunications device for the deaf (TTD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Request for Information

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are

required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we request information on the status of *Cirsium wrightii*. We request information from the public, other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning the status of *C. wrightii*. We are seeking information regarding:

(1) The historical and current status and distribution of the Wright's marsh thistle, its biology and ecology, and ongoing conservation measures for the species and its habitat; and

(2) Information relevant to the factors that are the basis for making a listing determination for a species under section 4(a) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of the species' habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing or regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence and threats to the species or its habitat.

If we determine that listing *Cirsium wrightii* is warranted, it is our intent to propose critical habitat to the maximum extent prudent and determinable at the time we would propose to list the species. Therefore, with regard to areas within the geographical range currently occupied by *C. wrightii*, we also request data and information on what may constitute physical or biological features essential to the conservation of the species, where these features are currently found, and whether any of these features may require special management considerations or protection. In addition, we request data and information regarding whether there are areas outside the geographical area occupied by *C. wrightii* that are essential to the conservation of the species. Please provide specific comments and information as to what, if any, critical habitat you think we should propose for designation if the species is proposed for listing, and why that proposed habitat meets the requirements of the Act.

We will base our 12–month finding on a review of the best scientific and commercial information available, including information we receive during this public comment period. Please note that comments merely stating support or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species must be made ''solely on the basis of the best scientific and commercial data available.'' Based on the status review, we will issue a 12–month finding on the petitioned action, as provided in section 4(b)(3)(B) of the Act.

You may submit your information concerning this finding by one of the methods listed in the **ADDRESSES** section.

If you submit information via *http://www.regulations.gov*, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov*.

Information and materials we receive, as well as supporting documentation we used in preparing this finding, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, New Mexico Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files at the time we make the determination. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of this finding promptly in the **Federal Register**.

Our standard for substantial information within the Code of Federal Regulations (CFR) with regard to a 90–day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial information was presented, we are required to promptly commence a review of the status of the species.

In making this 90–day finding, we based our decision on information provided by the petitioner, as well as information available in our files and on the Internet that was directly relevant to the information raised in the petition at the time we received the petition. We evaluated that information in accordance with 50 CFR 424.14(b). Our process for making this 90–day finding under section 4(b)(3)(A) of the Act and §424.14(b) of our regulations is limited to a determination of whether the information contained in the petition meets the ''substantial information'' threshold.

Petition

On October 15, 2008 we received a petition from the WildEarth Guardians, dated October 9, 2008, requesting that we list *Cirsium wrightii* (Wright's marsh thistle) as threatened or endangered under the Act. Additionally, the petitioner requested that critical habitat be designated concurrent with listing of *C. wrightii*. The petition clearly identified itself as such and included the requisite identification information for the petitioners, as required in 50 CFR 424.14(a). In a November 26, 2008, letter to the petitioner, we responded that we had reviewed the petition and determined that an emergency listing was not necessary. We also stated that, to the maximum extent practicable, we would address their petition within 90 days.

The petition asserted that water diversion, habitat loss and degradation through current livestock grazing, inadequate regulatory mechanisms, weed control, non-native species, drought, and climate change threaten *C. wrightii*. During our review of the petition, we found that the majority of information cited in the petition was not readily available to us. Therefore, on December 18, 2008, we requested that the petitioner provide references. On February 13, 2009, the petitioner provided additional references.

Previous Federal Actions

There have been no previous Federal actions concerning this species.

Species Information

Cirsium wrightii is a wetland obligate species that was originally collected in 1851 at San Bernardino Cienaga, Cochise County, Arizona (Gray 1853, p. 101; Smithsonian 1849, p. 1).

Historically, the species was found in Arizona; New Mexico; and Chihuahua, Mexico (Gray 1853, p. 101; Coulter 1891, p. 244; Kearney and Peebles 1951, p. 952; Correll and Johnston 1970, p. 1719; Service 1995, p. 1). An occurrence of the species in western Texas has been verified from a few plants in Presidio County; however, most specimens from Texas have recently been identified as *Cirsium texanum* (Texas thistle), rather than *C. wrightii* (Sivinski 1994a, p. 1; 1996, p. 2; 2006, p. 1; Worthington 2002a, p. 4). This species is easily confused in herbarium collections with *C. wrightii* (Sivinski 1994a, p. 1; 1996, p. 2; 2006, p. 1; Worthington 2002a, p. 4). In the field, *C. wrightii* differs from *C. texanum* in being a wetland obligate (almost always occurs in wetlands) with thick succulent leaves (New Mexico Rare Plant Technical Council (NMRPTC) 2006, p. 1).

Cirsium wrightii is a biennial (a plant completing development in 2 years, flowering its second year) or a weak monocarpic perennial (a plant that flowers, sets seed, then dies) in the sunflower family (Asteraceae). The plant is prickly with short black spines and a 0.9-to-2.4-meter (m) (3-to-8-foot (ft)) single stalk covered with succulent leaves (Sivinski 1996, p. 1; Arizona Game and Fish Department (AGFD) 2001, p. 1). Numerous slender flowering branches emerge from the stalk, starting about one-third up the length of the plant. Branches are terminated by one or a few small flowering heads, which have numerous slender phyllaries (a modified leaf associated with the flower) (Sivinski 1996, p. 1). Flowers are white to pale pink in areas of the Sacramento Mountains, but are vivid pink in the Santa Rosa locality (Sivinski 1996, p. 1). The species occurs in wet, alkaline soils in spring seeps and marshy edges of streams and ponds between 1,130 and 2,600 m (3,450 and 8,500 ft) in elevation (NMRPTC 2006, p. 1; Sivinski 1996, p. 1).

In the New Mexico portion of the species' range, *Cirsium wrightii* appears to be an obligate of seeps, springs, and wetlands (NMRPTC 2006; Sivinski 1996; Service 1998; Worthington 2002a, p. 2). Plants commonly found in areas inhabited by this species include *Scirpus* spp. (bulrush), *Salix* spp. (willow), *Baccharis glutinosa* (seepwillow), *Helianthus paradoxus* (Pecos sunflower), *Juncus* spp. (rush), and *Typha* spp. (cattail) (New Mexico Botanist 2004, p. 2; Sivinski 1996, pp. 2-5; Worthington 2002a, pp 1-2).

The petition and information in our files indicate that *Cirsium wrightii* populations may be declining. The species is believed to be extant in New Mexico; however, it is unclear whether the species has been extirpated from Arizona, Texas, and Mexico (Worthington 2002a, p. 4).

In New Mexico, *C. wrightii* is known from the Pecos River Valley and the west slope of the Sacramento Mountains (Sivinski 1996, p. 2), in Chavez, Guadalupe, Otero, and Socorro Counties, New Mexico (Bridge 2001, p. 1; New Mexico Botanist 2004, p. 2; NMRPTC 2006, p. 1; Sivinski 1994, p. 1; 2005, p. 1; Service 1998, p. 1; Worthington 2002, p. 1; 2002a, pp. 1-3). Known extant populations are widely disjunct, sometimes separated by more than 200 miles (322 km). Populations in the City of Roswell, Chaves County, and Lake Valley, Sierra County, New Mexico, appear to be extirpated (NMRPTC 2006, p. 2; Sivinski 2005, p. 1).

Information on the persistence and status of localities is lacking for many areas historically occupied by *Cirsium wrightii*. We are unaware of specific information on population abundance, or any year-round or long-term monitoring data on *C. wrightii* in Arizona, New Mexico or Mexico (see also Sivinski 1996). In Texas, *Cirsium wrightii* specimens have been confused with *C. texanum* because of the difficulty in distinguishing the two species (Sivinski 1994, p. 1; 1994a, p. 1; Sivinski 2007, p. 1). For these reasons, the status of this species remains unclear in its range in both the southwestern United States and in Mexico.

Five-Factor Evaluation

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

In making this 90–day finding, we evaluated whether information on threats to *Cirsium wrightii*, as presented in the petition and other information available in our files, is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is presented below.

A. Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Information Provided in the Petition

The petitioner asserts that the most significant threat to *Cirsium wrightii* is the alteration of the hydrology of its rare wetland habitat. *Cirsium wrightii* is a wetland obligate, and populations have a high potential for extirpation when habitat dries due to water diversions, draining of wetlands, or drought. The petitioner makes the following claims:

(1) The extirpation of *C. wrightii* populations in Chaves and Sierra Counties, New Mexico, are likely linked to the depletion of water through human activity;

(2) Marshes along drainages in the Sacramento Mountains have been drained, but likely contained populations of *C. wrightii* historically; and

(3) Extant populations of *C. wrightii* in Otero and Guadalupe Counties, New Mexico, are currently threatened, and will be threatened in the future, by municipal water diversion and use, and the draining and development of wetlands.

The petitioner cites the U.S. Forest Service (USFS) (2008) as support for the assertion that private wells in Otero County have increased since the 1950s. The petitioner believes that these private wells threaten the species by diverting and draining water from canyons that currently or historically supported *C. wrightii* populations. Finally, the petitioner believes that, although the USFS considers *C. wrightii* to be a sensitive species on the Lincoln National Forest (see further discussion under Factor D), it recently permitted actions that may result in the destruction of its habitat (e.g., see USFS 2008, entire document).

The petitioner asserts *Cirsium wrightii* is threatened by alterations to the hydrology of its rare wetland habitat, as desert springs and cienegas (marshes) are susceptible to drying or being diverted (NMPTC 2006, p. 2; Worthington 2002a, p. 3). Loss of water from wetland or spring habitat occurs naturally through changing precipitation patterns or as a result of human impacts from direct or indirect water diversion (USFS 2008, p. 19). For example, the *C. wrightii* population on City of Roswell lands has been extirpated as habitat at that location is no longer suitable for the plant (New Mexico Department of Game and Fish 2005, pp. 33-34; Sivinski 1996, p. 4).

Cirsium wrightii occurrences in La Luz Canyon in the Sacramento Mountains of New Mexico are within municipal supply watersheds, where pipelines divert water to the City of Alamogordo (Shomaker 2006, pp. 20, 26; USFS 2008, p. 21). The petitioner indicates that:

(1) The City of Alamogordo holds about 11,500 acre feet (1420 hectare meters) per year in water rights on the Lincoln National Forest and other lands that they continue to use;

(2) The number of private wells in La Luz and Fresnal Canyons in the Sacramento Mountains has increased 94 percent since the 1950s; and

(3) These watersheds were recently designated a critical management area, where the New Mexico Office of the State Engineer no longer permits new non-domestic groundwater appropriations (USFS 2008, p. 21).

The USFS (2008, p. 23) concluded that water withdrawal would continue to increase in this area and compound the effects of the recent and ongoing drought, leading to degradation of wetland and riparian habitat. The USFS (2008, p. 26) determined that *Cirsium wrightii* occurrences in this area would be affected by their issuance of a special use permit to maintain and operate the pipelines on USFS lands. Other *C. wrightii* occurrences are within areas where water is diverted for domestic use, which may contribute to the drying of its habitat (Sivinski 2006, p. 1).

The petitioner claims that the direct effects of grazing on *Cirsium wrightii* are not known and that Sivinski (1995, p. 5) did not find any evidence of the plant being grazed. Alternatively, the petitioner asserts that cattle may indirectly and adversely affect *C. wrightii* by degrading its habitat, changing soil structure and chemistry, and reducing water quality. Nevertheless, the petitioners note that no studies specifically related to the effects of livestock grazing on *C. wrightii* have been conducted (NMRPTC 2006, p. 2). Sivinski (1995, p. 5) noted that if two small springs in La Luz Canyon were diverted for livestock use, *C. wrightii* could potentially be impacted. The petitioner does not detail ongoing or future direct or indirect impacts to the species from livestock.

Evaluation of Information Provided in the Petition and Available in Service Files

We reviewed Sivinski (1996, 2005a, 2006) and find the assertions made by the petitioner to be reliable and accurate. Sivinski (1994, pp.1-2; 1996, p. 4; 2005, p. 1; 2006, p. 4) reported loss or degradation of habitat in Chaves, Otero, and Sierra Counties, New Mexico, areas that historically supported *Cirsium wrightii*. The population at the type locality from Arizona has not been relocated and the species may be extirpated from the State (AGFD 2001, p. 1; Sivinski 1994, p. 1; 1996, p. 4). There are six general confirmed locations in New Mexico, each having occurrences within a few miles of one another, one verified population of a few plants in Presidio County, Texas, and no locations confirmed to be extant in Arizona and Mexico (Sivinski 1996, pp. 2-5; Sivinski 2005, p. 1; 2006, p. 1; Worthington 2002a, p. 4).

Increased water extraction in the last 100 years has contributed to the depletion of most surface spring systems in the Chihuahuan Desert (see Karges 2003 and references therein). Moreover, the appropriation of water rights from springs for a ''beneficial use,'' such as livestock water, farming, domestic use, or recreational facilities, typically uses points of diversion that can curtail natural surface flows. Information in our files indicates that aquifers in the Sacramento Mountains are susceptible to appropriation by existing water rights and development of new water rights, which may pose future threats to the species (Service 2008, entire; USFS 2008, entire). For these reasons, we find that the petition presents substantial information that listing of the species may be warranted due to the alteration of wetland habitat occupied and needed by *C. wrightii*. We intend to assess this factor more thoroughly during the status review for the species.

We have no information in our files regarding grazing as a threat to *C. wrightii,* nor did the petitioner provide any information on observed or potential effects of grazing.

We find that there is substantial information in the petition and readily available in our files to indicate *Cirsium wrightii* may be threatened by the present or threatened destruction, modification, or curtailment of its habitat as a result of the alteration of desert springs, seeps, and wetland habitats. We did not find substantial information in the petition or readily available in our files to indicate that livestock grazing may be a threat to the species; however, we will assess the potential impacts of livestock grazing during the status review for the species.

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

The petitioner provides no information addressing this factor, and we have no information in our files indicating that listing of the species due to overutilization for commercial, recreational, scientific, or educational purposes may be warranted. We intend to assess this factor more thoroughly during the status review for the species.

C. Disease or Predation

Information Provided in the Petition

The petitioner provides information on an exotic weevil (*Rhinocyllus conicus*) that was introduced into the Great Plains to feed on various species of thistles, and claims that this and other native and exotic predator species may threaten native *Cirsium* (thistle) species. The petitioner provides no information addressing impacts of disease on *Cirsium wrightii*.

Evaluation of Information Provided in the Petition and Available in Service Files

Information in our files substantiates that there have been intentional releases of the exotic weevil to control *Carduus nutans* (musk thistle) (Sivinski 1994, p. 2; 2007, p. 6; NMRPTC 2006, p. 2; Bridge 2001, p. 1; AGFD 2001, p. 2). This exotic weevil has recently been found in the Sacramento Mountains in habitat occupied by *Cirsium wrightii* (Sivinski 2007, p. 6). Moreover, a native predator, the stem borer weevil (*Lixus pervestitus*) caused a widespread premature stem death to the flower heads of at least one population of the endangered *C. vinaceum* (Sacramento Mountains thistle), which co-occurrs with *C. wrightii* (Sivinski 2007, pp. 8-12). It is unknown if the stem borer weevil feeds on *C. wrightii* or has the same level of impact; however, we will assess these potential impacts during the status review for the species.

We find that there is substantial information in the petition and readily available in our files to indicate *Cirsium wrightii* may be threatened by predation. We did not find substantial information in the petition or readily available in our files to indicate that disease may be a threat to the species; however, we will assess the potential impact of disease during the status review for the species.

D. The Inadequacy of Existing Regulatory Mechanisms

Information Provided in the Petition

The petitioner asserts that *Cirsium wrightii* is not adequately protected by Federal or State laws or policies to prevent its endangerment or extinction. The petitioner states that the species' ranking in NatureServe was changed from G3 (vulnerable) to G2 (imperiled) in 2003 (NatureServe 2009, p. 1). Similarly, its National Status ranking for the U.S. is N2 (imperiled due to a

restricted range and very few populations) (NatureServe 2009, p. 2). The petition reports that *Cirsium wrightii* is listed as endangered by the State of New Mexico; however, the petitioner claims that this designation provides little regulatory protection for the habitat of the species. The petition reports that *Cirsium wrightii* is on the Regional Forester's Sensitive Species List and is noted by the Service to be a species of concern (USFS 2008, p. 35); however, the petitioner claims that these designations provide no protection or mitigation for impacts to the species.

Evaluation of Information Provided in the Petition and Available in Service Files

We reviewed these designations and find that the species receives no protection from the NatureServe designations because the designation lists only serve to notify the public of the species' status and do not require any conservation or management actions or provide any regulatory authority for conservation of species.

The State of New Mexico lists *Cirsium wrightii* as endangered. As such, *C. wrightii* is protected from unauthorized collection, transport, or sale by the New Mexico Endangered Plant Species Act, 9-10-10 NMSA. This law prohibits the taking, possession, transportation and exportation, selling or offering for sale any listed plant species. Listed species can only be collected under permit from the State of New Mexico for scientific studies and impact mitigation; however, this law does not provide any protection for *C. wrightii* habitat. There are no statutory requirements under the jurisdiction of the State of New Mexico that serve as an effective regulatory mechanism for reducing or eliminating the threats (see Factors A and C above) that may adversely affect the *C. wrightii* and its habitat. There are also no requirements under the New Mexico State statutes to develop a recovery plan that will restore and protect existing habitat for the species. Therefore, the species does not have a recovery plan, conservation plan, or conservation agreement. For these reasons, we find that the petition contains substantial information that existing New Mexico State regulatory mechanisms may currently be inadequate to protect *C. wrightii*.

The USFS is required to analyze the impacts on its sensitive species, including *C. wrightii*, in all applicable National Environmental Policy Act (NEPA) documents (42 U.S.C. 4321 *et. seq.*). On April 21, 2008, a new USFS planning rule (73 FR 21468) was made final that detailed how sensitive species would be analyzed in project planning and review. However, on June 30, 2009, the United States District Court for the Northern District of California issued a decision in *Citizens for Better Forestry* v. *United States Department of Agriculture*, No. C 08-1927 CW (N.D. Cal. June 30, 2009). The court enjoined the USFS from implementing and using the 2008 planning rule and remanded the matter to them for further proceedings. The Government has not yet determined whether to appeal the District Court's June 30, 2009 decision to the Ninth Circuit Court of Appeals. Therefore, the protections that may be afforded the species due to its USFS sensitive species status are unclear, and we will assess this factor more thoroughly during the status review for the species.

Similarly, the petitioner notes that the Service has identified *Cirsium wrightii* as a species of concern (Service 2009). While not a formal legal designation under Service regulations, a species of concern is defined as a taxon for which further biological research and field study are needed to resolve its conservation status or which is considered sensitive, rare, or declining on lists maintained by Natural Heritage Programs, State wildlife agencies, other Federal agencies, or professional/academic scientific societies. Species of concern are identified for planning purposes only and the title confers no regulatory protection.

Neither the petition nor our files provide information about existing regulatory mechanisms for the species if it is extant in Arizona, Texas, or Mexico. As such, we found no information that the lack of regulatory mechanisms in Arizona, Texas, or Mexico is affecting the continued existence of *Cirsium wrightii*.

We find that there is substantial information in the petition and readily available in our files to indicate that *Cirsium wrightii* may receive inadequate protection from its designation as a USFS sensitive species and from current regulatory mechanisms in the State of New Mexico. It receives no regulatory protection from the NatureServe designations or from the Service designation as a species of concern, because these lists only serve to notify the public of the species' status and do not require any conservation or management actions. The petitioner does not provide substantial information on the inadequacy of other existing regulatory mechanisms, including those which may be in place in Texas, Arizona, or Mexico. In summary, we find that there is substantial information in the petition and readily available in our files to indicate *C. wrightii* may be threatened by the inadequacy of existing regulatory mechanisms.

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

Information Presented in the Petition

The petitioner reports that drought may threaten *Cirsium wrightii*, as parts of the Sacramento Mountains have experienced extreme drought conditions in recent years, creating conditions that are not conducive to the species' occupation (USFS 2008, p. 21).

The petitioner notes that *Cirsium wrightii* is known to hybridize with *C. texanum* and *C. vinaceum,* threatening the genetic integrity of the species (Correll and Johnston 1979, p. 1719; NMRPTC 2006, pp. 1-2).

The petitioner also claims that *Cirsium wrightii* is threatened by climate change. The petitioner does not cite any information or publications in support of their claim on a correlation between climate change and the persistence of the species. The petitioner claims that climate change further complicates the impact of drought and water diversions, and suggests that regional landscape-scale vegetation changes from climate change are strong indicators for the potential loss of wetland habitat. The petitioner cites Breshears *et al.* (2005) as support; however, the authors (Breshears *et al.* (2005)) report on *Pinus edulis* (pinyon pine) in the Jemez Mountains, New Mexico, and not changes to wetland habitat or even vegetation changes within the range of *C. wrightii*.

The petitioner also claims that introduced plant species pose a threat to *Cirsium wrightii* through competition. The petitioner believes that *Elaeagnus angustifolia* (Russian olive), *Tamarix* spp. (salt cedar), and *Lythrum* spp. (loosestrife) can severely impact occurrences of *C. wrightii*.

The petitioner asserts that some occurrences of *Cirsium wrightii* are threatened by mechanical and herbicide treatments by individuals who believe they are eradicating invasive plants.

Evaluation of Information Provided in the Petition and Available in Service Files

Information in our files supports the petitioner's claim that *Cirsium wrightii* may be threatened by drought. Sivinski (2005a, pp. 3-4) reports that springs and wet valleys have been affected by drought in at least three canyons of the Sacramento Mountains, New Mexico,

resulting in reduced *C. wrightii* populations.

Information in our files substantiates the petitioner's claim that *Cirsium wrightii* hybridizes with other species. For example, *Cirsium* species observed at Rattlesnake Springs (Carlsbad Caverns National Park), New Mexico, show characteristics that are intermediate between *C. wrightii* and *C. texanum* (NMRPTC 2006, pp. 1-2). This *Cirsium* population blooms in May rather than in August through October, as is typical of *C. wrightii*. *C. wrightii* sometimes occurs with the threatened *C. vinaceum* in the Sacramento Mountains, where a few hybrids between these rare taxa have been observed; however, hybrid plants are apparently uncommon (Service 2008a, p. 13; Worthington 2002, p. 1). We will assess hybridization more thoroughly during the status review for the species.

We find the information presented in the petition and readily available in our files on the subject of climate change to be insufficiently specific to *C. wrightii* to be conclusive; however, the Intergovernmental Panel on Climate Change (IPCC) states that warming of the climate is unequivocal and indicates that drying trends in the Southwest are likely to persist or worsen (IPCC 2007a, p. 15; IPCC 2007b, p. 887). We intend to investigate the effects of climate change on *C. wrightii* further in the status review for the species.

We find the information cited on the potential threat of introduced species, *E. angustifolia* and *Tamarix* spp, to be generic in nature and not specific to *C. wrightii* or its habitat. Sivinski (1996) reports that *E. angustifolia* and *Tamarix* spp. are becoming dominate in many riparian and wetland areas, but that these species likely do not threaten *C. wrightii* because it grows in saturated substrates that are not suitable habitat for these exotic trees; however, there is substantial information that indicates that *Lythrum* spp. could severely impact the habitat of *C. wrightii* at some point in the foreseeable future. Sivinski (1996, p. 6) reports that this exotic species has not yet spread to the interior Southwest, but is spreading throughout the west coast States.

We find that there is substantial information in the petition and readily available in our files to indicate *Cirsium wrightii* may be threatened by drought and potential competition from *Lythrum* spp. While hybridization between *C. wrightii* and other *Cirsium* species has been observed, it is uncommon, and does not appear to be a significant threat to *C. wrightii*. We did not find substantial information in the petition or readily available in our files to indicate that *C. wrightii* may be threatened by the effects of climate change or competition from *Elaeagnus angustifolia* or *Tamarix* spp; however, we will assess these potential impacts during the status review for the species.

Finding

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our process for making this 90–day finding under section 4(b)(3)(A) of the Act is limited to a determination of whether the information in the petition presents ''substantial scientific and commercial information,'' which is interpreted in our regulations as ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). We have reviewed the petition and the literature cited in the petition, and evaluated the information to determine whether the sources cited support the claims made in the petition. We also reviewed reliable information that was readily available in our files to clarify and verify information in the petition. Based on our evaluation of the information provided in the petition, we find that the petition presents substantial scientific information indicating that listing *Cirsium wrightii* may be warranted.

The petitioner presents substantial information indicating that *Cirsium wrightii* may be threatened by Factor A (the present or threatened destruction, modification, or curtailment of its habitat or range), Factor C (predation), Factor D (inadequacy of existing regulatory mechanisms), and Factor E (other natural or manmade factors affecting its continued existence). The petitioner does not present substantial information that Factor B (overutilization for commercial, recreational, scientific, or educational purposes) is currently, or may be in the future, a threat to *C. wrightii*. Based on this review and evaluation, we find that the petition presents substantial scientific or commercial information that listing *C. wrightii* throughout all or a significant portion of its range may be warranted due to current and future threats under Factors A, C, D, and E. Therefore, we are initiating a status review to determine whether listing *C. wrightii* under the Act is warranted. We will issue a 12–month finding as to whether any of the petitioned actions are warranted. To ensure that the status review is comprehensive, we request scientific and commercial information regarding *C. wrightii*.

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

We encourage interested parties to continue gathering data that will assist with the conservation of *Cirsium wrightii*. The petitioner requests that critical habitat be designated for this species. If we determine in our 12–month finding that listing *C. wrightii* is warranted, we will address the designation of critical habitat at the time of the proposed rulemaking.

References Cited

A complete list of all references cited in this finding is available upon request from the New Mexico Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this rule are the staff members of the New Mexico Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

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

Dated: August 24, 2009.

Daniel M. Ashe,

Acting Director, Fish and Wildlife Service.

[FR Doc. E9–21755 Filed 9–9– 09; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R7–ES–2009–0051; 9221050083]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Pacific Walrus as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the Pacific walrus (*Odobenus rosmarus divergens*) as threatened or endangered under the Endangered Species Act of 1973, as amended (Act), and to designate critical habitat. Following a review of the petition, we find that the petition presents substantial scientific or commercial information indicating that listing this subspecies may be warranted. Therefore, with the publication of this notice, we are initiating a status review to determine if listing the Pacific walrus is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial data and other information regarding this subspecies.

DATES: We made the finding announced in this document on September 10, 2009. To allow us adequate time to conduct this review, we request that you send us information on or before November 9, 2009.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Search for docket FWS–R7–ES–2009–0051 and then follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R7–ES–2009–0051; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all information received on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (*see* the Information Solicited section below for more details).

FOR FURTHER INFORMATION CONTACT: Rosa Meehan, Alaska Regional Office, Marine Mammals Management, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503; by telephone (800–362–5148); or by facsimile (907–786–3816). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Information Solicited

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information concerning the status of the Pacific walrus (*Odobenus rosmarus divergens*). We request information from other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning the status of the Pacific walrus. We are seeking information regarding:

(1) Information relevant to the factors that are the basis for making a listing determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of the species' habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

(2) The historical and current status of the population, including distribution, abundance, trends in abundance, population dynamics, taxonomy, and stock structure.

(3) Habitat selection and use, including both sea-ice and terrestrial haulouts; disturbance at haulouts; food habits; and effects of disease, competition, and predation on Pacific walruses.

(4) The effects of climate and environmental changes, sea-ice changes, and ocean acidification on the distribution, abundance, and life history of Pacific walruses and their principal prey over the short and long term.

(5) Information on the effects of other potential threat factors, including, but not limited to, oil and gas exploration and development, commercial fishing and shipping, contaminants, and hunting.

(6) Information on the effects of ongoing conservation measures for the species and its habitat on the distribution and abundance of Pacific walruses and their principal prey over the short and long term.

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

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be informative to us in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species must be made ''solely on the basis of the best scientific and commercial data available.'' Based on the status review, we will issue a 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act.

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Information and materials we receive, as well as supporting documentation we used in preparing this finding, will be

available for public inspection on *http://www.regulations.gov,* or by appointment during normal business hours at the Alaska Regional Office (*see* **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly commence a status review of the species.

On February 8, 2008, we received a petition dated February 7, 2008, from the Center for Biological Diversity requesting that we list the Pacific walrus as threatened or endangered under the Act and that we designate critical habitat. The petition clearly identified itself as such and included the requisite identification information for the petitioner, as required by 50 CFR 424.14(a). We evaluated the immediacy of possible threats to the Pacific walrus and determined that emergency listing was not warranted. In a letter to the petitioner dated April 9, 2008, we informed the petitioner that all remaining available funds in the listing program for Fiscal Year (FY) 2008 had already been allocated to the Service's highest priority listing actions and that no listing funds were available to further evaluate the walrus petition in FY 2008. In the case of *Center for Biological Diversity* v. *U.S. Fish and Wildlife Service, et al.* (3:08–cv–00265–JWS), the plaintiff filed a complaint for declaratory judgment and injunctive relief challenging the failure of the Service to make a 90-day finding on its petition to list the Pacific walrus, under section 4(b)(3) of the Act (16 U.S.C. 1533(b)(3)) and the Administrative Procedure Act (5 U.S.C. 706(1)). The complaint was filed in U.S. District Court for the District of Alaska on December 3, 2008. On May 18, 2009, a settlement agreement between the Center for Biological Diversity and the Service was approved by the court. This agreement requires us to submit our 90-day finding on the petition to the **Federal Register** by September 10, 2009. If we find that the petition presents substantial information that listing may be warranted, we must submit our 12-month finding to the **Federal Register** by September 10, 2010.

Species Information

The family Odobenidae is represented by a single modern species, *Odobenus rosmarus,* of which two subspecies are generally recognized: The Atlantic walrus (*O. r. rosmarus*) and the Pacific walrus (*O. r. divergens*). The two subspecific pinnipeds occur in geographically isolated populations. The Pacific walrus is a large, heavy-bodied pinniped that has thick, rough, creased skin; a wide head and muzzle; small, protruding eyes; hundreds of forward-facing, short, stiff, vibrissae, and upper canine teeth that develop into long tusks (Jefferson *et al.* 2008, pp. 376–377).

Pacific walrus use floating sea ice as a substrate for birthing and nursing calves, for resting, for isolation from predators, and for passive transport to new feeding areas (Fay 1974, pp. 393–394). Pacific walrus is thus identified as an ice-associated species. They range throughout the continental shelf waters of the Bering and Chukchi Seas and can be found in low numbers in the East Siberian Sea and the Beaufort Sea. In winter and early spring, walruses concentrate in the Bering Sea pack ice where open leads, polynyas, or thin ice allow access to water (Fedoseev 1982, p. 2 of translation; Fay 1982, p. 21).

During spring, most of the population, including females and calves, migrates from the Bering Sea into the Chukchi Sea, where they form mixed groups along the southern edge of the pack ice. As summer sea ice recedes, walruses may haul out on shore on Wrangel and other islands and along the Chukchi Sea coast. The number of walruses using coastal haulouts in Chukotka are highly variable among years and seasons (*see* Fay *et al.* 1984 for summary up through the 1970s, pp. 270–271). Many adult males remain in the Bering Sea for the summer, using coastal haulout sites in the Gulf of Anadyr, Bering Strait region, and in Bristol Bay (Fay 1982, p. 14). In the fall, walruses that summered in the Chukchi Sea follow the formation of sea ice as they migrate south through the Bering Strait and back into the Bering Sea.

Walruses feed on a broad array of benthic invertebrate prey, including sea anemones, worms, sea cucumbers, tunicates, snails, and clams (Sheffield *et al.* 2001, p. 311). Occasionally, walruses consume large nonbenthic organisms such as fish, birds, or seals (summarized in Sheffield *et al.* 2001, p. 311). Although capable of diving to deeper depths, walruses usually feed in shallow waters of 100 meters (328 feet) or less (Fay 1982, p. 163; Fay and Burns 1988, p. 240).

The current size and trend of the Pacific walrus population is unknown. Between 1975 and 1990, cooperative, contemporaneous, visual aerial surveys were carried out by the United States and the former Soviet Union at 5-year intervals, producing population estimates ranging from about 170,000 to 250,000 individuals (*see* Gilbert 1999 for review, pp. 76–79). Observers counted or estimated numbers of walruses hauled out on pack ice and land, but could not accurately detect or quantify walruses that were swimming in the water. Surveyed areas included all known terrestrial haulout sites, but were limited to an unknown but very small percentage of available ice habitats. Efforts to survey the Pacific walrus population were suspended by both countries after 1990, due to unresolved problems with survey methods that produced population estimates with unknown bias and large or unknown, but presumably large, variances that severely limited their utility (Gilbert *et al.* 1992, p. 1; Gilbert 1999, p. 82). The population estimates generated from these surveys are considered minimum values that cannot be used for detecting trends in population size (Hills and Gilbert 1994, p. 205).

During 2002–2005, the Service and Russian partners developed a survey method that uses thermal imaging systems to reliably detect walrus groups hauled out on sea ice (Burn *et al.* 2006, p. 54; Udevitz *et al.* 2008, pp. 63–64). At the same time, the U.S. Geological Survey developed satellite transmitters that record information on the haulout status of individual walruses (Jay *et al.* 2006, p. 231), which can be used to estimate the proportion of the walrus population in the water. These technological advances led to a joint United States-Russia aerial survey in March and April of 2006, to estimate the size of the Pacific walrus population (USFWS and USGS 2006, p. 7). Analysis of data collected during the 2006 walrus survey is ongoing. Final results are expected in late 2009.

Threats Evaluation

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR Part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

In making this 90-day finding, we evaluated whether information regarding threats to the Pacific walrus, as presented in the petition and other information available in our files, is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is presented below.

A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

The petition asserts that the Pacific walrus' sea-ice habitats in the Bering and Chukchi Seas are disappearing and being degraded by global climate change (Petition, pp. 26–63). It states that the Arctic is warming faster than other regions of the globe (p. 31; Anisimov *et al.* 2007, p. 656), and that Arctic summer sea ice, including the ice of the Chukchi Sea, is predicted to disappear or nearly disappear between 2012 and 2030 (p. 27; Amos 2007, p. 1; Stroeve *et al.* 2008, p. 14). By 2050, the Bering Sea is predicted to lose about 40 percent of its winter sea ice unless emissions scenarios change (Overland and Wang 2007, p. 1).

The petition states that global warming will impact the Pacific walrus by degrading and eliminating critical sea-ice habitat, decreasing prey availability, altering interactions with predators and disease, and increasing human disturbance throughout the range (Petition, p. 58). It claims that, without sea ice, the Pacific walrus will be forced into a shore-based existence for which it is not adapted (Petition, p. 27).

After reviewing the supporting references cited in the petition, we find that the information provided in the petition, as well as other information in our files, presents substantial scientific or commercial information indicating that the petitioned action may be warranted due to effects on walruses resulting from changes in climate and sea-ice habitats.

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

The petition does not claim that overutilization of Pacific walruses for commercial, recreational, scientific, or educational purposes is taking place or will take place, and does not provide any evidence that this factor is impacting or will impact Pacific walruses (Petition, pp. 63–64). We do not have substantial information in our files to suggest that overutilization for commercial, recreational, scientific, or educational purposes may threaten the Pacific walrus. However, all factors, including threats from utilization for commercial, recreational, scientific, or educational purposes, will be evaluated when we conduct our status review.

C. Disease or Predation

The petition asserts that global warming is likely to markedly increase depredation and disease occurrence in the Pacific walrus population (Petition, p. 64), but does not support this statement with any evidence that this factor is impacting or will impact Pacific walruses. We do not have substantial information in our files to suggest that disease or predation may threaten the Pacific walrus. However, all factors, including threats from disease and predation, will be evaluated when we conduct our status review.

D. The Inadequacy of Existing Regulatory Mechanisms

The petition presents information regarding existing and planned regulatory mechanisms, stating that the primary international regulatory mechanisms addressing greenhouse gas emissions and global warming, the United Nations Framework Convention on Climate Change and the Kyoto Protocol, are ineffective in mitigating many of the climate-based threats to the species (Petition, pp. 64–70). The petition claims that the ineffectiveness of these regulatory mechanisms is demonstrated by their failure to significantly reduce greenhouse gas emissions (Petition, pp. 69–70). See our analysis of Factor A above, where we found that the petitioned action may be warranted due to effects on walruses resulting from changes in climate and sea-ice habitats. The petition further claims that existing regulatory mechanisms are inadequate to address impacts of oil and gas development, as made evident by the fact that important walrus habitats were not deleted from Minerals Management Service lease sales (Petition, pp. 70). It states that existing regulations both domestically and internationally are inadequate to protect Pacific walruses and their habitat from harm due to shipping and ocean acidification (Petition, pp. 71–72).

After reviewing the supporting references cited in the petition, we find that the information provided in the petition, as well as other information in our files, presents substantial scientific or commercial information indicating that the petitioned action may be warranted due to inadequacy of existing regulatory mechanisms.

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

The petition claims that ocean acidification poses a profound threat to marine ecosystems due to impacts on photosynthesis of phytoplankton, metabolic rates of zooplankton and fish, oxygen supply of squid, reproduction of clams, nitrification by microorganisms, and the uptake of metals (Petition, p. 72; WBGU 2006, p. 69). The petition further claims that ocean acidification threatens the Pacific walrus because of its deleterious effects on walrus prey species (Petition, p. 72), including mollusk species that are similar to those species consumed by the Pacific walrus (Berge *et al.* 2005, p. 1; Gazeau *et al.* 2007, p. 1).

The petition claims that additional impacts on the Pacific walrus include threats from offshore oil and gas development in the United States, Canada, and Russia, which has the potential to negatively impact large portions of the Pacific walrus' foraging and breeding habitat with oil and noise pollution (Petition, p. 73). The petition states that exposure to contaminants may also increase for Pacific walruses as a result of increasing precipitation and ice melt (Tynan and DeMaster 1997, p. 318). The petition also states that commercial fisheries pose a threat to the Pacific walrus by causing direct mortality through incidental take as fisheries bycatch (Woodley and Lavinge 1991, p. 12), and by depleting essential prey resources (Petition, p. 82).

After reviewing the supporting references cited in the petition, we find that some of the information provided in the petition, specifically information on threats due to ocean acidification, as well as other information in our files, present substantial scientific or commercial information indicating that the petitioned action may be warranted due to this factor. The petition does not

present substantial information, nor do we have substantial information in our files, to suggest that fisheries or oil and gas activities, with the possible exception of potential oil spills, may threaten the Pacific walrus. However, all factors will be evaluated when we conduct our status review.

Finding

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our process for making this 90-day finding under section 4(b)(3)(A) of the Act is limited to a determination of whether the information in the petition presents ''substantial scientific and commercial information,'' which is interpreted in our regulations as ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). As described in our threats evaluation, above, the petition presents substantial information indicating that listing the Pacific walrus throughout its entire range may be warranted based on Factors A, D, and E. Based on our threats evaluation, the petition does not present substantial information indicating that Factors B and C may be a threat to this species.

Based on this review and evaluation, we find that the petition presents substantial scientific or commercial information indicating that listing the Pacific walrus throughout all or a significant portion of its range may be warranted due to current and future threats under Factors A, D, and E. Therefore, we are initiating a status review to determine whether listing the Pacific walrus under the Act is warranted.

The ''substantial information'' standard for a 90-day finding is not the same as the Act's ''best scientific and commercial data'' standard that applies to a status review to determine whether a petitioned action is warranted. A 90-day finding is not a status assessment of the species and does not constitute a status review under the Act. In a 12-month finding, we will determine whether a petitioned action is warranted after we have completed a thorough status review of the species, which is conducted following a substantial 90-day finding. Because the Act's standards for 90-day and 12-month findings are different, as described above, a substantial 90-day finding does not mean that the 12-month finding will indicate that listing is warranted.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Alaska Regional Office (*see* **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this notice are the staff members of the Alaska Regional Office (*see* **FOR FURTHER INFORMATION CONTACT**).

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

Dated: September 1, 2009.

Sam D. Hamilton,

Director, U.S. Fish and Wildlife Service.

[FR Doc. E9–21759 Filed 9–9–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R8–ES–2009–0047]
[MO 92210530083-B2]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List the Amargosa Toad (*Bufo nelsoni*) as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90–day petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90–day finding on a petition to list the Amargosa toad (*Bufo nelsoni*) as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). We find that the petition presents substantial scientific or commercial information indicating that listing this species may be warranted. Therefore, with the publication of this notice, we are initiating a status review to determine if listing the Amargosa toad is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial data and other information regarding this species.

DATES: We made the finding announced in this document on September 10, 2009. To allow us adequate time to conduct this review, we request that we receive information on or before November 9, 2009.

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

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS–R8–ES–2009–0047; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

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

FOR FURTHER INFORMATION CONTACT: Robert D. Williams, Field Supervisor, Nevada Fish and Wildlife Office, 4701 North Torrey Pines Drive, Las Vegas, NV 89130, by telephone (702–515–5230), or by facsimile (702–515–5231). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Information Solicited

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review (12–month finding) is complete and based on the best available scientific and commercial information, we are soliciting information concerning the status of the Amargosa toad. We request information from the public, other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning the status of the Amargosa toad. We are seeking information regarding:

(1) The species' historical and current status and distribution, its biology and ecology, and ongoing conservation measures for the species and its habitat.

(2) Information relevant to the factors that are the basis for making a listing determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of the species' habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

(3) Any proposed projects or development plans that may result in increased water use in the Oasis Valley.

(4) Information on methods to control crayfish (*Procambarus* spp.) in desert riparian systems.

(5) Information on effects of mosquitofish on eggs and larvae of the Amargosa toad or other species of toad where mosquitofish are not native.

(6) Data on surface water quality or groundwater monitoring in the Oasis Valley, including transport or movement of environmental contaminants from mining operations and the Nevada Test Site.

(7) Information on whether or not UV-B radiation is increasing in the Oasis Valley and, if so, the effects of this increase on Amargosa toads.

(8) Information as to any other threats to Amargosa toads asserted in the petition.

If we determine that listing the Amargosa toad is warranted, it is our intent to propose critical habitat to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, with regard to areas within the geographical range currently occupied by the Amargosa toad, we also request data and information on what may constitute physical or biological features that are essential to the conservation of the species, where these features are currently found, and whether any of these features may require special management considerations or protection. In addition, we request data and information regarding whether or not there are areas outside the geographical area occupied by the species that are essential to the conservation of the species. Please provide specific comments and information as to what, if any, critical habitat you think we should propose for designation if the species is proposed for listing, and why such habitat meets the requirements of the Act.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.'' Based on the status review, we will issue a 12–month finding on the petition, as provided in section 4(b)(3)(B) of the Act.

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. We will not consider submissions sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit information via *http://www.regulations.gov*, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov*.

Information and materials we receive, as well as supporting documentation we used in preparing this finding, will be available for public inspection on *http://www.regulations.gov*, or by appointment during normal business hours, at the U.S. Fish and Wildlife Service, 4701 North Torrey Pines Drive, Las Vegas, NV.

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files at the time we make the determination. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90–day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly commence a status review of the species.

On February 27, 2008, we received a petition dated February 26, 2008, from the Center for Biological Diversity and Public Employees for Environmental Responsibility (PEER; hereinafter referred to as ''petitioners'') requesting that the Amargosa toad be listed as endangered or threatened under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioners, as required in 50 CFR 424.14(a). In a letter to the petitioners dated May 1, 2008, we responded that we had reviewed the petition and found that an emergency listing was not warranted. We also stated that, although we were currently required to complete a significant number of listing and critical habitat actions, we anticipated making an initial finding on the petition during Fiscal Year 2008. However, due to unforeseen delays, we were not able to complete the finding at that time. This notice constitutes our initial finding on the petition.

Previous Federal Actions

On August 2, 1977, the Service included the Amargosa toad on a list of amphibians that we were reviewing to determine whether those species should be proposed for listing as endangered or threatened (42 FR 39121). Subsequently, beginning in 1982, we assigned the Amargosa toad as either a category 1 or category 2 candidate species under the Act (47 FR 58454, December 30, 1982; 50 FR 37958, September 18, 1985; 54 FR 554, January 6, 1989; 56 FR 58804, November 21, 1991; 59 FR 58982, November 15, 1994). A category 1 species was a taxon for which the Service has substantial information on hand to support the biological appropriateness of proposing to list as endangered or threatened under the Act. A category 2 species was a taxon for which the Service has information indicating that proposing to list the species as endangered or threatened is possibly appropriate, but that information is not conclusive data on biological vulnerability or threats that would support a proposed listing.

On September 21, 1994, the Service received a petition from the Biodiversity Legal Foundation of Boulder, Colorado, requesting emergency listing of the Amargosa toad as endangered. At the time we received the petition, the Amargosa toad was a category 1 candidate species. On March 23, 1995, we announced our 90–day finding that the petitioned action may be warranted and initiated a status review of the species (60 FR 15280). On July 26, 1995,

the Service recommended removal of the Amargosa toad from category 1 candidate status based on information we obtained during the status review. On February 28, 1996 (61 FR 7596), we removed the Amargosa toad from candidate status. On March 1, 1996, we announced our 12–month finding that listing the Amargosa toad as endangered or threatened was not warranted (61 FR 8018).

Species Information

Taxonomy and Description

The Amargosa toad is a member of the family Bufonidae which includes North American true toads. Stejneger (1893, cited in Lannoo 2005, p. 427) described the Amargosa toad as *Bufo boreas nelsoni*, a subspecies of the western toad (*Bufo boreas*). Savage (1959, pp. 251–254) was the first to refer to the Amargosa toad as *Bufo nelsoni* in accordance with the rules of the International Code of Zoological Nomenclature. Feder (1997, cited in Lannoo 2005, p. 428) diagnosed *Bufo nelsoni* by allozymic data and was the first to publish species rank for the Amargosa toad. Mitochondrial DNA analyses by Goebel (1996, cited in Lannoo 2005, p. 429) are consistent with species status for the Amargosa toad. In 2002, *Bufo nelsoni* was listed as a full species on the Integrated Taxonomic Information System database compiled by the Smithsonian Institution with the highest credibility rating by their Taxonomic Working Group (Lannoo 2005, p. 427).

Adult male Amargosa toads are typically 1.6 to 2.7 inches (in.) (42 to 68 millimeters (mm)) snout-vent length, females typically 1.8 to 3.5 in. (46 to 89 mm) snout-vent length (Nevada Department of Wildlife [NDOW] 2000a, p. A–2). The dorsal body of the Amargosa toad has three paired rows of tubercles, or wart-like skin projections, with brown center coloration. The back has black speckling or asymmetrical spots. Background coloration ranges from almost black to brownish or buffy olive and may vary considerably among individual toads in the same population. A light mid-dorsal stripe occurs along the backbone. The large, wart-like parotid glands located behind the eye are tawny to olive. Underneath, the Amargosa toad is whitish or pale olive with scattered black spots that merge above the legs to form the appearance of ''pants.''

Historical and Current Range

Amargosa toads are endemic to Oasis Valley in southern Nye County, Nevada. The area occupied by the Amargosa toad is isolated with no known or probable connections to members of the western toad complex (NDOW 2000a, p. A–1). The nearest known record for a western toad is approximately 35 linear miles (56 kilometers (km)) away at Furnace Creek in Death Valley National Park, California, where an introduced population of western toad occurs. The historical and current range of the Amargosa toad is estimated to be a 10-mile (16-km) stretch of the Amargosa River and nearby spring systems roughly between the towns of Springdale and Beatty. In 1996, the Amargosa Toad Working Group (ATWG) was organized to provide recommendations for management and conservation of the Amargosa toad. The ATWG consists of representatives of the Service, NDOW, Nevada Department of Conservation and Natural Resources, Bureau of Land Management (BLM), Nye County and local community, the University of Nevada at Reno, and other stakeholders. In 2007, the ATWG prepared a map of all known and potential habitat for the species, including potential movement corridors, and posted the map on the Internet at: *http://www.fws.gov/nevada/nv%5Fspecies/amargosa_toad.html*. The total amount of known and potential Amargosa toad habitat delineated on the ATWG map is 8,440 acres (ac) (3,416 hectares (ha)).

Life History and Ecology

Amargosa toad habitat requirements for breeding and population recruitment include the presence of open, ponded or flowing water, with riparian vegetative cover in an early to intermediate successional stage to form a partial canopy for shade with minimal emergent vegetation at the water's edges. Immature (metamorphs or toadlets) and adult Amargosa toads are dependent upon the areas described above as well as areas they can use for shelter, including burrows, debris piles, spaces under logs or rocks, or areas of dense vegetation (NDOW 2000a, p. A–2). Adult toads also require adjacent vegetated uplands for nocturnal foraging. Upland habitat typically consists of Mojave and Great Basin desert vegetation with leaf litter, rock outcrops, rodent burrows, woody debris, and open areas that are sparsely vegetated. Dense vegetation and advanced successional stages of riparian vegetation appear to limit habitat suitability and occupancy by all life stages, particularly where open water is not present (NDOW 2000a, p. A–2).

The breeding season for the Amargosa toad begins in mid-February and may extend into July during which time adults congregate at breeding sites. Jones (2004, p. 19) found 82 percent of clutches were laid from February 27 to March 23 in the 2001 season. Eggs are deposited in strings among vegetation in shallow water. A female may lay up to 6,000 eggs in a single clutch. The eggs typically develop into larvae (tadpoles) within 1 to 2 weeks, but as quickly as 3 days in thermal waters (NDOW 2000a, p. A–2). Larvae are blackish with silvery speckles, rounded tail tips, and translucent tail fins. Larvae feed on algae, decaying plant material, and organic detritus that is suspended in the water column or on the substrate. Larvae may be swept downstream if a current is present. Larval mortality may be very high, although recruitment estimates have not been made (CBD and PEER 2008, p. 10). Amargosa toad tadpoles require relatively open water that persists long enough for the completion of metamorphosis and development into toadlets at which time they leave the water. Tadpoles metamorphose into toadlets in about 4 to 8 weeks, though development is highly variable depending on water temperature and site conditions (Jones 2004, p. 7). Predation and early desiccation of wetlands needed for breeding may destroy an entire breeding effort. Amargosa toads are believed to typically live 3 to 4 years in the wild, but a toad marked in 1998 was recaptured in 2008.

Amargosa toads may be active any time of the year. Toads eat invertebrates including spiders, scorpions, ants, harvester ants, wasps, beetles, flies, grasshoppers, stink bugs, water striders, damsel flies, mosquitoes, mites, and snails. They use their sticky tongue to grab prey items in a sit-and-wait predator strategy (CBD and PEER 2008, p. 11).

The mean home range of adult Amargosa toads has been studied at the Torrance Ranch site and at Amargosa River Narrows. Home ranges at these sites are estimated to be approximately 1.5 ac (0.6 ha), with no difference between males and females (Jones 2004, p. 48). Rare movements occur over 0.8 mile (1.3 km) between breeding sites along the Amargosa River and 0.5 mile (0.8 km) across uplands (NDOW 2000b, p. 9). During rain events, toad movements are not always confined to riparian corridors and reports exist of Amargosa toads moving over upland ridges (Jones 2004, p. 49). However, significant genetic differentiation of Amargosa toads among sites suggests Amargosa toads do not make extensive use of upland habitat for movement or migration (Simandle 2006, p. 38). Amargosa toads are attracted to

disturbed areas where they forage and breed (NDOW 2000b, pp. 7–8 and 19), and seemingly co-exist with humans as indicated by survey data collected at developed study sites (urban and residential).

Predators of toads include common raven (*Corvus corax*), white-faced ibis (*Plegadis chihi*), great egret (*Ardea alba*), snowy egret (*Egretta thula*), great blue heron (*Ardea herodias*), red-tailed hawk (*Buteo jamaicensis*), red-shouldered hawk (*Buteo lineatus*), spotted sandpiper (*Actitis macularius*), American robin (*Turdus migratorius*), American badger (*Taxidea taxus*), crayfish (*Procambarus* spp.), and various fish species (CBD and PEER 2008, p. 11).

Status

Since 1998, the Amargosa toad has been classified as a Protected Species by the State of Nevada. No Federal protection is currently afforded the species other than designation as a Special Status Species by the BLM. Conservation and management oversight for the Amargosa toad is provided through the ATWG. The ATWG is comprised mostly of biologists, managers, and private landowners with a common interest in Amargosa toad conservation. The Amargosa Toad Conservation Agreement and Strategy was completed in 2000 (CA/S) (NDOW 2000a, pp. 1–12) and provides management and conservation guidance for the Amargosa toad. Efforts to update the CA/S were initiated at the November 7, 2007, meeting of the ATWG.

In 1998, the Nevada Department of Wildlife (NDOW) initiated a long-term population monitoring program for the Amargosa toad using mark/recapture methods at key sites. The study involves capture and marking (with implanted tags) of all adult Amargosa toads found that are 2 in. (50 mm), or greater in length. As of November 2007, a total of 5,666 Amargosa toads had been captured and tagged since 1998. The 2007 estimate for the number of toads 2 in. (50 mm) or greater in length from all surveyed sites is 5,179, which is 13 percent less than the estimate for 1998 through 2006 (Hobbs 2007, p. 1). Further, additional populations of toads may occur on unsurveyed sites on private land (NDOW 2000b, p. 18).

Simandle (2006, p. 42) determined that Amargosa toads meet the criteria and expectations of metapopulations. This means that occupied habitats, unoccupied but suitable habitats, and intervening habitat that may be occasionally used during infrequent migration events should all be considered as conservation priorities. Rare events such as intense floods demonstrate that these are dynamic, disturbance-dependent ecological systems upon which the Amargosa toad depends. Events such as floods may simultaneously destroy existing occupied habitat, create new suitable habitat, and facilitate infrequent movement among different sites.

Five Factor Evaluation

Section 4 of the Act, and its implementing regulations at 50 CFR 424, set forth the criteria and procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. The Service determines whether a species is an endangered or threatened species due to one or more of the following five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

In making this 90–day finding, we evaluated whether information regarding the Amargosa toad, as presented in the petition and other information available in our files at the time of the petition review, meets the definition of substantial information as stated in 50 CFR 424.14(b)(1), indicating that the petitioned action may be warranted. Our evaluation of this information is presented below.

Factor A.

Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

The petition outlines numerous assertions regarding the present or threatened destruction, modification, or curtailment of the Amargosa toad's habitat or range. Several assertions point to Amargosa toad habitat being threatened by proposed Federal land sales and by development projects on private land. The petitioners claim that federal land proposed for sale and private lands subject to development encompass the majority of the range of the Amargosa toad (CBD and PEER 2008, pp. 3, 19, and 29). The petition states that threats to the Amargosa toad resulting from federal land sales are the development that would take place on these and the surrounding private lands, and the increased demand for groundwater to support that development (CBD and PEER 2008, pp. 3, 17, and 20).

The petition raises the issue of potential development plans for the Town of Rhyolite that would include the need for water (CBD and PEER 2008, p. 20). Indian Spring has been identified as a potential water extraction site that would support Rhyolite development. The petition states that if this were to occur, it would likely adversely affect the water table at that site.

The petition also states that the proposed Reward Mine on BLM land has the potential to affect groundwater in the area. The Reward Mine is approximately 3 miles (4.8 km) southeast of the Amargosa River at the Narrows, south of Beatty. The mine operations would use up to 287 acre-feet of groundwater per year over a period of 6 years (John Shomaker and Associates, Inc. 2008, p. 1). The petitioners claim that proposed water withdrawal potentially may create a cone of depression that could lower water levels upstream and impact toad habitat. The February 2008 analysis provided by BLM on the Reward Mine indicates water for operations would be provided by a well in alluvium next to the Amargosa River (John Shoemaker & Associates Inc. 2008, p. 1). The petitioners assert the combination of river water and local groundwater extracted from the well could lower groundwater levels in Oasis Valley (particularly southern Oasis Valley); however, the petitioner did not provide any support for these assertions.

The petitioners assert that lowering of the water table from increased groundwater use could seriously impact toad habitat (CBD and PEER 2008, p. 17). Further, they claim that portions of the Amargosa River may have become dewatered from overuse by humans (CBD and PEER 2008, p. 17). A detailed analysis of the impacts of groundwater and surface water withdrawals on water levels in the Amargosa River would be required to demonstrate the above effects. There is no indication in our files or submitted with the petition that such an analysis has been completed. However, we have in our files a 1998 ruling on an application for groundwater withdrawal in the Oasis Valley issued by the Nevada State Engineer (NSE). This ruling recognized a high degree of connection between groundwater and surface water in Oasis Valley (NSE Ruling 4669). The NSE found that combined groundwater and surface water allocations significantly exceeded the current estimate of perennial yield in the basin. Proposed land uses and development in and near the area of Oasis Valley could lead to additional groundwater allocations, accompanied by a reduction in

Amargosa toad habitat through a lowering of local groundwater levels. A small decrease in groundwater levels in Oasis Valley could lead to a significant reduction in the area of open pools of water at springs, along spring branches, or along the Amargosa River (particularly during dry summer months), all of which provide habitat for the Amargosa toad (Braumiller 2008, p. 1). Therefore existing and future water use in the Oasis Valley may pose a threat to the Amargosa toad.

Other potential threats identified by the petitioners include alterations of the riparian corridor that may affect toad movements and habitat connectivity; habitat loss and fragmentation resulting from proposed projects including flood control projects, a railroad, and a mineral material site; overgrowth of vegetation as a result of fencing; feral burro and livestock effects on springs and toads; direct mortality associated with roads and highways; and off-highway vehicle (OHV) use.

The petitioners generally describe the potential effects that could result from flood control projects (CBD and PEER 2008, pp. 17 and 20). However, the petitioners do not provide information on any specific flood control projects that may threaten the species or its habitat, and the Service is unaware of any proposed flood control actions that would alter the Amargosa River.

The petitioners state that construction of a new railroad, as proposed by the U.S. Department of Energy to transport nuclear waste to Yucca Mountain, may cross the northernmost portion of the Oasis Valley, north of Colson pond, disturbing approximately 20 ac (8 ha) of Amargosa toad habitat (CBD and PEER 2008, p. 18). Although habitat is suitable, Amargosa toads are not known to occur in this area (ATWG 2006, pp. 1–2).

Vegetation overgrowth and use of springs by feral burros and cattle are other land management issues raised by the petitioners that may result in degraded habitat and depressed Amargosa toad numbers (CBD and PEER 2008, pp. 17–18, 21 and 23–25). Fencing has been installed at the Crystal and Indian springs sites to exclude feral burros. While burros and livestock (ungulates) may trample Amargosa toad eggs and larvae, light to moderate disturbance is important to Amargosa toads (ATWG 2005, p. 2). In the absence of disturbance, vegetation grows uncontrolled and reduces open areas necessary for Amargosa toads. Intensive and uncontrolled use of Amargosa toad habitat by ungulates may threaten the species by resulting in habitat degradation and potential loss of individual Amargosa toads; however, light to moderate use may be beneficial to the Amargosa toad. Targeted grazing on the Torrance Ranch by The Nature Conservancy improved habitat, and Amargosa toads responded positively as indicated by use of the area by Amargosa toads for feeding and breeding. Complete removal of ungulates could lead to overgrowth of vegetation, and may pose a more serious threat to the Amargosa toad than moderate ungulate use.

The petitioners claim that OHV activity has been increasing around the Beatty area and results in decreased habitat quality, loss of riparian habitats, and direct mortality of Amargosa toads (CBD and PEER 2008, pp. 21 and 27). Most OHV use in the Beatty area, including the Terrible's 200 Las Vegas to Reno race, occurs during the daytime when toads are likely sheltering. OHVs are used by community residents within the town limits of Beatty mostly along existing roads and trails. However, OHV travel within the river corridor, washes, or other areas used by toads for breeding or for sheltering during daylight hours may impact Amargosa toads, particularly eggs and tadpoles that are known to occur in road depressions. Although the extent of impacts to the Amargosa toad as a result of OHV use is largely unknown, we believe this current OHV use could pose a threat to the Amargosa toad.

In summary, we find that the information provided in the petition, as well as information in our files, presents substantial scientific or commercial information indicating that listing the Amargosa toad as threatened or endangered may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range, including existing and future water development, use of groundwater to support land development, overgrowth of vegetation, excessive habitat use by ungulates, and OHV use in toad habitat. We will investigate whether there are additional potential threats to the Amargosa toad related to Factor A during our status review.

Factor B.

Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The petitioners state that there is no evidence that scientific research has resulted in negative consequences on studied populations of the Amargosa toad (CBD and PEER 2008, p. 22). We have no information in our files that indicates overutilization for commercial, recreational, scientific, or educational purposes is a threat to the Amargosa toad. However, we will further investigate whether overutilization for commercial, recreational, scientific, or educational purposes is a potential threat to the toad during our status review.

Factor C.

Disease or Predation

The petitioners did not present evidence, and no evidence exists in our files, that disease may be a threat to the Amargosa toad at this time. However, we will further investigate whether disease is a potential threat to the toad during our status review.

The petitioners claim that exotic species or nonnative predators and competitors, including nonnative crayfish (*Procambarus* spp.), largemouth bass (*Micropterus salmoides*), nonnative trout (*Oncorhynchus* spp.), black bullhead catfish (*Ictalurus melas*), mosquitofish (*Gambusia affinis*), and nonnative bullfrogs (*Rana catesbeiana*), are a serious threat to the Amargosa toad. Since their introduction in the mid-1980s, nonnative crayfish have become established along most of the Amargosa River and springs occupied by the Amargosa toad, and occur in large numbers (CBD and PEER 2008, p. 3). Crayfish consume toad eggs and larvae, and were located in 7 of 11 sites surveyed during a study (CBD and PEER 2008, p. 23; Jones 2004, pp. 24–25). Bass are known to occur in at least one pond on private property in Oasis Valley, but there is no information in our files to support the claim that trout currently occur in Oasis Valley. Black bullhead catfish are known at one pond that is also occupied by Amargosa toads. Catfish and toads have co-occurred at this site for at least 9 years. Mosquitofish have been introduced into waters of Oasis Valley and occur at most sites occupied by toads. Mosquitofish have been observed to remove and consume eggs of the arroyo toad (*Bufo californicus*; Lannoo 2005, p. 399) and may also prey on Amargosa toad eggs. It is conceivable that nonnative predators have an impact on Amargosa toads; however, the overall effects of these introduced aquatic species specifically to the Amargosa toad are unknown.

In summary, we find that the information provided in the petition, as well as information in our files, presents substantial scientific or commercial information indicating that listing the Amargosa toad may be warranted due to the threat of predation by introduced species.

Factor D.

Inadequacy of Existing Regulatory Mechanisms

The petitioners cite BLM's failure to protect the Amargosa toad through designation of important toad habitat as an Area of Critical Environmental Concern (ACEC) or through provision of a comparable level of protection through other means (CBD and PEER 2008, pp. 19 and 27). Further, they claim that the Town of Beatty and Nye County have failed to cooperate in local community efforts to develop a conservation area in Oasis Valley (CBD and PEER 2008, p. 20), and, therefore, that Amargosa toad habitat on private land is threatened by potential development which may proceed without conservation for the Amargosa toad (CBD and PEER 2008, p. 19). Finally, the petitioners assert that the State of Nevada fails to provide adequate protection for the Amargosa toad through existing statutes particularly regarding permit exemptions for residential groundwater use up to 1,800 gallons per day and habitat threats on private lands (CBD and PEER 2008, pp. 20 and 28).

The petitioners also claim that BLM allows OHV racing near the Crystal Springs exclosure and in a wash potentially used by Amargosa toads. They further state that BLM usually does not enforce OHV exclusion from riparian areas in Oasis Valley (CBD and PEER 2008, p. 27).

Finally, the petition claims that BLM failed to follow through with habitat projects (CBD and PEER 2008, pp. 20 and 25) and the CA/S has failed at protecting toad habitat and increasing toad populations (CBD and PEER 2008, p. 27).

Water development may adversely affect areas occupied by Amargosa toad. The State of Nevada permits exemptions for up to 1,800 gallons per day for residential use, which may collectively result in a substantial volume of groundwater withdrawal. The structure of State water regulations and absence of sufficient data on groundwater and surface water to support development without affecting toad habitat constitutes a potential threat to the Amargosa toad. Further, the Service is unaware of a final master plan that guides community planning in concert with toad conservation. The Service acknowledges that activities and potential development on private lands within Oasis Valley are significant threats to the toad.

Near the Crystal Spring exclosure, BLM has approved OHV events that occur over a 2–day period during the daytime when Amargosa toads are sheltering. The BLM imposes permit conditions to minimize impacts to the area. The Service is unaware of any information that indicates these events or casual OHV use are threats to the Amargosa toad or that BLM fails to enforce OHV exclusion from riparian areas. In 2008, BLM chose an alternate route away from toad habitat for OHV events near Crystal Spring.

Following a recent review of the CA/S, the ATWG concluded that implementation of the CA/S was an overall success. While some projects have not been completed, a number of important activities not identified in the CA/S have been conducted. The updated CA/S will include information on all accomplishments that benefit the toad. The petition asserts that several habitat enhancement projects proposed in the CA/S (CBD and PEER 2008, p. 20) were not completed, but these projects will be revisited in the upcoming review of CA/S.

In summary, we find that the information provided in the petition, as well as information in our files, does present substantial scientific or commercial information indicating that listing the Amargosa toad may be warranted due to the inadequacy of the existing regulatory mechanisms, particularly State regulations that allow for residential groundwater use up to 1,800 gallons per day without the need for a permit and the lack of a final master plan for the Oasis Valley.

Factor E.

Other Natural or Manmade Factors Affecting the Species' Continued Existence

The petitioners assert that the Amargosa toad is particularly vulnerable to extinction due to its exceedingly small range and small population size; most of its range has been impacted by humans (Simandle 2006, p. 14; Petition, pp. 16 and 29), and small populations are particularly vulnerable to genetic drift. Information in our files also suggests that the historical and current range of the Amargosa toad is small, i.e., approximately 10 miles (16 km) long consisting of 8,440 ac (3,416 ha) centered on the Amargosa River and including movement corridors among adjacent spring sites and the river. Small population size and range, compounded by threats under Factor A, could threaten the Amargosa toad. Therefore, we find that the information in the petition and in our files presents substantial information that small range and population size may be an important threat to the Amargosa toad when combined with potential threats from development identified in Factor A.

The petition states that species found in few locations, such as the Amargosa toad, are susceptible to stochastic events such as fire or floods (CBD and PEER 2008, p. 22). Controlled burns conducted on Torrance Ranch in 2008 were successful at reducing vegetation and improving toad habitat; toad reproduction was documented immediately following the burn (ATWG 2008, p. 1). Flood events are a natural disturbance and may benefit the Amargosa toad through periodic habitat disturbances. We will further investigate whether susceptibility to stochastic events is a potential threat to the toad during our status review.

Radiation poisoning through groundwater contamination (from atomic testing on the Nevada Test Site) was also cited by the petitioners (CBD and PEER 2008, p. 21). The petitioners also assert that pollution of unknown levels on private land is a threat to the Amargosa toad (CBD and PEER 2008, p. 25). No information on groundwater connections or the types, amounts, infiltration speed, or locations of pollution was provided in the petition or exists in our files to support this claim as an important threat to the Amargosa toad. However, we will further investigate whether radiation poisoning through groundwater contamination is a potential threat to the toad during our status review.

Environmental factors, including global warming, were identified by the petitioners as factors that could decrease habitat for the Amargosa toad through drought. The petitioners also mentioned increased UV-B radiation, which could weaken the Amargosa toad's immune system and result in mortality from disease (CBD and PEER 2008, p. 22). As acknowledged in the petition (CBD and PEER 2008, p. 23), disease has not been observed in Amargosa toads, and no field observations of Amargosa toad mortalities suggesting disease have been reported.

We acknowledged in Factor A that management of water resources to meet the needs of the Amargosa toad is important for Amargosa toad conservation. Environmental changes due to climate change, including drought, could exacerbate the threats under Factor A. Therefore, we find that the information in the petition and in our files presents substantial information to indicate environmental changes due to climate change could exacerbate threats under Factor A and combine to threaten the Amargosa toad.

Finally, the petitioners claim that introduced, invasive trees have become established along stretches of the Amargosa River and springs, which may reduce prey and microhabitat available for the Amargosa toad (CBD and PEER 2008, pp. 24 and 26). Since the CA/S was signed in 2000, removal of invasive trees, tamarisk (*Tamarix ramosissima*) and Russian olive (*Elaeagnus angustifolia*) has been ongoing and successful as a joint effort involving State, Federal, and private landowners. Amargosa toads are known to use areas underneath tamarisk and Russian olive trees for feeding and sheltering. Tamarisk and Russian olive removal efforts generally include replacement with native riparian species that will provide the same function. We will further investigate whether invasive trees are a potential threat to the toad during our status review.

In summary, we find that the information provided in the petition and in our files presents substantial scientific or commercial information indicating that listing the Amargosa toad may be warranted due to threats from other natural or manmade factors. These factors, particularly small populations, small range size, and environmental changes due to climate change, could exacerbate threats identified under Factor A.

Finding

We have reviewed the petition and the literature cited in the petition, and evaluated the information to determine whether the sources cited support the claims made in the petition. We also reviewed information that was readily available in our files. Based on our evaluation of the information provided in the petition, and information in our files, we find that the petition presents substantial scientific information indicating that listing the Amargosa toad may be warranted.

Our process for making this 90–day finding under section 4(b)(3)(A) of the Act is limited to a determination of whether the information in the petition presents ''substantial scientific or commercial information,'' which is interpreted in our regulations as ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). Section 4(a) of the Act states the Secretary shall, by regulation promulgated in accordance with subsection (b) of the Act, determine whether any species is an endangered species or a threatened species because of any of the five listing factors. Furthermore, regulations at 50 CFR 424.11(c) state a species shall be listed or reclassified if the Secretary determines, on the basis of the best scientific and commercial data available after conducting a review of the species' status, that the species is endangered or threatened because of any one or a combination of the five listing factors.

As described in our Five-Factor Evaluation above, the petitioners presented substantial information indicating that the Amargosa toad may be threatened throughout its entire range due to four of the five listing factors described in the Act. Therefore, based on our determination that the petitioned action may be warranted due to substantial information presented under Factors A, C, D and E, we are initiating a status review to determine whether listing the Amargosa toad under the Act is warranted. We will address any other potential threats during our status review. To ensure that the status review is comprehensive, we are soliciting scientific and commercial information regarding the Amargosa toad relevant to all five listing factors.

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

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Nevada Fish and Wildlife Office, Las Vegas, Nevada (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this notice are the staff members of the Nevada Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

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

Dated: August 26, 2009.

Daniel M. Ashe,

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

[FR Doc. E9–21762 Filed 9–9– 09; 8:45 am]

BILLING CODE 4310–55–S

Notices

Federal Register

Vol. 74, No. 174

Thursday, September 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

Office of the Chief Information Officer; Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Office of the Chief Information Officer (OCIO), USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the intention of the Office of the Chief Information Officer (OCIO) to request approval for the continuation of information collection necessary to allow USDA customers to securely and confidently share data and receive services electronically. Authority for obtaining information from customers is included in the Freedom to E–File Act, the Electronic Signatures in Global and National Commerce Act (E–SIGN), and the E–Government Act of 2002. Customer information is collected through the USDA eAuthentication Service (eAuth), located at *http://www.eauth.egov.usda.gov.* The USDA eAuth provides the public and government businesses with a single sign-on capability for USDA applications, management of user credentials, and verification of identity, authorization, and electronic signatures. USDA's eAuth obtains customer information through an electronic self registration process provided through the eAuth Web site. This voluntary online self registration process enables USDA customers, as well as employees, to obtain accounts as authorized users that will provide single sign-on capability to access USDA Web applications and services via the Internet. The USDA eAuthentication system stems from the Web-based Centralized Authentication and Authorization Facility (WebCAAF), the former USDA authentication system.

DATES: Comments on this notice must be received by November 9, 2009 to be assured of consideration.

Additional Information or Comments: Shari Erickson, Program Manager, Office of the Chief Information Officer, United States Department of Agriculture, 301 S. Howes St., Suite 309, Fort Collins, CO 80521 or via e-mail at *shari.erickson@ocio.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Office of the Chief Information Officer eAuthentication Service.

OMB Number: 0503–0014.

Expiration Date of Approval: February 28, 2010.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The USDA OCIO has developed eAuth as a management and technical process that addresses user authentication and authorization prerequisites for providing services electronically. The process requires a one-time electronic self registration to obtain an eAuth account for each USDA customer desiring access to online services or applications that require user authentication. USDA customers can self register for a Level 1 or Level 2 Access account. A Level 1 Access account provides users with limited access to USDA Web site portals and applications that have minimal security requirements. A Level 2 Access account enables users to conduct official electronic business transactions via the Internet, enter into a contract with the USDA, and submit forms electronically via the Internet to USDA agencies. Due to the increased customer access associated with a Level 2 Access account, customers must be authenticated in person at a USDA Service Center by a local registration authority, in addition to an electronic self registration. Once an account is activated, customers may use the associated user ID and password that they created to access USDA resources that are protected by eAuth. It is estimated to take 8 minutes to complete the self registration process for a Level 1 Access account. A Level 2 Access account registration is estimated to be completed in 1 hour 40 minutes due to the travel time to the USDA Service Center.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 8 minutes per Level 1 account and 1 hour and 40 minutes per Level 2 account.

Respondents: Individual USDA Customers.

Estimated Number of Respondents: 44,088 Level 1 and 18,096 Level 2.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 35,952 hours.

Comments are invited on (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agencies' estimate of 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 the information on those who respond, including the use of appropriate automated, electronic, mechanical, or techniques or other forms of information technology. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, *OIRA_Submission@omb.eop.gov* or Fax (202) 395–5806, and to Shari Erickson, Program Manager, Office of the Chief Information Officer, United States Department of Agriculture, 301 S. Howes St., Suite 309, Fort Collins, CO 80521, e-mail *shari.erickson@ocio.usda.gov.* All comments received will be available for public inspection during regular business hours at the same address. Copies of the information collection may be obtained from Ms. Erickson at the address above. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Christopher L. Smith,

Chief Information Officer, Office of the Chief Information Officer.

[FR Doc. E9–21799 Filed 9–9–09; 8:45 am]

BILLING CODE 3410–KR–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Domestic Sugar Program—2008-Crop Cane Sugar and Beet Sugar Marketing Allotments and Company Allocations

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: The Commodity Credit Corporation (CCC) is issuing this notice to publish the 2008-crop state sugar marketing allotments and company allocations to sugarcane and sugar beet processors, and changes to allotments that have occurred since the establishment of the fiscal year 2009 (FY 2009) overall allotment quantity (OAQ). This applies to all domestic sugar marketed for human consumption in the United States from October 1, 2008 through September 30, 2009. Although CCC already has announced most of the information in this notice through United States Department of Agriculture (USDA) news releases, CCC is required to publish the determinations establishing, adjusting, or suspending sugar marketing allotments.

FOR FURTHER INFORMATION CONTACT: Barbara Fecso, Dairy and Sweeteners Analysis Group, Economic Policy and Analysis Staff, Farm Service Agency, USDA, 1400 Independence Avenue, SW., STOP 0516, Washington, DC 20250–0516; telephone (202) 720–4146; FAX (202) 690–1480; *e-mail: barbara.fecso@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Initial FY 2009 State Allotments and Company Allocations

On September 30, 2008, CCC announced the distribution of the FY 2009 beet sugar allotment of 4,850,738 short tons, raw value (STRV) (54.35 percent of the OAQ) to sugar beet processors. In addition, CCC announced the distribution to sugarcane processors of the 4,074,262 STRV cane sugar allotment (45.65 percent of the OAQ).

CCC also granted Andino Energy Enterprises, L.L.C. (Andino) a FY 2009 cane sugar allocation of 25,266 STRV. This amount represented Andino's expected FY 2009 sugar production based on evidence provided to CCC demonstrating its ability to process, produce, and market 2008-crop raw cane sugar at its St. James Factory. CCC did not reduce allocations at the other Louisiana mills at that time because the FY 2009 raw cane sugar allotment was expected to be considerably larger than the domestic raw cane sugar supply. Instead, CCC filled Andino's allocation need with surplus allotment expected from Hawaii. CCC will determine the permanent allocation level for Andino, and subtract allocation shares, on a pro rata basis, from the Louisiana mills when the time period opens in May for growers to request to transfer allocations.

In FY 2004, CCC declared that Puerto Rican processors permanently terminated operations because no sugar had been processed for two complete years. Since Puerto Rico is entitled to an allocation by law, the allocation of 6,356 STRV was reassigned to the mainland sugarcane-producing states. Hawaii was not expected to use all of its current cane sugar allotment. Therefore, Hawaii received none of the Puerto Rican reassignment and CCC reassigned 25,266 tons of Hawaiian allocation to Andino.

CCC determined that proportionate shares were not necessary in Louisiana in FY 2009 because the cane sugar sector was not expected to fill its allotment.

Additionally, based on the September 2008 World Agricultural Supply and Demand Estimates report (WASDE) indicating a FY 2009 ending stocks-to-use ratio of 4.6 percent, CCC determined that there would be no sugar available to implement provisions of the Feedstock Flexibility Program (FFP) in FY 2009. At this level, the prospect for sugar forfeitures in FY 2009, which triggers FFP, was determined to be very small.

First FY 2009 Reassignment of State Allotments and Company Allocations

In mid-year, CCC reviewed current inventories, estimated production, expected marketings, and other factors affecting a sugar beet or sugarcane processor's ability to market its full allocation. In a May 19, 2009, news release, CCC announced the reassignment of projected surplus beet sugar and cane sugar marketing allotments and allocations under the FY 2009 Sugar Marketing Allotment program. The reassignment, which transferred allocations from processors with inadequate supply to fulfill their allocations to processors with production in excess of their allocations, was expected to substantially increase the available supplies of domestically produced refined beet sugar.

CCC also announced the redistribution of a portion of the American Crystal Sugar Company's allocation to the other sugar beet processors in response to legal proceedings contesting the transfer of sugar marketing allocation from the Pacific Northwest Sugar Company to the American Crystal Sugar Company. The redistribution is considered a ''permanent'' allotment transfer for future years. The legal proceedings resulted in an 82,425 ton net decrease in American Crystal Sugar's allocation, and a corresponding increase, on a pro-rata basis, to the other sugar beet processors.

As part of the domestic sugar program, CCC is required to reassign allocation to raw cane sugar imports if it is determined that processors will be unable to market their allocations and there is no CCC inventory. Data supplied by the processors in May 2009 indicated that the beet sugar sector would be unable to market 198,073 tons of its current sugar marketing allotment, while the raw cane sugar sector would be unable to market 561,510 tons of its sugar marketing allotment. Hence, the allotments were reduced to 4,652,664 tons for beet sugar and 3,512,752 tons for cane sugar, while 759,583 tons were reassigned to raw cane sugar imports already displayed in the WASDE report. It was expected at that time that further reassignments would be likely.

FY 2009 OAQ Increase

This notice also announces an increase in the FY 2009 OAQ to 9,235,250 million tons, which is 85 percent of the demand estimate published in the August 2009 WASDE report. The latest production forecasts indicate that the beet sugar sector is unable to fill 77,621 tons of its sugar marketing allotment, while the cane sugar sector is 171,417 tons short of filling its sugar marketing allotment. The total surplus allotment of 249,039 tons is reassigned to raw cane sugar imports already included in the WASDE report. CCC is reassigning the surplus allotment to raw sugar imports already expected because no additional raw sugar imports beyond the level already expected are needed at this time.

The current 2008-crop beet sugar and cane sugar marketing allotments to date are listed in the following table:

FY 2009 OVERALL BEET SUGAR AND CANE SUGAR ALLOTMENTS AND ALLOCATIONS

Distribution	9/30/2008 Announcement	5/19/2009 Announcement			9/8/2009 Announcement		
	Initial allocation	Redistribution of PNW	Reassignments	FY 2009 adjustment 5/19/2009	Adjusted OAQ due to change in food use	Reassignments	FY 2009 adjustment 9/8/2009
	short tons, raw value						
Beet Sugar	4,850,738	0	−198,073	4,652,664	168,621	−77,621	4,743,664
Cane Sugar	4,074,262	0	−561,510	3,512,752	141,629	−171,417	3,482,964
Reassignment to Imports	0	0	759,583	759,583	0	249,039	1,008,622
Total OAQ	8,925,000	0	0	8,925,000	310,250	0	9,235,250
Sugar Beet Processors' Allocations:							
Amalgamated Sugar Co	1,010,626	27,954	−241,742	796,838	36,103	14,722	847,663
American Crystal Sugar Co	1,865,642	−82,425	104,646	1,887,863	62,167	−62,278	1,887,751
Michigan Sugar Co	487,479	13,484	127,681	628,643	17,414	9,389	655,446
Minn-Dak Farmers Co-op	302,624	8,371	−69,068	241,927	10,811	−15,512	237,226
So. Minn Beet Sugar Co-op	637,074	17,621	−99,306	555,389	22,758	−21,550	556,597
Western Sugar Co	482,583	13,206	−18,494	477,295	17,056	112	494,462
Wyoming Sugar Co	64,710	1,790	−1,790	64,711	2,312	−2,504	64,518
Total Beet Sugar	4,850,738	0	−198,073	4,652,664	168,621	−77,621	4,743,664
State Cane Sugar Allotments:							
Florida	2,018,559	.....	−427,364	1,591,196	70,369	−70,369	1,591,196
Louisiana	1,586,848	.....	−50,236	1,536,612	54,438	−54,438	1,536,612
Texas	175,477	.....	−21,284	154,193	6,117	−6,117	154,193
Hawaii	293,378	.....	−62,626	230,752	10,705	−40,493	200,964
Total Cane Sugar	4,074,262	.....	−561,510	3,512,752	141,629	−171,417	3,482,964
Sugarcane Processors' Allocations:							
Florida:							
Florida Crystals	831,094	.....	−195,131	635,963	28,973	−28,973	635,963
Growers Co-op. of FL	363,109	.....	−61,292	301,817	12,658	−12,658	301,817
U.S. Sugar Corp	824,356	.....	−170,941	653,416	28,738	−28,738	653,416
Total	2,018,559	.....	−427,364	1,591,196	70,369	−70,369	1,591,196
Louisiana:							
Alma Plantation	130,959	.....	39,847	170,806	4,565	−4,565	170,806
Cajun Sugar Co-op	157,902	.....	−37,601	120,301	5,505	−5,505	120,301
Cora-Texas Mfg. Co	171,921	.....	19,644	191,565	5,993	−5,993	191,565
Lafourche Sugars Corp	108,896	.....	−12,060	96,837	3,796	−3,796	96,837
Louisiana Sugarcane Co-op	120,075	.....	599	120,674	4,186	−4,186	120,674
Lula Westfield, LLC	234,165	.....	−8,554	225,611	8,163	−8,163	225,611
M.A. Patout & Sons	478,609	.....	−21,951	456,658	16,685	−16,685	456,658
St. Mary Sugar Co-op	159,055	.....	−21,895	137,160	5,545	−5,545	137,160
Andino Energy	25,266	.....	−8,266	17,000	0	0	17,000
Total	1,586,848	.....	−50,236	1,536,612	54,438	−54,438	1,536,612
Texas:							
Rio Grande Valley	175,477	.....	−21,284	154,193	6,117	−6,117	154,193
Hawaii:							
Gay & Robinson, Inc	67,345	.....	−5,594	61,751	2,457	−8,196	56,013

FY 2009 OVERALL BEET SUGAR AND CANE SUGAR ALLOTMENTS AND ALLOCATIONS—Continued

Distribution	9/30/2008 Announcement	5/19/2009 Announcement			9/8/2009 Announcement		
	Initial allocation	Redistribution of PNW	Reassignments	FY 2009 adjustment 5/19/2009	Adjusted OAQ due to change in food use	Reassignments	FY 2009 adjustment 9/8/2009
Hawaiian Commercial & Sugar Company	226,033		−57,033	169,000	8,247	−32,296	144,951
Total	293,378		−62,626	230,752	10,705	−40,493	200,964

Signed in Washington, DC on September 2, 2009.

Jonathan W. Coppess,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. E9–21761 Filed 9–9–09; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Meeting; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: Pacific Northwest Region, USDA Forest Service.

ACTION: Notice of meeting.

SUMMARY: The Pacific Northwest Recreation Resource Advisory Committee will meet in Portland, OR. The purpose of the meeting is to review and provide recommendations on recreation fee proposals for facilities and services offered on lands managed by the Forest Service and Bureau of Land Management in Oregon and Washington, under the Federal Lands Recreation Enhancement Act of 2004.

DATES: The meeting will be held on October 30, 2009, from 8:30 a.m.–5 p.m. A public input session will be provided at 10:30 a.m. on October 30, 2009. Comments will be limited to three minutes per person.

ADDRESSES: The meeting will be at the Residence Inn by Marriot, Lloyd Center, 1710 NE Multnomah St., Portland, Oregon 97232. Send written comments to Dan Harkenrider, Designated Federal Official for the Pacific Northwest Recreation RAC, 902 Wasco Street, Suite 200, Hood River, OR 97031, 541–308–1700 or *dharkenrider@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Dan Harkenrider, Designated Federal Official, 902 Wasco Street, Suite 200, Hood River, OR 97031, 541–308–1700.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Recreation RAC discussion is limited to Forest Service and Bureau of Land Management staff and Recreation RAC members. However, persons who wish to bring recreation fee matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. A public input session will be provided and individuals who have made written requests by October 26, 2009, to the Designated Federal Official will have the opportunity to address the Committee during the meeting on October 30, 2009, at 10:30 a.m.

The Recreation RAC is authorized by the Federal Land Recreation Enhancement Act, which was signed into law by President Bush in December 2004.

Dated: September 1, 2009.

Mary Wagner,

Regional Forester, Pacific Northwest Region.

[FR Doc. E9–21686 Filed 9–9–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tehama County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tehama County Resource Advisory Committee (RAC) will meet in Red Bluff, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Chairman's Perspective, (5) FY09 RAC Proposal Presentations, (6) FY09 RAC Proposal Voting, (7) Next Agenda.

DATES: The meeting will be held on September 17, 2009 from 9 a.m. and end at approximately 12 p.m.

ADDRESSES: The meeting will be held at the Lincoln Street School, Pine Room, 1135 Lincoln Street, Red Bluff, CA. Individuals wishing to speak or propose agenda items must send their names and proposals to Randy Jero, Committee Coordinator, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Randy Jero, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, 825 N. Humboldt Ave., Willows, CA 95988. (530) 934–1269; e-mail *rjero@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by September 14, 2009 will have the opportunity to address the committee at those sessions.

Dated: September 1, 2009.

Eduardo Olmedo,

Designated Federal Official.

[FR Doc. E9–21630 Filed 9–9–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on September 18, 2009 at the US Forest Service Office, 35 College Drive, South Lake Tahoe, CA 96150. This Committee, established by the Secretary of Agriculture on December 15, 1998 (64 FR 2876), is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meetings will be held September 18, 2009, beginning at 9 a.m. and ending at 12 p.m.

ADDRESSES: The meeting will be held at the US Forest Service Office, 35 College Drive, South Lake Tahoe, CA 96150.

FOR FURTHER INFORMATION OR TO REQUEST AN ACCOMMODATION (ONE WEEK PRIOR TO MEETING DATE) CONTACT: Arla Hams, Lake Tahoe Basin Management Unit, Forest Service, 35 College Drive, South Lake Tahoe, CA 96150, (530) 543–2773.

SUPPLEMENTARY INFORMATION: Items to be covered on the agenda: (1) Aquatic Invasive Species Management Plan update; (2) Southern Nevada Public Land Management Act (SNPLMA) Round 10 updates, (3) SNPLMA Round 11 status, (4) Lake Tahoe Restoration Act reauthorization update, and (5) public comment.

All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend at the above address. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: September 2, 2009.

Terri Marceron,

Forest Supervisor.

[FR Doc. E9–21688 Filed 9–9–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Southwestern Region, Arizona, New Mexico, West Texas and Oklahoma: Proposed Invasive Plant Control Project, Carson National Forest, Portions of Rio Arriba, Mora, Taos, and Colfax Counties; and Santa Fe National Forest, Portions of Rio Arriba, Los Alamos, Sandoval, San Miguel, and Mora Counties, New Mexico

AGENCY: Forest Service, USDA.

ACTION: Notice; correction.

SUMMARY: On December 15, 2000, the USDA Forest Service published a notice of intent (65 FR 78464–78465) to prepare an environmental impact statement (EIS) for a proposed invasive plant control project on the Carson and Santa Fe national forests. A draft EIS was completed and the Environmental Protection Agency (EPA) published a notice of availability (NOA) in the **Federal Register** on July 16, 2004 (69 FR 42722). A NOA for the final EIS was published in the **Federal Register** on November 18, 2005 (70 FR 69967).

Due to significant new information relevant to environmental concerns and bearing on the proposed action and its impacts, the Carson and Santa Fe national forests are jointly preparing a supplemental environmental impact statement (SEIS) for the invasive plant control project on National Forest System lands within the boundaries of the two national forests. The proposed action would control invasive plant populations on both national forests by using one or a combination of integrated pest management methods, including mechanical, chemical, biological, and cultural treatments.

DATES: *Revised Dates:* The anticipated date for completion and distribution of the draft SEIS is the end of December 2009. A 45-day comment period will follow issuance of the draft SEIS. The final SEIS is estimated to be released in April 2010.

FOR FURTHER INFORMATION CONTACT: Lucy Maldonado, 575–758–6255.

Dated: *September 2, 2009.*

Kendall Clark,

Forest Supervisor, Carson National Forest.

[FR Doc. E9–21738 Filed 9–9–09; 8:45 am]

BILLING CODE 3410–11–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination under the Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR Agreement)

September 3, 2009.

AGENCY: The Committee for the Implementation of Textile Agreements.

ACTION: Determination to add a product in unrestricted quantities to Annex 3.25 of the CAFTA-DR Agreement.

EFFECTIVE DATE: September 10, 2009.

SUMMARY: The Committee for the Implementation of Textile Agreements (''CITA'') has determined that certain woven modal-polyester apparel fabric, as specified below, is not available in commercial quantities in a timely manner in the CAFTA-DR countries. The product will be added to the list in Annex 3.25 of the CAFTA-DR Agreement in unrestricted quantities.

FOR FURTHER INFORMATION CONTACT: Maria Dybczak, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3651.

FOR FURTHER INFORMATION ON-LINE: http://web.ita.doc.gov/tacgi/CaftaReqTrack.nsf under ''Approved Requests,'' Reference number: 129.2009.08.10.Fabric.SoriniSamet forBWA

SUPPLEMENTARYINFORMATION:

Authority: The CAFTA-DR Agreement; Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (CAFTA-DR Implementation Act), Pub. Law 109-53; the Statement of Administrative Action (SAA), accompanying the CAFTA-DR Implementation Act; and Presidential Proclamations 7987 (February 28, 2006) and 7996 (March 31, 2006); Modifications to Procedures for Considering Requests Under the Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement, 73 FR 53200 (Sept. 15, 2008) (''procedures'').

BACKGROUND:

The CAFTA-DR Agreement provides a list in Annex 3.25 for fabrics, yarns, and fibers that the Parties to the CAFTA-DR Agreement have determined are not available in commercial quantities in a timely manner in the territory of any Party. The CAFTA-DR Agreement provides that this list may be modified pursuant to Article 3.25(4)-(5), when the President of the United States determines that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the territory of any Party. See Annex 3.25 of the CAFTA-DR Agreement; see also section 203(o)(4)(C) of the CAFTA-DR Implementation Act.

The CAFTA-DR Implementation Act requires the President to establish procedures governing the submission of a request and providing opportunity for interested entities to submit comments and supporting evidence before a commercial availability determination is made. In Presidential Proclamations 7987 and 7996, the President delegated to CITA the authority under section 203(o)(4) of CAFTA-DR Implementation Act for modifying the Annex 3.25 list. Pursuant to this authority, on September 15, 2008, CITA published modified procedures it would follow in considering requests to modify the Annex 3.25 list of products determined to be not commercially available in the territory of any Party to CAFTA-DR. See CITA procedures.

On August 10, 2009, the Chairman of CITA received a Request for a Commercial Availability Determination (''Request'') from Sorini Samet & Associates, LLC, on behalf of BWA, for certain woven modal-polyester apparel fabric, as specified below. On August 11, 2009, in accordance with CITA's procedures, CITA notified interested parties of the Request, which was posted on the dedicated website for CAFTA-DR Commercial Availability

proceedings. In its notification, CITA advised that any Response with an Offer to Supply (''Response'') must be submitted by August 24, 2009, and any Rebuttal Comments to a Response must be submitted by August 28, 2009 in accordance with CITA's procedures at Sections 6 and 7. No interested entity submitted a Response to the Request advising CITA of an objection to the Request and an ability to supply the subject product.

In accordance with section 203(o)(4)(C) of the CAFTA-DR Implementation Act, and Section 8(c)(2) of CITA's procedures, as no interested entity submitted a Response objecting to the Request and demonstrating its ability to supply the subject product, CITA has determined to add the specified fabric to the list in Annex 3.25 of the CAFTA-DR Agreement.

Therefore, the subject product has been added to the list in Annex 3.25 of the CAFTA-DR Agreement in unrestricted quantities. A revised list has been posted on the dedicated website for CAFTA-DR Commercial Availability proceedings.

HTSUS: 5516.12; 5516.13; 5516.22; 5516.23
NOTE: In the finishing process, in the event that the polyester filament content breaks and turns into a fiber, the classification would be a woven fabric of 100% polyester synthetic staple fiber (HTS 5516.92; 5516.93)
Fiber Content: 52 to 95% spun modal rayon; 5 to 48% filament polyester
Yarn Size: Spun modal rayon 44/1 to 88/1 metric; filament polyester 59 to 92 metric
Thread Count: 31 to 53 warp ends per centimeter; 27 to 36 filling picks per centimeter.
Weave Type: Twill or dobby or jacquard or oxford or satin
Weight: 100 to 300 grams per square meter
Width: 137 to 153 centimeters
Coloration: (Piece) dyed or yarns of different colors
Finishing Process: Wicked, UV blocker, peached, sanded wash, stain-resistant and teflon finish.

Kimberly Glas,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E9–21903 Filed 9–9–09; 8:45 am]

BILLING CODE 3510–DS

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Hawaii Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the Hawaii Advisory Committee to the Commission will convene at 10 a.m. and adjourn at approximately 1 p.m. on Thursday, September 24, 2009, at the Hilton Hawaiian Village, 2005 Kalia Road, Honolulu, Hawaii. The purpose of the meeting is to plan Committee projects for the coming 2010 fiscal year.

Members of the public are entitled to submit written comments; the comments must be received in the regional office by October 31, 2009. The address is 300 N. Los Angeles St., Suite 4333, Los Angeles, California 90012. Persons wishing to email their comments or who desire additional information should contact Peter Minarik, Regional Director, at (213) 894–3437 or 800–877–8339 for individuals who are deaf, hearing impaired, and/or have speech disabilities or by email to *pminarik@usccr.gov.*

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Western Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov*, or to contact the Western Regional Office at the above email or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, September 3, 2009.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. E9–21834 Filed 9–9–09; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Hampshire Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights and the Federal Advisory Committee Act, that the New Hampshire Advisory Committee will convene a briefing meeting and planning meeting at 10:30 a.m. on Friday, September 25, 2009, at the Legislative Office Building, Room 201, Concord, New Hampshire 03301. The purpose of the briefing meeting is to hear from experts about civil rights issues in the state. The purpose of the planning meeting is for the Committee to select the topic for its civil rights project.

Members of the public are entitled to submit written comments; the comments must be received in the regional office by October 23, 2009. The address is the Eastern Regional Office, 624 Ninth Street, NW., Suite 740, Washington, DC 20425. Persons wishing to e-mail their comments, or who desire additional information should contact Alfreda Greene, Secretary, at 202–376–7533 or by e-mail to: *ero@usccr.gov.*

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Eastern Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the rules and regulations of the Commission and FACA.

Dated in Washington, DC, September 4, 2009.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. E9–21838 Filed 9–9–09; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Arizona Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the Arizona Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at approximately 11:30 a.m. on Tuesday, September 22, 2009, at 500 East Coronado Road, Phoenix, Arizona. The purpose of the meeting is to plan Committee projects for the coming 2010 fiscal year.

Members of the public are entitled to submit written comments; the comments must be received in the regional office by October 31, 2009. The address is 300 N. Los Angeles St., Suite 4333, Los Angeles, California 90012. Persons wishing to e-mail their comments or who desire additional information should contact Peter

Minarik, Regional Director, at (213) 894–3437 or 800–877–8339 for individuals who are deaf, hearing impaired, and/or have speech disabilities or by e-mail to *pminarik@usccr.gov*.

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Western Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov*, or to contact the Western Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, September 3, 2009.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. E9–21840 Filed 9–9–09; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Kansas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the Kansas Advisory Committee to the Commission will convene by conference call at 2:30 p.m. and adjourn at approximately 4:30 p.m. on Thursday, September 17, 2009. The purpose of this meeting is the Committee will convene to receive information from the State party leaders of the Kansas Democratic and Republican Parties. This information will be used in preparation for the Committees civil rights project ''Civil Rights Implications of Kansas's Caucus Process and Related Voting Rights Issues.''

This meeting is available to the public through the following toll-free call-in number: (866) 364–7584, conference call access code number 18161461. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and contact name Farella E. Robinson.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Corrine Sanders of the Central Regional Office and TTY/TDD telephone number, by 4 p.m. on September 11, 2009.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by September 25, 2009. The address is U.S. Commission on Civil Rights, 400 State Avenue, Suite 908, Kansas City, Kansas 66101. Comments may be e-mailed to *frobinson@usccr.gov.* Records generated by this meeting may be inspected and reproduced at the Central Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Central Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, August 31, 2009.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. E9–21836 Filed 9–9–09; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: Report of Sample Shipments of Chemical Weapon Precursors.

Form Number(s): N/A.

OMB Control Number: 0694–0086.

Type of Request: Regular submission.

Burden Hours: 16.5 hours.

Number of Respondents: 28.

Average Hours per Response: 30 minutes.

Needs and Uses: This collection of information will be used to monitor sample shipments of chemical weapon precursors in order to facilitate and enforce provisions of the Export Administration Regulations that permit limited exports of sample shipments without a validated export license. The chemical samples may be exported under license exclusion, in exchange for a quarterly reporting requirement. The reports will be reviewed by the BIS monitor quantities and patterns of shipments that might indicate circumvention of the regulation by entities seeking to acquire chemicals for chemical weapons purposes.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

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

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

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

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

Dated: September 4, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–21806 Filed 9–9–09; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; National Security and Critical Technology Assessment of the U.S. Industrial Base

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general

public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before November 9, 2009.

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

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Larry Hall, BIS ICB Liaison, (202) 482–4895, *lhall@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Department of Commerce conducts assessments of U.S. industries deemed critical to our national security. The information gathered is needed to assess the health and competitiveness, as well as the needs of the targeted industry sector, in order to maintain a strong U.S. industrial base.

II. Method of Collection

Submitted electronically.

III. Data

OMB Control Number: 0694–0119.
Form Number(s): None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations and not-for-profit institutions.
Estimated Number of Respondents: 6,000.
Estimated Time per Response: 4 hours.
Estimated Total Annual Burden Hours: 24,000.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 4, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–21812 Filed 9–9–09; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; Chemical Weapons Convention Declaration and Report Handbook and Forms

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before November 9, 2009.

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

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Larry Hall, BIS ICB Liaison, (202) 482–4895, *lhall@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Chemical Weapons Convention Implementation Act of 1998 and Commerce Chemical Weapons Convention Regulations (CWCR) specify the rights, responsibilities and obligations for submission of declarations, reports and inspections. This information is required for the United States to comply with the Chemical Weapons Convention (CWC), an international arms control treaty.

II. Method of Collection

Submitted electronically or in paper form.

III. Data

OMB Control Number: 0694–0091.
Form Number(s): Form 1–1, Form 1–2, Form 1–2A, Form 1–2B, etc.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations.
Estimated Number of Respondents: 929.
Estimated Time per Response: 10 minutes–31 hours per response.
Estimated Total Annual Burden Hours: 10,842 hours.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 4, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–21811 Filed 9–9–09; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–893]

Third Administrative Review of Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review

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

SUMMARY: On March 9, 2009, the Department of Commerce (the

''Department'') published in the **Federal Register** the *Preliminary Results* of the third administrative review of the antidumping duty order on certain frozen warmwater shrimp from the People's Republic of China (''PRC'').[1] We gave interested parties an opportunity to comment on the *Preliminary Results.* Based upon our analysis of the comments and information received, we made changes to the margin calculations for the final results. We continue to find that certain exporters have sold subject merchandise at less than normal value during the period of review (''POR''), February 1, 2007, through January 31, 2008.

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

FOR FURTHER INFORMATION CONTACT: Paul Walker, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0413.

SUPPLEMENTARY INFORMATION:

Background

On April 7, 2008, the Department initiated an administrative review of 482 producers/exporters of subject merchandise from the PRC.[2] In the *Preliminary Results* the Department rescinded the review with respect to Yelin Enterprise Co., Ltd. Hong Kong (the predecessor in interest to Hilltop International), Yangjiang City Yelin Hoitat Quick Frozen Seafood Co., Ltd., Fuqing Yihua Aquatic Food Co., Ltd. and Fuqing Minhua Trade Co., Ltd. (collectively named ''Yelin/Hilltop''), in accordance with 19 CFR 351.213(d)(1), because of timely withdrawals of requests for review. Also, in the *Preliminary Results* the Department preliminarily rescinded the review with respect to 11 companies which submitted no shipment certifications: Allied Pacific Group (comprised of Allied Pacific Food (Dalian) Co., Ltd.; Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd.;[3] Zhanjiang Allied Pacific Aquaculture Co., Ltd.; Allied Pacific (H.K.) Co., Ltd.; and King Royal Investments Ltd.); Gallant Ocean (Nanhai), Ltd.; Luk Ka Paper Industrial Ltd.; Shantou Yelin Frozen Seafood Co., Ltd.; and Shantou Yuexing Enterprise Company. Thus, 466 companies remain subject to this review.

As noted above, on March 9, 2009, the Department published the *Preliminary Results* of this administrative review.[4] On March 25, 2009, the Petitioners[5] submitted additional surrogate value information. On March 30, 2009, Domestic Interested Parties[6] submitted additional surrogate value information. On April 2, 2009, Zhanjiang Regal Integrated Marine Resources Co., Ltd. (''Regal'') submitted additional surrogate value information.

On April 3, 2009, we extended the deadline for parties to submit the case briefs and rebuttal briefs to April 8, 2009 and April 17, 2009, respectively. On April 8, 2009, the Petitioners, DIP and Regal filed case briefs. On April 17, 2009, the Petitioners and DIP filed rebuttal briefs.

On June 4, 2009, the Department extended the deadline for the completion of the final results of this review until July 28, 2009.[7] On July 22, 2009, the Department extended the deadline for the completion of the final results of this review until August 28, 2009.[8]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to these reviews are addressed in the ''Administrative Review of Frozen Warmwater Shrimp from the People's Republic of China: Issues and Decision Memorandum for the Final Results,'' which is dated concurrently with this notice (''I&D Memo''). A list of the issues which parties raised and to which we respond in the I&D Memo is attached to this notice as an Appendix. The I&D Memo is a public document and is on file in the Central Records Unit (''CRU''), Main Commerce Building, Room 1117, and is accessible on the Department's Web site at *http://www.trade.gov/ia.* The paper copy and electronic version of the memorandum are identical in content.

Changes Since the Preliminary Results

Based on a review of the record as well as comments received from parties regarding our *Preliminary Results,* we have made revisions to Regal's margin calculation for the final results. For all changes to Regal's calculation, see I&D Memo and the company specific analysis memorandum.

Scope of the Order

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,[9] deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedule of the United States (''HTS''), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, white-leg shrimp (*Penaeus vannemei*), banana prawn (*Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*),

[1] *See Third Administrative Review of Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review,* 74 FR 10026 (March 9, 2009) (''Preliminary Results'').

[2] *See notice of Initiation of Administrative Reviews of the Antidumping Duty Orders on Frozen Warmwater Shrimp from the Socialist Republic of Vietnam and the People's Republic of China,* 73 FR 18739 (April 7, 2008) for a listing of these companies.

[3] The Department in its initiation notice included ''Allied Pacific Aquatic Products (Zhangjiang) Co., Ltd.'' due to the Petitioners' misspelling of the company's name in its review request. *See* Letter from Dewey & LeBouef to the Secretary of Commerce, ''Request for Administrative Reviews,'' (Feb. 29, 2008). In its April 17, 2008, letter, Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd. clarified the correct spelling of its name. *See* Letter from Trade Pacific to the Secretary of Commerce, ''Frozen Warmwater Shrimp from the People's Republic of China.'' The Department notes that the review is preliminarily rescinded for both the proper name and the misspelled name of this company.

[4] *See Preliminary Results.*

[5] The petitioners are the members of the Ad Hoc Shrimp Trade Action Committee (hereinafter referred to as ''Petitioners'').

[6] These domestic parties are the American Shrimp Processors Association and Louisiana Shrimp Association (hereinafter referred to as ''DIP'').

[7] *See Certain Frozen Warmwater Shrimp from the People's Republic of China and the Socialist Republic of Vietnam: Notice of Extension of Time Limit for the Final Results of the Third Administrative Reviews,* 74 FR 26839 (June 4, 2009).

[8] *See Certain Frozen Warmwater Shrimp from the People's Republic of China and the Socialist Republic of Vietnam: Notice of Extension of Time Limit for the Final Results of the Third Administrative Reviews,* 74 FR 36164 (July 22, 2009).

[9] ''Tails'' in this context means the tail fan, which includes the telson and the uropods.

and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this investigation. In addition, food preparations, which are not ''prepared meals,'' that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this investigation.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTS subheading 1605.20.1020); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTS subheadings 0306.23.0020 and 0306.23.0040); (4) shrimp and prawns in prepared meals (HTS subheading 1605.20.0510); (5) dried shrimp and prawns; (6) Lee Kum Kee's shrimp sauce; (7) canned warmwater shrimp and prawns (HTS subheading 1605.20.1040); (8) certain dusted shrimp; and (9) certain battered shrimp. Dusted shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a ''dusting'' layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen (''IQF'') freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and pan-fried.

The products covered by this investigation are currently classified under the following HTS subheadings: 0306.13.0003, 0306.13.0006, 0306.13.0009, 0306.13.0012, 0306.13.0015, 0306.13.0018, 0306.13.0021, 0306.13.0024, 0306.13.0027, 0306.13.0040, 1605.20.1010 and 1605.20.1030. These HTS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this investigation is dispositive.

Final Partial Rescission

In the *Preliminary Results,* the Department preliminarily rescinded this review with respect to the following companies: Allied Pacific Group [10]; Gallant Ocean (Nanhai), Ltd.; Luk Ka Paper Industrial Ltd.; Shantou Yelin Frozen Seafood Co., Ltd.; and Shantou Yuexing Enterprise Company. These companies reported that they had no shipments of subject merchandise to the United States during the POR.

Subsequent to the *Preliminary Results,* no information was submitted on the record indicating that the above companies made sales to the United States of subject merchandise during the POR. Thus, in accordance with 19 CFR 351.213(d)(3), and consistent with our practice, we are rescinding this review with respect to the above-named companies for the period of February 1, 2007, through January 31, 2008.

Separate Rates

In our *Preliminary Results,* we determined that Regal and Shantou Longsheng Aquatic Product Foodstuff Co., Ltd. (''Shantou Longsheng'') met the criteria for the application of a separate rate. We have not received any information since the issuance of the *Preliminary Results* that provides a basis for the reconsideration of these determinations. Therefore, the Department continues to find that Regal and Shantou Longsheng meet the criteria for a separate rate.

Facts Available

Section 776(a)(2) of the Act provides that if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a determination under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Furthermore, section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of that party as facts otherwise available. Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* Statement of Administrative Action (''SAA'') accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Session at 870 (1994). An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. *See* section 776(b) of the Act.

As noted in the *Preliminary Results,* the Department selected Zhanjiang Go-Harvest Aquatic Products Co., Ltd. (''Go-Harvest'') for individual examination in this review, however, Go-Harvest did not respond to any of the Department's requests for information.[11] Because Go-Harvest did not respond to the Department's requests for information and failed to demonstrate that it qualifies for separate rate status, we consider Go-Harvest to be a part of the PRC-wide entity.[12] Consequently, because the PRC-wide entity, including Go-Harvest, withheld requested information, failed to provide information in a timely manner and in the form requested, and significantly impeded this proceeding, we found in the *Preliminary Results* that the PRC-wide entity, including Go-Harvest, failed to cooperate to the best of its ability and applied adverse facts otherwise available in order to determine a margin for the PRC-wide entity, pursuant to section 776(a)(2)(A), (B), (C) and 776(b) of the Act.[13]

In the *Initiation,* we requested that all companies listed therein wishing to qualify for separate rate status in this administrative review submit, as appropriate, either a separate rate status application or certification.[14] As noted above, the Department initiated this administrative review with respect to 482 companies, and in the *Preliminary Results* rescinded the review on five of those 482 companies. Also as noted above, the Department is rescinding the review with respect to eleven other above-named companies due to the lack

[10] Allied Pacific Group is comprised of: Allied Pacific Food (Dalian) Co., Ltd.; Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd.; Zhanjiang Allied Pacific Aquaculture Co., Ltd.; Allied Pacific (H.K.) Co., Ltd.; and King Royal Investments Ltd.

[11] *See Preliminary Results* at 10026.

[12] *Id.*

[13] *See e.g., Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 71 FR 69546 (December 1, 2006) and accompanying Issues and Decision Memorandum at Comment 1. *See also Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results of the First Administrative Review and New Shipper Review,* 72 FR 10689, 10692 (March 9, 2007) (decision to apply total AFA to the NME-wide entity unchanged in *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of the First Antidumping Duty Administrative Review and First New Shipper Review,* 72 FR 52052 (September 12, 2007) (*First Vietnamese Shrimp Review*).

[14] *See Initiation.*

of shipments during the POR. Thus, including Regal and Shantou Longsheng, 466 companies remain subject to this review. We note that no other company listed in the *Initiation,* including Go-Harvest, has demonstrated its eligibility for separate rate status in this administrative review. In the *Preliminary Results,* the Department determined that 464 companies which did not demonstrate eligibility for a separate rate are properly considered part of the PRC-Wide entity.[15] Since the *Preliminary Results,* none of the 464 companies, including Go-Harvest submitted comments regarding these findings.

Therefore, we continue to treat these entities as part of the PRC-Wide entity.

Final Results of Review

The weighted-average dumping margins for the POR are as follows:

FROZEN WARMWATER SHRIMP FROM THE PRC

Exporter	Weighted-average margin (percent)
Regal	9.08
Shantou Longsheng	9.08
PRC-Wide Entity [16]	112.81

[16] The PRC-wide entity includes the 464 companies currently under review that have not established their entitlement to a separate rate, including Zhanjiang Go-Harvest Aquatic Products Co., Ltd. and Shantou Yuexing Enterprise Company.

Assessment

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific (or customer) *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis.*

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be the rate established in these final results of review (except, if the rate is zero or *de minimis, i.e.,* less than 0.5 percent, a zero cash deposit rate will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 112.81 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Reimbursement of Duties

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

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this administrative review and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: August 28, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix I—Decision Memorandum

Comment 1: Surrogate Country
Comment 2: Zeroing
Comment 3: Surrogate Values
a. Purchased Ice
b. Ocean Water
c. Shrimp Feed
d. Salt
e. By-products
f. Fertilizer
g. Shrimp Larvae
Comment 4: Calculation of Surrogate Financial Ratios
a. Interest
b. Labor
c. Depreciation
Comment 5: Calculation of Diesel Oil Consumption
Comment 6: Self-Made Ice
Comment 7: Assessment Rates to Account for Misclassified Entries
Comment 8: Selection of Respondents

[FR Doc. E9–21904 Filed 9–9–09; 8:45 am]

BILLING CODE 3510–DS–P

[15] *See Preliminary Results* at 10029.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XR12

Fisheries in the Western Pacific; Western Pacific Pelagic Fisheries; American Samoa Longline Limited Entry Program

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

ACTION: Notice; availability of permit upgrades.

SUMMARY: NMFS is soliciting applications for American Samoa longline limited entry permit upgrades. Nineteen (19) permit upgrades will be available for Class A vessel (less than or equal to 40 ft (12.2 m) in length) permit holders to upgrade to larger vessel size classes (B–1 or C–1). The permit upgrades are available only to Class A permit holders who participated in the fishery before March 22, 2002, and the highest priority for receiving a permit upgrade will be given to the person with the earliest date of documented participation.

DATES: Completed permit upgrade applications must be received by NMFS by November 9, 2009.

ADDRESSES: Application forms are available from NMFS Pacific Islands Region (PIR), Attn: Permits, 1601

Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700, or the Pacific Islands Region website at www.fpir.noaa.gov.

Send completed applications to NMFS PIR, Attn: ASLE Permit Upgrade, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700.

FOR FURTHER INFORMATION CONTACT: Walter Ikehara, NMFS PIR, Tel (808)944–2275, Fax (808) 973–2940.

SUPPLEMENTARY INFORMATION: On May 25, 2005, NMFS published a final rule that established a limited entry program for the pelagic longline fishery based in American Samoa, under Amendment 11 to the Fishery Management Plan for Pelagic Fisheries in the Western Pacific Region (70 FR 29646). American Samoa longline limited entry permits were established for four vessel size classes, based on length:

a. Class A - less than or equal to 40 ft (12.2 m),

b. Class B (and B–1) - over 40 ft (12.2 m) to 50 ft (15.2 m) inclusive,

c. Class C (and C–1) - over 50 ft (15.2 m) to 70 ft (21.3 m) inclusive, and

d. Class D (and D–1) - over 70 ft (21.3 m).

A total of 60 American Samoa longline limited entry permits is allowed in this limited access fishery. The limited entry program allowed for a total of 26 permit upgrades to be made available for the exclusive use of permit holders in Class A, distributed over a four-year period following the issuance of initial limited entry permits in late 2005, and 2009 is the last year of the upgrade program. Nineteen permit upgrades are available: 13 for vessel Class B–1 and six for Class C–1.

The Regional Administrator may issue Class B–1 and C–1 permit upgrades only to persons who currently hold a Class A permit and who participated in the American Samoa pelagic longline fishery before March 22, 2002. The highest priority will be given to those with the earliest date of documented participation. Those receiving upgraded permits must surrender their Class A permits and the surrendered permits are deducted from the allowed Class A permit total. This notice announces the availability of permit upgrades and solicits applications for the upgrades.

On January 28, 2009, NMFS published a notice soliciting applications for American Samoa longline permits (70 FR 4942). In August 2009, NMFS issued permits to certain applicants, and the holders of Class A permits issued in August 2009 may now apply for upgrades.

Complete applications must include the completed and signed application form (see **ADDRESSES**), legible copies of documents supporting historical participation in the American Samoa pelagic longline fishery, and payment for the non-refundable application processing fee. Documents supporting participation should show that fishing was conducted using longline gear. Applications must be received by NMFS by November 9, 2009 to be considered for eligibility for the 2009 permit upgrades. Applications will not be accepted if received after that date.

Authoritative additional information on the American Samoa limited entry program may be found in the Code of Federal Regulations, Title 50, part 665.

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

Dated: September 2, 2009.

Alan D. Risenhoover,

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

[FR Doc. E9–21879 Filed 9–9–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–820]

Hot-Rolled Carbon Steel Products From India: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

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

FOR FURTHER INFORMATION CONTACT: Joy Zhang, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Ave., NW., Washington, DC 20230, *telephone:* (202) 482–1168.

SUPPLEMENTARY INFORMATION:

Background

On February 2, 2009, the U.S. Department of Commerce (''the Department'') published a notice of initiation of the administrative review of the antidumping duty order on hot-rolled carbon steel products from India covering the period December 1, 2008, through November 30, 2008. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 74 FR 5821 (February 2, 2009). The preliminary results are currently due no later than September 2, 2009.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested. Section 751(a)(3)(A) of the Act further states that if it is not practicable to complete the review within the time period specified, the administering authority may extend the 245-day period to issue its preliminary results to up to 365 days.

Due to the complexity of the issues in this administrative review, in particular the overlapping issues associated with the ongoing countervailing duty review of the same product, we have determined that it is not practicable to complete the preliminary results within the 245-day period. Therefore, in accordance with section 751(a)(3)(A) of the Act, we are extending the time period for issuing the preliminary results of the review by 120 days. The preliminary results are now due no later than December 31, 2009. The final results continue to be due 120 days after publication of the preliminary results.

This notice is issued and published in accordance with section 751(a)(3)(A) of the Act.

Dated: September 2, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–21700 Filed 9–9–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XR48

Marine Mammals; File No. 13602

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that Dr. Terrie Williams, Long Marine Lab, Institute of Marine Sciences, University of California at Santa Cruz, 100 Shaffer Road, Santa Cruz, CA 95060, has been issued a permit to conduct research on captive marine mammals.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s): Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone

(301)713–2289; fax (301)713–0376; and Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Amy Sloan, (301)713–2289.

SUPPLEMENTARY INFORMATION: On October 8, 2008, notice was published in the **Federal Register** (73 FR 58941) that a request for a scientific research permit to conduct research on captive marine mammals had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The issued permit allows for the continuation of research activities authorized under Permit No. 984–1587. This research compares the energetic responses and diving physiology of odontocetes and pinnipeds to determine key physiological factors required for survival. Two adult bottlenose dolphins (*Tursiops truncatus*) currently maintained at Long Marine Lab will continue to be used as research subjects. Additional odontocetes and other marine mammal species (up to 122 animals representing 7 species over 5 years) would be added through cooperative agreements with accredited zoological institutions. Other species and subjects from rehabilitation and stranding programs may be added opportunistically. This permit has been issued for five years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: September 4, 2009.

P. Michael Payne,

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

[FR Doc. E9–21880 Filed 9–9–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XR45

Marine Mammals; File No. 14233

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Scott D. Kraus, Ph.D., New England Aquarium Edgerton Research Laboratory, Central Wharf, Boston, MA 02110, has applied in due form for a permit to conduct research on North Atlantic right whales (*Eubalaena glacialis*).

DATES: Written, telefaxed, or e-mail comments must be received on or before October 13, 2009.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the Features box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov*, and then selecting File No. 14233 from the list of available applications.

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

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978)281–9300; fax (978)281–9333; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; phone (727)824–5312; fax (727)824–5309.

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

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 14233.

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

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

Dr. Kraus requests a five-year scientific research permit to study North Atlantic right whales along the U.S. East Coast from Florida to Maine with intensive sampling in designated right whale critical habitats. Using aerial and vessel surveys, the program would annually monitor as many individuals as possible, identifying and documenting: skin and body condition; anthropogenic scarring; calf production; calving intervals; birth rates of individual females; sex, age, and genetic patterns in movement, behavior, and habitat use; rates and causes of mortality; hormone and stress levels, and behavior and association data over time. Aerial surveys would occur at approximately 1,000 ft. primarily off the coast of the southeastern United States. During vessel surveys, researchers would approach, photograph and collect fecal samples from up to 450 whales, 50 of which would also be biopsy sampled annually. All age classes would be targeted for research. Individual whales may be approached up to 10 times per year. Researchers also request the authority to import and export up to 50 biological samples per year, including samples and tissues from dead right whales in other parts of the world to use in control and comparative studies. These data would be used to test hypotheses on the potential links between contaminants, biotoxins, food supply, nutrition, global warming, acoustic disturbance and habitat loss, and the decline in reproduction of right whales.

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

Dated: September 3, 2009.

P. Michael Payne,

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

[FR Doc. E9–21877 Filed 9–9–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1645]

Reorganization/Expansion of Foreign-Trade Zone 25; Broward County, FL

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

Whereas, the Port Everglades Department of Broward County, grantee of Foreign-Trade Zone 25, submitted an application to the Board for authority to expand and reorganize FTZ 25, within the Port Everglades Customs and Border Protection port of entry (FTZ Docket 70–2008, filed 12/11/2008);

Whereas, notice inviting public comment was given in the **Federal Register** (73 FR 79441, 12/29/2008) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

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

Now, therefore, the Board hereby orders:

The application to reorganize and expand FTZ 25 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 27th day of August 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–21902 Filed 9–9–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

Request for Applicants for the Appointment to the United States-India CEO Forum

AGENCY: Market Access and Compliance, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: In 2005, the Governments of the United States and India established the U.S.-India CEO Forum. The two sides are reconstituting the Forum, and this notice announces membership opportunities for appointment as representatives to the U.S. Section of the Forum.

DATE: Applications should be received no later than October 1, 2009.

ADDRESSES: Please send requests for consideration to Linda Droker and Awinash Bawle, Office of South Asia and Oceania, U.S. Department of Commerce, either by e-mail at *linda.droker@mail.doc.gov* and *awinash.bawle@mail.doc.gov,* or by mail to U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 2310, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Linda Droker, Director, Office of South Asia and Oceania, U.S. Department of Commerce, telephone: (202) 482–2955.

SUPPLEMENTARY INFORMATION: The U.S.-India CEO Forum, consisting of both private and public sector members, is expected to bring together leaders of the respective business communities of the United States and India to discuss issues of mutual interest, particularly ways to strengthen the economic and commercial ties between the two countries, and to communicate their joint recommendations to the U.S. and Indian governments. The Forum will have U.S. and Indian co-chairs; the Deputy Assistant to the President and Deputy National Security Advisor for International Economic Affairs, together with the Deputy Chairman of the Planning Commission of India, plan to co-chair the Forum. The Forum will include a Committee comprising private sector members. The Committee will be composed of two Sections, each consisting of 10–12 members from the private sector representing the views and interests of the private sector business community in the United States and India. Each government will appoint the members to its respective Section. The Committee will provide recommendations to the two governments and their senior officials that reflect private sector views, needs, and concerns about the creation of an environment in which their respective private sectors can partner, thrive, and enhance bilateral commercial ties to expand trade and economic links between the United States and India.

Candidates are currently being sought for membership on the U.S. Section of the Forum. Each candidate must be Chief Executive Officer or President (or have a comparable level of responsibility) of a U.S.-owned or controlled company that is incorporated in and has its main headquarters located in the United States and is currently doing business in both India and the United States. Each candidate also must be a U.S. citizen or otherwise legally authorized to work in the United States and be able to travel to India and locations in the United States to attend official Forum meetings as well as Section meetings on the U.S. side. In addition, the candidate may not be a registered foreign agent under the Foreign Agents Registration Act of 1938, as amended.

Evaluation of applications for membership in the U.S. Section by eligible individuals will be based on the following criteria:

- A demonstrated commitment by the individual's company to the Indian market either through exports or investment.
- A demonstrated strong interest in India and its economic development.
- The ability to offer a broad perspective and business experience to the discussions.
- The ability to address cross-cutting issues that affect the entire business community.
- The ability to initiate and be responsible for activities in which the Forum will be active.

Members will be selected on the basis of who best will carry out the objectives of the Forum as stated under **SUPPLEMENTARY INFORMATION**, above. The U.S. Section of the Forum should also include members who represent a diversity of business sectors and geographic locations. To the extent possible, Section members also should represent a cross-section of small, medium, and large firms.

U.S. members will receive no compensation for their participation in Forum-related activities. Individual members will be responsible for all travel and related expenses associated with their participation in the Forum, including attendance at Committee and Section meetings. It is anticipated that the first meeting will be held in late November in Washington, DC, in conjunction with senior level

government exchanges. The U.S. and Indian Sections should be prepared to work together ahead of that time to prepare recommendations to the U.S. and Indian governments. Only appointed members may participate in official Forum meetings; substitutes and alternates will not be designated. U.S. members will normally serve for two-year terms but may be reappointed.

To be considered for membership, please submit the following information as instructed in the **ADDRESSES** and **DATES** captions above: Name and title of the individual requesting consideration; name and address of company's headquarters; location of incorporation; size of the company; size of company's export trade, investment, and nature of operations or interest in India; and a brief statement of why the candidate should be considered, including information about the candidate's ability to initiate and be responsible for activities in which the Forum will be active. Applications will be considered as they are received. All candidates will be notified of whether they have been selected.

Dated: September 3, 2009.

Linda S. Droker,

Director of the Office of South Asia and Oceania.

[FR Doc. E9–21696 Filed 9–9–09; 8:45 am]

BILLING CODE 3510–DA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XQ84

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 October, November, and December 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 2010 and announced in the **Federal Register**.

DATES: The Atlantic Shark Identification Workshops will be held October 29, November 19, and December 3, 2009.

The Protected Species Safe Handling, Release, and Identification Workshops will be held October 14, October 28, November 11, November 18, December 1, and December 16, 2009.

See **SUPPLEMENTARY INFORMATION** for further details.

ADDRESSES: The Atlantic Shark Identification Workshops will be held in Norfolk, VA; Dania Beach, FL; and Madeira Beach, FL.

The Protected Species Safe Handling, Release, and Identification Workshops will be held in Panama City, FL; Kitty Hawk, NC; Warwick, RI; Gulfport, MS; Fort Pierce, FL; and Ronkonkoma, NY.

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 37 free Atlantic Shark Identification Workshops have been conducted since January 2007.

Workshop Dates, Times, and Locations

1. October 29, 2009, from 12 p.m. – 5 p.m., Mary D. Pretlow Anchor Branch Library (Room 1), 111 W. Ocean View Avenue, Norfolk, VA 23503.
2. November 19, 2009, from 9 a.m. – 2 p.m., NOVA Southeast Oceanographic Center (Modular Classroom 1), 8000 North Ocean Drive, Dania Beach, FL 33004.
3. December 3, 2009, from 9 a.m. – 2 p.m., Madeira Beach Municipal Town Hall, 300 Municipal Drive, Madeira Beach, FL 33708.

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 70 free Protected Species Safe Handling, Release, and Identification Workshops have been conducted since 2006.

Workshop Dates, Times, and Locations

1. October 14, 2009, from 9 a.m. – 5 p.m., Hilton Garden Inn, 1101 U.S. Highway 231, Panama City, FL 32405.
2. October 28, 2009, from 9 a.m. – 5 p.m., Hilton Garden Inn, 5353 North Virginia Dare Trail, Kitty Hawk, NC 27949.
3. November 11, 2009, from 9 a.m. – 5 p.m., Hilton Garden Inn (at Providence airport), 1 Thurber Street, Warwick, RI 02886.
4. November 18, 2009, from 9 a.m. – 5 p.m., Magnolia Plantation Hotel, 16391 Robinson Road, Gulfport, MS 39503.
5. December 1, 2009, from 9 a.m. – 5 p.m., Days Inn (Midtown), 3224 South U.S. Highway 1, Fort Pierce, FL 34982.
6. December 16, 2009, from 9 a.m. – 5 p.m., Holiday Inn, 3845 Veterans Memorial Highway, Ronkonkoma, NY 11779.

Registration

To register for a scheduled Protected Species Safe Handling, Release, and Identification Workshop, please contact Angler Conservation Education at (386) 852–9137, 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: September 3, 2009.

Alan D. Risenhoover,

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

[FR Doc. E9–21842 Filed 9–9–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 0908061222–91268–03]

RIN 0660–ZA29

State Broadband Data and Development Grant Program

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of funds availability; clarification of period of performance.

SUMMARY: The National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, publishes this Notice to provide clarification regarding the period of performance for awards under the State Broadband Data and Development Grant Program as set forth in the Notice of Funds Availability and Solicitation of Applications (NOFA) published on July 8, 2009.

DATES: NTIA implements this notice as of September 10, 2009. All amended budgets *must* be submitted to NTIA no later than 11:59 p.m. ET on September 15, 2009, as more fully described in this Notice.

ADDRESSES: All amended budgets must be submitted through the online Grants.gov system. NTIA requests that Applicants also submit a courtesy copy to *broadbandmapping@ntia.doc.gov*.

FOR FURTHER INFORMATION CONTACT: Anne W. Neville, Program Director, State Broadband Data and Development Grant Program, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 4716, Washington, DC

20230; by telephone at (202) 482–4949 or via electronic mail at *broadbandmapping@ntia.doc.gov*. Information about the State Broadband Data and Development Grant Program can also be obtained electronically via the Internet at *http://www.broadbandusa.gov/broadband_mapping.htm.*

SUPPLEMENTARY INFORMATION: On July 8, 2009, NTIA published a Notice of Funds Availability (NOFA) in the **Federal Register** to announce the availability of funds for the State Broadband Data and Development Grant Program pursuant to the authority provided in the American Recovery and Reinvestment Act of 2009 (Recovery Act), Public Law 111–5, 123 Stat. 115 (2009), and the Broadband Data Improvement Act (BDIA), Title I, Public Law 110–385, 122 Stat. 4096 (2008).[1] In the NOFA, NTIA provided that the period of performance for awards under the Program would be five years from the date of award.[2]

NTIA's highest priority with respect to this Program is to facilitate the development and maintenance of a national broadband map. The Agency seeks to develop the map in such a way that encourages continually improved data collection efforts while maintaining fiscal responsibility, resulting in a map that meets the requirements of Congress and the needs of all stakeholders, including policymakers and consumers. To that end, NTIA has determined that it will at this time fund mapping and data collection efforts for two years and will assess lessons learned, determine best practices, and investigate opportunities for improved data collection prior to obligating funding for subsequent years. NTIA now clarifies that the initial period of performance for funds allocated to Broadband Mapping purposes will be two (2) years from the date of award and any subsequent funding will be subject to and contingent upon the agency's review of program priorities and the availability of funds.

NTIA will review and negotiate awards based on the five-year budget that applicants have already submitted. In light of this clarification, however, NTIA will allow an applicant to submit a new budget on SF 424A reflecting any revisions necessary for the first two years of the award period (2009–2010, 2010–2011). Any revised budget must be submitted no later than 11:59 p.m. on September 15, 2009, through the online Grants.gov system. NTIA requests that Applicants also submit a courtesy copy to *broadbandmapping@ntia.doc.gov*.

The period of performance for funds allocated to Broadband Planning purposes will remain five (5) years from the date of award. All other requirements provided in the Notice published on July 8, 2009, remain unchanged.

Dated: September 4, 2009.

Lawrence E. Strickling,

Assistant Secretary for Communications and Information.

[FR Doc. E9–21797 Filed 9–9–09; 8:45 am]

BILLING CODE 3560–60–P

[1] State Broadband Data and Development Grant Program, *Notice of Funds Availability and Solicitation of Applications,* 74 FR 32545 (July 8, 2009) (NOFA).

[2] 74 FR 32550.

COMMODITY FUTURES TRADING COMMISSION

Global Markets Advisory Committee Meeting

The Commission's Global Markets Advisory Committee will conduct a public meeting on September 30, 2009. The meeting will take place in the first floor hearing room of the Commission's Washington, DC headquarters, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581 from 1 p.m. to 5 p.m. There will also be a live broadcast of the meeting via webcast. To view the live webcast from a desktop PC with Internet access go to *http://www.cftc.gov.*

The purpose of the meeting is to discuss global markets issues related to the Commission's regulatory responsibilities. The meeting will be chaired by Commissioner Jill Sommers who is Chairman of the Global Markets Advisory Committee.

The agenda will consist of the following:

- Opening Remarks from Commissioners/Introduction of GMAC Members.
- Update on IOSCO Issues.
- Bankruptcy Issues—CFTC/UK FSA/Lehman Brothers.
- Overview of Treasury Proposal to Regulate OTC Derivatives/CFTC Legislative Language.
- Presentation by UK FSA on OTC Derivatives.
- New Business.

The meeting is open to the public. Any member of the public who wishes to file a written statement with the committee should mail a copy of the statement to the *attention of:* Global Markets Advisory Committee, c/o Commissioner Jill Sommers, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should inform Commissioner Sommers in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for oral presentations of no more than five minutes each in duration.

For further information concerning this meeting, please contact Andrew Morton at 202–418–5030.

Issued by the Commission in Washington, DC on September 4, 2009.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E9–21856 Filed 9–9–09; 8:45 am]

BILLING CODE P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 09–C0034]

Hill Sportswear, Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally accepted Settlement Agreement with Hill Sportswear, Inc., containing a civil penalty of $100,000.00. Commissioner Nancy Nord issued a statement that is available on the Commission's Web site, *http://www.cpsc.gov.*

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by September 25, 2009.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 09–C0034, Office of the Secretary, Consumer Product Safety Commission, 4330 East-West Highway, Room 502, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Seth B. Popkin, Lead Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7612 and Renee K. Haslett, Trial Attorney, (same address); telephone (301) 504–7673.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: September 3, 2009.

Todd A. Stevenson,

Secretary.

Settlement Agreement

1. In accordance with 16 CFR. 1118.20, Hill Sportswear, Inc. (''Hill'') and the staff (''Staff'') of the United States Consumer Product Safety Commission (''Commission'') enter into this Settlement Agreement (''Agreement''). The Agreement and the incorporated attached Order (''Order'') settle the Staff's allegations set forth below.

Parties

2. The Commission is an independent federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. 2051–2089 (''CPSA'').

3. Hill is a corporation organized and existing under the laws of California, with its principal offices located in Paramount, California. At all times relevant hereto, Hill sold apparel.

Staff Allegations

4. From 2003 through 2008, Hill manufactured, held for sale, and/or sold children's hooded pullover and zipper sweatshirts with drawstrings at the neck, style numbers HK008 and HK009 (collectively, ''Sweatshirts'').

5. Hill sold Sweatshirts to retailers.

6. The Sweatshirts are ''consumer product[s],'' and, at all times relevant hereto, Hill was a ''manufacturer'' of those consumer products, which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(5), (8), and (11), 15 U.S.C. 2052(a)(5), (8), and (11).

7. In February 1996, the Staff issued the Guidelines for Drawstrings on Children's Upper Outerwear (''Guidelines'') to help prevent children from strangling or entangling on neck and waist drawstrings. The Guidelines state that drawstrings can cause, and have caused, injuries and deaths when they catch on items such as playground equipment, bus doors, or cribs. In the Guidelines, the Staff recommends that there be no hood and neck drawstrings in children's upper outerwear sized 2T to 12.

8. In June 1997, ASTM adopted a voluntary standard, ASTM F1816–97, that incorporated the Guidelines. The Guidelines state that firms should be aware of the hazards and should be sure garments they sell conform to the voluntary standard.

9. On May 19, 2006, the Commission posted on its Web site a letter from the Commission's Director of the Office of Compliance to manufacturers, importers, and retailers of children's upper outerwear. The letter urges them to make certain that all children's upper outerwear sold in the United States complies with ASTM F1816–97. The letter states that the Staff considers children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act (''FHSA'') section 15(c), 15 U.S.C. 1274(c). The letter also notes the CPSA's section 15(b) reporting requirements.

10. In November 2008, a three-year old boy reportedly strangled to death when his Sweatshirt's drawstring became stuck on a playground slide.

11. Hill's distribution in commerce of the Sweatshirts did not meet the Guidelines or ASTM F1816–97, failed to comport with the Staff's May 2006 defect notice, and posed a strangulation hazard to children.

12. On February 12, 2009, the Commission announced Hill's recall of the Sweatshirts.

13. Hill had presumed and actual knowledge that the Sweatshirts distributed in commerce posed a strangulation hazard and presented a substantial risk of injury to children under FHSA section 15(c)(1), 15 U.S.C. 1274(c)(1). Hill had obtained information that reasonably supported the conclusion that the Sweatshirts contained a defect that could create a substantial product hazard or that they created an unreasonable risk of serious injury or death. CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), required Hill to immediately inform the Commission of the defect and risk.

14. Hill knowingly failed to immediately inform the Commission about the Sweatshirts as required by CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), and as the term ''knowingly'' is defined in CPSA section 20(d), 15 U.S.C. 2069(d). This failure violated CPSA section 19(a)(4), 15 U.S.C. 2068(a)(4). Pursuant to CPSA section 20, 15 U.S.C. 2069, this failure subjected Hill to civil penalties.

Hill's Responsive Allegations

15. Hill denies the Staff's allegations that Hill knowingly violated the CPSA and denies the other allegations above, including, but not limited to, the allegations that Hill had actual knowledge (i) that the Sweatshirts posed a strangulation risk; (ii) that the Sweatshirts presented a substantial risk of injury to children; and (iii) that Hill failed to immediately inform the Commission about the Sweatshirts. Hill further denies the Staff's allegations that Hill obtained information that reasonably supported the conclusion that the Sweatshirts contained a defect that could create a substantial product hazard or an unreasonable risk of serious injury or death. To the contrary, Hill alleges that as soon as it had actual notice of the Commission's guidelines, it promptly complied with all such guidelines.

Agreement of the Parties

16. Under the CPSA, the Commission has jurisdiction over this matter and over Hill.

17. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Hill, or a determination by the Commission, that Hill knowingly violated the CPSA.

18. In settlement of the Staff's allegations, Hill shall pay a civil penalty in the amount of one hundred thousand dollars ($100,000.00). The civil penalty shall be paid in four (4) installments as follows: $25,000.00 shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement; $25,000.00 shall be paid within one hundred twenty (120) calendar days of service of the Commission's final Order accepting the Agreement; $25,000.00 shall be paid within two hundred forty (240) calendar days of service of the Commission's final Order accepting the Agreement; and $25,000.00 shall be paid within three hundred sixty-five (365) calendar days of service of the Commission's final Order accepting the Agreement. Each payment shall be made by check payable to the order of the United States Treasury.

19. Upon provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date it is published in the **Federal Register**.

20. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Hill knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (1) An administrative or judicial hearing; (2) judicial review or other challenge or

contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether Hill failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

21. The Commission may publicize the terms of the Agreement and the Order.

22. The Agreement and the Order shall apply to, and be binding upon, Hill and each of its successors and assigns.

23. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject Hill and each of its successors and assigns to appropriate legal action.

24. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

25. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Hill agree that severing the provision materially affects the purpose of the Agreement and the Order.

Hill Sportswear, Inc.

Dated: *August 6, 2009.*

By: _____

Young Min Park, President,
Hill Sportswear, Inc.,
16250 Gundry Avenue,
Paramount, CA 90723.

Dated: *August 10, 2009.*

By: _____

Michael D. McCaffrey, Esq.,
Law Offices of Michael D. McCaffrey,
2030 Main Street, Suite 1200,
Irvine, CA 92614–7256,
Counsel for Hill Sportswear, Inc.

U.S. Consumer Product Safety Commission Staff

Cheryl A. Falvey,
General Counsel.

Ronald G. Yelenik,
Assistant General Counsel, Office of the General Counsel.

Dated: *August 12, 2009.*

By: _____

Seth B. Popkin,
Lead Trial Attorney,

Renee K. Haslett,
Trial Attorney, Division of Compliance, Office of the General Counsel.

Order

Upon consideration of the Settlement Agreement entered into between Hill Sportswear, Inc. (''Hill'') and the U.S. Consumer Product Safety Commission (''Commission'') staff, and the Commission having jurisdiction over the subject matter and over Hill, and it appearing that the Settlement Agreement and the Order are in the public interest, it is

Ordered, that the Settlement Agreement be, and hereby is, accepted; and it is

Further ordered, that Hill shall pay a civil penalty in the amount of one hundred thousand dollars ($100,000.00). The civil penalty shall be paid in four (4) installments as follows: $25,000.00 shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement; $25,000.00 shall be paid within one hundred twenty (120) calendar days of service of the Commission's final Order accepting the Agreement; $25,000.00 shall be paid within two hundred forty (240) calendar days of service of the Commission's final Order accepting the Agreement; and $25,000.00 shall be paid within three hundred sixty-five (365) calendar days of service of the Commission's final Order accepting the Agreement. Each payment shall be made by check payable to the order of the United States Treasury. Upon the failure of Hill to make any of the foregoing payments when due, the total amount of the civil penalty shall become immediately due and payable, and interest on the unpaid amount shall accrue and be paid by Hill at the Federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 3rd day of September 2009.

By Order of the Commission:

Todd A. Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. E9–21763 Filed 9–9–09; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 09–C0033]

Kohl's Department Stores, Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Kohl's Department Stores, Inc., containing a civil penalty of $425,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by September 25, 2009.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 09–C0033, Office of the Secretary, Consumer Product Safety Commission, 4330 East-West Highway, Room 502, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Seth B. Popkin, Lead Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7612.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: September 3, 2009.

Todd A. Stevenson,

Secretary.

Settlement Agreement

1. In accordance with 16 CFR 1118.20, Kohl's Department Stores, Inc. (''Kohl's'') and the staff (''Staff'') of the United States Consumer Product Safety Commission (''Commission'') enter into this Settlement Agreement (''Agreement''). The Agreement and the incorporated attached Order (''Order'') settle the Staff's allegations set forth below.

Parties

2. The Commission is an independent Federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product

Safety Act, 15 U.S.C. 2051—2089 (''CPSA'').

3. Kohl's is a corporation organized and existing under the laws of Delaware, with its principal offices located in Menomonee Falls, Wisconsin. At all times relevant hereto, Kohl's sold apparel, accessories, and other products.

Staff Allegations

4. From January to February, 2009, Kohl's held for sale and/or sold Seattle Cotton Works hooded sweatshirts with drawstrings at the neck (''Sweatshirts'').

5. Kohl's sold Sweatshirts to consumers.

6. The Sweatshirts are ''consumer product[s],'' and, at all times relevant hereto, Kohl's was a ''retailer'' of those consumer products, which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(5), (8), and (13), 15 U.S.C. 2052(a)(5), (8), and (13).

7. In February 1996, the Staff issued the Guidelines for Drawstrings on Children's Upper Outerwear (''Guidelines'') to help prevent children from strangling or entangling on neck and waist drawstrings. The Guidelines state that drawstrings can cause, and have caused, injuries and deaths when they catch on items such as playground equipment, bus doors, or cribs. In the Guidelines, the Staff recommends that there be no hood and neck drawstrings in children's upper outerwear sized 2T to 12.

8. In June 1997, ASTM adopted a voluntary standard, ASTM F1816–97, that incorporated the Guidelines. The Guidelines state that firms should be aware of the hazards and should be sure garments they sell conform to the voluntary standard.

9. On May 19, 2006, the Commission posted on its Web site a letter from the Commission's Director of the Office of Compliance to manufacturers, importers, and retailers of children's upper outerwear. The letter urges them to make certain that all children's upper outerwear sold in the United States complies with ASTM F1816–97. The letter states that the Staff considers children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act (''FHSA'') section 15(c), 15 U.S.C. 1274(c). The letter also notes the CPSA's section 15(b) reporting requirements.

10. Kohl's informed the Commission that there had been no incidents or injuries associated with the Sweatshirts.

11. Kohl's distribution in commerce of the Sweatshirts did not meet the Guidelines or ASTM F1816–97, failed to comport with the Staff's May 2006 defect notice, and posed a strangulation hazard to children.

12. On March 12, 2009, the Commission, in cooperation with the Sweatshirts' distributor, announced a recall of the Sweatshirts, informing consumers that they should immediately remove the drawstrings from the Sweatshirts to eliminate the hazard, or call the manufacturer to arrange for a full refund.

13. Kohl's had presumed and actual knowledge that the Sweatshirts distributed in commerce posed a strangulation hazard and presented a substantial risk of injury to children under FHSA section 15(c)(1), 15 U.S.C. 1274(c)(1). Kohl's had obtained information that reasonably supported the conclusion that the Sweatshirts contained a defect that could create a substantial product hazard or that they created an unreasonable risk of serious injury or death. CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), required Kohl's to immediately inform the Commission of the defect and risk.

14. Kohl's knowingly failed to immediately inform the Commission about the Sweatshirts as required by CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), and as the term ''knowingly'' is defined in CPSA section 20(d), 15 U.S.C. 2069(d). This failure violated CPSA section 19(a)(4), 15 U.S.C. 2068(a)(4). Pursuant to CPSA section 20, 15 U.S.C. 2069, this failure subjected Kohl's to civil penalties.

Kohl's Responsive Allegations

15. Kohl's denies the Staff's allegations above, including, but not limited to, the allegations that Kohl's failed to timely notify the Commission about the Sweatshirts as required by CPSA sections 15(b)(3) and (4). Kohl's denies that it otherwise violated the CPSA or FHSA.

16. In order to supply products to Kohl's, vendors are required to represent and warrant to Kohl's that all merchandise delivered to Kohl's will comply with all existing laws, regulations, standards, orders, and rulings, including, but not limited to, the CPSA and the FHSA.

17. After confirming that the Sweatshirts contained drawstrings, Kohl's immediately (i) sent notice to all Kohl's stores to pull the Sweatshirts from the shelves, (ii) had the Sweatshirts pulled from the Kohls.com Web site, and (iii) took additional steps to prevent further sales of the Sweatshirts.

18. Kohl's timely notified the Commission of the Sweatshirts pursuant to section 15 of the CPSA.

19. Kohl's fully cooperated with the Commission and the Sweatshirts' distributor in providing information necessary for the Commission to determine, with the Sweatshirts' distributor, whether a recall was warranted.

20. Kohl's implemented the recall announced by the Commission and the Sweatshirts' distributor.

21. Kohl's has entered into the Agreement to avoid incurring additional expenses and the distraction of litigation. The Agreement and Order do not constitute and are not evidence of any fault or wrongdoing by Kohl's.

Agreement of the Parties

22. Under the CPSA, the Commission has jurisdiction over this matter and over Kohl's.

23. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Kohl's, or a determination by the Commission, that Kohl's knowingly violated the CPSA.

24. In settlement of the Staff's allegations, Kohl's shall pay a civil penalty in the amount of four hundred twenty-five thousand dollars ($425,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be by check payable to the order of the United States Treasury.

25. Upon issuance of, and Kohl's compliance with, the final Order, the Commission regards this matter as resolved and agrees not to bring a civil penalty action against Kohl's based upon the Staff's allegations contained herein regarding the Sweatshirts.

26. Upon provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date it is published in the **Federal Register**.

27. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Kohl's knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (1) An administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of

whether Kohl's failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

28. The Commission may publicize the terms of the Agreement and the Order.

29. The Agreement and the Order shall apply to, and be binding upon, Kohl's and each of its successors and assigns.

30. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject Kohl's and each of its successors and assigns to appropriate legal action.

31. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

32. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Kohl's agree that severing the provision materially affects the purpose of the Agreement and the Order.

Kohl's Department Stores, Inc.

Dated: July 29, 2009.

Jeff Manby,

Executive VP, GMM—Men's/YMen's/Children's, Kohl's Department Stores, Inc., N56 W17000 Ridgewood Drive, Menomonee Falls, WI 53051.

Dated: August 3, 2009.

Paul Izzo, Esq.,

One Post Office Square, Sharon, MA 02067. Counsel for Kohl's Department Stores, Inc.

U.S. Consumer Product Safety Commission Staff.

Cheryl A. Falvey,

General Counsel.

Ronald G. Yelenik,

Assistant General Counsel, Office of the General Counsel.

Dated: August 11, 2009.

Seth B. Popkin,

Lead Trial Attorney, Division of Compliance, Office of the General Counsel.

Order

Upon consideration of the Settlement Agreement entered into between Kohl's Department Stores, Inc. (''Kohl's'') and the U.S. Consumer Product Safety Commission (''Commission'') staff, and the Commission having jurisdiction over the subject matter and over Kohl's, and it appearing that the Settlement Agreement and the Order are in the public interest, it is

Ordered, that the Settlement Agreement be, and hereby is, accepted; and it is

Further Ordered, that Kohl's shall pay a civil penalty in the amount of four hundred twenty-five thousand dollars ($425,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made by check payable to the order of the United States Treasury. Upon the failure of Kohl's to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Kohl's at the Federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 2nd day of September, 2009.

By Order of the Commission.

Todd A. Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. E9–21764 Filed 9–9–09; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Uniform Formulary Beneficiary Advisory Panel Meeting

AGENCY: Department of Defense, Assistant Secretary of Defense (Health Affairs).

ACTION: Notice of meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended) and the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended) the Department of Defense announces that the Uniform Formulary Beneficiary Advisory Panel (hereafter referred to as the Panel) will meet to review and comment on recommendations made to the Director, TRICARE Management Activity, by the Pharmacy and Therapeutics Committee regarding the Uniform Formulary.

Due to scheduling difficulties the Uniform Formulary Beneficiary Advisory Panel was unable to finalize its agenda in time to publish notice of its meeting in the **Federal Register** for the 15 calendar days required by 41 CFR 102–3.150(a). Accordingly, the Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15 calendar-day notification requirement.

DATES: The meeting will be held September 24, 2009, from 8 a.m. to 5 p.m. and is open to the public, but seating is limited. The panel will also conduct an Administrative Work Meeting from 7 a.m. to 8 a.m. that is closed to the public.

ADDRESSES: The meetings will be held at the Naval Heritage Center Theater, 701 Pennsylvania Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Thomas Bacon, Designated Federal Officer, Uniform Formulary Beneficiary Advisory Panel, Skyline 5, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041–3206; (703) 681–2890 (phone), (703) 681–1940 (fax), e-mail: *Baprequests@tma.osd.mil.*

SUPPLEMENTARY INFORMATION:

Meeting Accessibility

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and the availability of space this meeting is open to the public. Seating is limited and will be provided only to the first 220 people signing in. All persons must sign in legibly.

Meeting Agenda

Sign-In; Welcome and Opening Remarks; Public Citizen Comments; Scheduled Therapeutic Class Reviews—Phosphodiesterase-5 Inhibitors and New Drugs in Previously Reviewed Classes; Drugs recommended for non-formulary placement due to non-compliance with 2008 NDAA Section 703; Panel Discussions and Vote, and comments following each therapeutic class review.

Administrative Work Meeting

Prior to the public meeting the Panel will conduct an Administrative Work Meeting from 7 a.m. to 8 a.m. to discuss administrative matters of the Panel. Pursuant to 41 CFR 102–3.160, the Administrative Work Meeting will be closed to the public.

Written Statements

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the membership of the Panel at any time or in response to the stated agenda of a planned meeting.

Written statements should be submitted to the Panel's Designated Federal Officer; the Designated Federal Officer's contact information can be obtained from the General Services Administration's Federal Advisory Committee Act Database at *https://www.fido.gov/facadatabase/public.asp.*

Written statements that do not pertain to the scheduled meeting of the Panel may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting then these statements must be submitted no later than five business days prior to the meeting in question. The Designated Federal Officer will review all submitted written statements and provide copies to all the committee members.

Public Comments

In addition to written statements, the Panel will set aside 1 hour for individual or interested groups to address the Panel. To ensure consideration of their comments, individuals and interested groups should submit written statements as outlined in this notice, but if they still want to address the Panel then they will be afforded the opportunity to register to address the Panel. The Panel's Designated Federal Officer will have a ''Sign Up Roster'' available at the Panel meeting, for registration on a first-come, first-serve basis. Those wishing to address the Panel will be given no more than 5 minutes to present their comments, and at the end of the 1-hour time period no further public comments will be accepted. Anyone who signs up to address the Panel but is unable to do so due to the time limitation may submit their comments in writing; however, they must understand that their written comments may not be reviewed prior to the Panel's deliberation. Accordingly, the Panel recommends that individuals and interested groups consider submitting written statements instead of addressing the Panel.

Dated: September 3, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–21744 Filed 9–9–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee; Defense Health Board (DHB) Meeting

AGENCY: Department of Defense (DoD).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, and in accordance with section 10(a)(2) of Public Law, DoD announces that the DoD Task Force on the Prevention of Suicide by Members of the Armed Forces, a subcommittee of the Defense Health Board (DHB), will meet on October 8, 2009.

DATES: The meeting will be held on October 8, 2009, from 8 a.m. to 5 p.m. Subject to the availability of space, the meeting is open to the public from 9 a.m. to 12 p.m. and from 1 to 4 p.m. The meeting is closed to the public from 8 to 9 a.m., 12 to 1 p.m., and 4 to 5 p.m. for administrative working meetings.

Registration:

The public is encouraged to register for the meeting.

Special Accommodations:

If special accommodations are required to attend (sign language, wheelchair accessibility) please contact Ms. Lisa Jarrett at (703) 681–8448 ext. 1280 by September 23, 2009.

ADDRESSES: The meeting will be held at the Hilton Hotel San Diego Resort & Spa, 1775 E Mission Bay Dr., San Diego, CA 92109.

Written statements may be mailed to the address under **FOR FURTHER INFORMATION CONTACT**, e-mailed to *dhb@ha.osd.mil,* or faxed to (703) 681–3317.

Additional information, agenda updates, and meeting registration are available online at the Defense Health Board Web site, *http://www.ha.osd.mil/dhb.*

FOR FURTHER INFORMATION CONTACT: Commander Edmond F. Feeks, Executive Secretary, Defense Health Board, Five Skyline Place, 5111 Leesburg Pike, Suite 810, Falls Church, Virginia 22041–3206, (703) 681–8448, ext. 1228 (phone), (703) 681–3317 (fax), or e-mail: *edmond.feeks@tma.osd.mil.*

SUPPLEMENTARY INFORMATION:

Agenda

The DoD Task Force on the Prevention of Suicide by Members of the Armed Forces will meet to receive briefings on current efforts toward the prevention of suicide among Service members of the Armed Services. The Task Force will receive briefings on the DoD Suicide Event Report, Suicide Prevention and Risk Reduction Committee, the Defense Centers of Excellence, and the Mental Health Advisory Team. The Task Force will also participate in a panel discussion as well as discussions with families.

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165 and subject availability of space, the October 8, 2009, Defense Health Board meeting is open to the public from 9 a.m. to 12 p.m. and from 1 to 4 p.m. As follows, the meeting is closed to the public from 8 to 9 a.m., 12 to 1 p.m., and 4 to 5 p.m.

8 a.m.–9 a.m. (Closed Session: Administrative Working Meeting);

9 a.m.–12 p.m. (Open Session);

12 p.m.–1 p.m. (Closed Session: Administrative Working Meeting);

1 p.m.–4 p.m. (Open Session);

4 p.m.–5 p.m. (Closed Session: Administrative Working Meeting).

Written Statements

Anyone wishing to provide input to the Task Force on the Prevention of Suicide by Members of the Armed Forces should submit a written statement in accordance with 41 CFR 102–3.140(C) and section 10(a)(3) of the Federal Advisory Committee Act, and the procedures described in this notice. Written statements should be no longer than two type-written pages and must address the following detail: The issue, discussion, and a recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and to provide any necessary background information.

Individuals desiring to submit a written statement may do so through the Board's Designated Federal Officer (DFO) at any point (see **FOR FURTHER INFORMATION CONTACT**). If the written statement is not received at least 10 calendar days prior to the meeting, then it may not be provided to for consideration by the Task Force on the Prevention of Suicide by Members of the Armed Forces until the next open meeting.

The DFO will review all timely submissions with the Task Force on the Prevention of Suicide by Members of the Armed Forces Chairperson, and ensure they are provided to members of the Task Force before the meeting that is subject to this DFO Federal Officer may choose to invite the submitter of the comments to orally present their issue during an open portion of this meeting or at a future meeting.

The DFO, in consultation with the Task Force on the Prevention of Suicide by Members of the Armed Forces Chairperson, may, if desired, allot a specific amount of time for members of the public to present their issues for review and discussion by the Task Force

on the Prevention of Suicide by Members of the Armed Forces.

Dated: September 2, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–21748 Filed 9–9–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Health Board (DHB) Meeting

AGENCY: Department of Defense (DoD).

ACTION: Notice of meeting.

SUMMARY: On October 14–15, 2009, the Traumatic Brain Injury Family Caregiver Panel will meet to: review and vote to approve the Traumatic Brain Injury Family Caregiver Curriculum, address the issue of curriculum dissemination, review and approve the contents of the Mild Traumatic Brain Injury Education Guide, and devise a dissemination plan for that guide. Portions of the meeting are open to the public (*see* the Agenda in the **SUPPLEMENTARY INFORMATION** section of this notice for further details).

DATES: The meeting will be held on October 14 from 9:15 a.m. to 5 p.m. and on October 15, 2009, from 9:15 a.m. to 2:30 p.m.

Information regarding dates and the submission of written statements can be found in the **SUPPLEMENTARY INFORMATION** section of this notice.

ADDRESSES: The meeting will be held at the Marriott Pooks Hill Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Written statements may be mailed to the address under **FOR FURTHER INFORMATION CONTACT**, e-mailed to *dhb@ha.osd.mil* or faxed to (703) 681–3317.

Additional information, agenda updates, and meeting registration are available online at the Defense Health Board Web site, *http://www.ha.osd.mil/dhb.*

FOR FURTHER INFORMATION CONTACT: Commander Edmond F. Feeks, Executive Secretary, Defense Health Board, Five Skyline Place, 5111 Leesburg Pike, Suite 810, Falls Church, Virginia 22041–3206, (703) 681–8448, ext. 1228 (phone), (703)–681–3317 (fax), e-mail: *edmond.feeks@tma.osd.mil.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, and in accordance with section 10(a)(2) of Public Law, DoD announces that the Traumatic Brain Injury Family Caregiver Panel, a subcommittee of the Defense Health Board (DHB), will meet on October 14 and 15, 2009.

Agenda

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165 and subject to availability of space, the Defense Health Board meeting is open to the public on October 14 from 9:15 a.m. to 12 p.m. and 1:30 to 5 p.m., and on October 15 from 9:15 a.m. to 12 p.m. and 1 to 2:30 p.m.

October 14, 2009

The Panel will vote to approve the Family Caregiver Curriculum and discuss the dissemination plan. In addition, the Panel will be briefed by Lt Col Randy Mauffray regarding the Center of Excellence For Medical Multimedia as it relates to the multimedia component of the curriculum.

9:15 a.m.–12 p.m. (Open Session).
12 p.m.–1:30 p.m. (Closed Administrative Working Meeting).
1:30 p.m.–5 p.m. (Open Session).

October 15, 2009

The Panel will review, refine, and approve the contents of the Mild Traumatic Brain Injury Patient Education Tool and will discuss a dissemination plan.

9:15 a.m.–12 p.m. (Open Session).
12:00 p.m.–1 p.m. (Closed Administrative Working Meeting).
1 p.m.–2:30 p.m. (Open Session).

Written Statements

Anyone wishing to provide input to the Defense Health Board should submit a written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act, and the procedures described in this notice. Written statements should be not longer than two type-written pages and must address the following detail: The issue, discussion, and a recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and to provide any necessary background information.

Individuals desiring to submit a written statement may do so through the Board's Designated Federal Officer (*see* **FOR FURTHER INFORMATION CONTACT**) at any point. However, if the written statement is not received at least 10 calendar days prior to the meeting, which is subject to this notice, then it may not be provided to or considered by the Panel until the next open meeting.

The Designated Federal Officer will review all timely submissions with the Traumatic Brain Injury Family Caregiver Panel Chairperson, and ensure they are provided to members of the Panel before the meeting that is subject to this notice. After reviewing the written comments, the Chairperson and the Designated Federal Officer may choose to invite the submitter of the comments to orally present their issue during an open portion of this meeting or at a future meeting.

The Designated Federal Officer, in consultation with the Panel Chairperson, may, if desired, allot a specific amount of time for members of the public to present their issues for review and discussion by the Panel.

Registration

The public is encouraged to register for the meeting.

Special Accommodations

If special accommodations are required to attend (sign language, wheelchair accessibility) please contact Ms. Lisa Jarrett at (703) 681–8448 ext. 1280 by October 4, 2009.

Dated: September 4, 2009.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–21855 Filed 9–9–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee; Defense Health Board (DHB) Meeting

AGENCY: Department of Defense (DoD).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, and in accordance with section 10(a)(2) of Public Law, DoD announces that the DoD Task Force on the Prevention of Suicide by Members of the Armed Forces, a subcommittee of the Defense Health Board (DHB), will meet on October 1, 2009.

DATES: The meeting will be held October 1, 2009, from 8 a.m. to 5 p.m. Subject to the availability of space, the meeting is open to the public from 9 a.m. to 12 p.m. and from 1 to 5 p.m. The meeting is closed to the public from 8 to 9 a.m. and from 12 to 1 p.m. for administrative working meetings.

The public is encouraged to register for the meeting.

Special Accommodations:

If special accommodations are required to attend (sign language, wheelchair accessibility) please contact Ms. Lisa Jarrett at (703) 681–8448 ext. 1280 by September 21, 2009.

ADDRESSES: The meeting will be held at the Marriott Hotel North Bethesda, 5701 Marinelli Road, Bethesda, MD 20852.

Registration:

Written statements may be mailed to the address under **FOR FURTHER INFORMATION CONTACT**, e-mailed to *dhb@ha.osd.mil,* or faxed to (703) 681–3317.

Additional information, agenda updates, and meeting registration are available online at the Defense Health Board Web site, *http://www.ha.osd.mil/dhb.*

FOR FURTHER INFORMATION CONTACT: Commander Edmond F. Feeks, Executive Secretary, Defense Health Board, Five Skyline Place, 5111 Leesburg Pike, Suite 810, Falls Church, Virginia 22041–3206, (703) 681–8448, ext. 1228 (phone), (703) 681–3317 (fax), or *e-mail: edmond.feeks@tma.osd.mil.*

SUPPLEMENTARY INFORMATION:

Agenda:

The DoD Task Force on the Prevention of Suicide by Members of the Armed Forces will meet to receive briefings on current efforts toward the prevention of suicide among Service members of the Armed Services. The Task Force will receive briefings on the Service Data Review from the Army, Navy, Air Force and Marines Corps, as well as briefings from the Walter Reed Army Institute of Research and Armed Forces Institute of Pathology. The Task Force will also conduct a panel discussion with service representatives.

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165 and subject to availability of space, the October 1, 2009, Defense Health Board meeting is open to the public from 9 a.m. to 12 p.m. and from 1 to 5 p.m. As follows, the meeting is closed to the public from 8 to 9 a.m. and from 12 to 1 p.m.

8 a.m.—9 a.m. (Closed Session: Administrative Working Meeting).

9 a.m.—12 p.m (Open Session).

12 p.m.—1 p.m (Closed Session: Administrative Working Meeting).

1 p.m.—5 p.m. (Open Session).

Written Statements:

Anyone wishing to provide input to the Task Force on the Prevention of Suicide by Members of the Armed Forces should submit a written statement in accordance with 41 CFR 102–3.140(C) and section 10(a)(3) of the Federal Advisory Committee Act, and the procedures described in this notice. Written statements should be no longer than two type-written pages and must address the following detail: The issue, discussion, and a recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and to provide any necessary background information.

Individuals desiring to submit a written statement may do so through the Board's Designated Federal Officer (DFO) at any point (*see* **FOR FURTHER INFORMATION CONTACT**). If the written statement is not received at least 10 calendar days prior to the meeting, then it may not be provided for consideration by the Task Force on the Prevention of Suicide by Members of the Armed Forces until the next open meeting.

The DFO will review all timely submissions with the Task Force on the Prevention of Suicide by Members of the Armed Forces Chairperson, and ensure they are provided to members of the Task Force before the meeting that is subject to this DFO Federal Officer may choose to invite the submitter of the comments to orally present their issue during an open portion of this meeting or at a future meeting.

The DFO, in consultation with the Task Force on the Prevention of Suicide by Members of the Armed Forces Chairperson, may, if desired, allot a specific amount of time for members of the public to present their issues for review and discussion by the Task Force on the Prevention of Suicide by Members of the Armed Forces.

Dated: September 2, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–21747 Filed 9–9–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

U.S. Nuclear Command and Control System Comprehensive Review Advisory Committee

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. paragraph 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the U.S. Nuclear Command and Control System Comprehensive Review Advisory Committee will meet to review and discuss contents of its Final Report. The meeting is closed to the public.

DATES: The meeting will be held September 30, 2009 and October 1, 2009, from 8 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Nuclear Command and Control System Support Staff, 5201 Leesburg Pike, Falls Church, VA 22041.

FOR FURTHER INFORMATION CONTACT: Committee's Designated Federal Officer, Mr. William L. Jones, (703) 681–8681, U.S. Nuclear Command and Control System Support Staff (NSS), Skyline 3, 5201 Leesburg Pike, Suite 500, Falls Church, Virginia 22041. *William.jones@nss.pentagon.mil.*

SUPPLEMENTARY INFORMATION:

AGENDA FOR SEPTEMBER 30, 2009 AND OCTOBER 1, 2009

Time	Topic
8 a.m	Administrative Remarks.
8:15 a.m	Review and Discussion.
10:15 a.m	Break.
10:45 a.m	Review and Discussion.
12 p.m	Lunch.
1 p.m	Review and Discussion.
3:15 p.m	Break.
3:30 p.m	Deliberations and Guidance.
4 p.m.	Adjourn.

Pursuant to 5 U.S.C. para. 552b, as amended and 41 CFR 102–3.155, the Department of Defense has determined that the meeting shall be closed to the public. The Director, U.S. Nuclear Command and Control System Support Staff, in consultation with his General Counsel, has determined in writing that the public interest requires that all sessions of the committee's meeting will be closed to the public because they will be concerned with classified information and matters covered by section 5 U.S.C. para. 552b(c)(1).

Written Statements:

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements at any time to the Nuclear Command and Control System Federal Advisory Committee about its mission and functions. All written statements shall be submitted to the Designated Federal Officer for the Nuclear Command and Control System Federal Advisory Committee. He will ensure that written statements are provided to the membership for their consideration. Written statements may also be submitted in response to the stated agenda of planned committee meetings.

Statements submitted in response to this notice must be received by the Designated Federal Official at least five calendar days prior to the meeting which is the subject of this notice. Written statements received after that date may not be provided or considered by the Committee until its next meeting. All submissions provided before that date will be presented to the committee members before the meeting that is the subject of this notice.

Dated: September 3, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–21746 Filed 9–9–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

RIN 0710–ZA04

Proposed Suspension and Modification of Nationwide Permit 21

AGENCY: United States Army Corps of Engineers, Department of Defense.

ACTION: Notice of public hearings.

SUMMARY: In the July 15, 2009, issue of the **Federal Register** (74 FR 34311) the U.S. Army Corps of Engineers published a proposal to take two actions concerning Nationwide Permit 21, which authorizes discharges of dredged or fill material into waters of the United States for surface coal mining activities. The two proposed actions are to suspend NWP 21 to prohibit its use to authorize surface coal mining activities in the Appalachian region of Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia, and then to modify NWP 21 to make that prohibition permanent until NWP 21 expires on March 18, 2012. In the July 15, 2009, notice we also offered commenters opportunity to request a public hearing. In the August 13, 2009, issue of the **Federal Register** (74 FR 40815), we extended the comment period to September 14, 2009. We have received several requests to hold public hearings, and have determined that hearings would afford us the opportunity to gain additional information to assist us in reaching decisions on these two proposed actions. Therefore, we will be holding public hearings in each of the six affected states. Written comments to supplement the hearing records may be submitted until October 26, 2009.

DATES: See **SUPPLEMENTARY INFORMATION** section for public hearing dates. Written comments to supplement the hearing records may be submitted until October 26, 2009.

ADDRESSES: *See* **SUPPLEMENTARY INFORMATION** section for public hearing addresses. Written comments to supplement the hearing records may be submitted by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments to supplement the hearing records to docket number COE–2009–0032.

Mail: U.S. Army Corps of Engineers, *Attn:* CECW–CO (*Attn:* Ms. Desiree Hann), 441 G Street, NW., Washington, DC 20314–1000.

Hand Delivery/Courier: Due to security requirements, we cannot receive comments to supplement the hearing records by hand delivery or courier.

FOR FURTHER INFORMATION CONTACT: Ms. Desiree Hann or Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC. Ms. Hann can be reached at 202–761–4560 and Mr. Olson can be reached at 202–761–4922.

SUPPLEMENTARY INFORMATION: In the July 15, 2009, issue of the **Federal Register** (74 FR 34311) the U.S. Army Corps of Engineers (Corps) published a proposal to take two actions concerning Nationwide Permit 21, which authorizes discharges of dredged or fill material into waters of the United States for surface coal mining activities. In the August 13, 2009, issue of the **Federal Register** (74 FR 40815) the Corps announced the extension of the comment period for those two proposed actions to September 14, 2009.

We have received several requests for public hearings. Most of those requests have asked that we conduct six public hearings, one in each of the six states proposed to be affected by the suspension and modification of NWP 21, including Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia. Since we have determined that the hearings would likely provide additional information to assist us in our decision making for the two proposed actions, we have decided to hold six public hearings in cities that are either in or near the coalfield regions in each of these six states. The legal authority for these hearings is Section 404 of the Clean Water Act (33 U.S.C. 1344).

The hearings are open to the public. Comments may be submitted in person at the hearing or in writing to the Chief of Engineers through the methods listed in the **ADDRESSES** section above. Filing of written statements would be helpful and facilitate the job of the court reporters. All hearings will be transcribed. Depending on the number of people of who wish to speak at each public hearing, the hearing officer may impose a time limit for each speaker, so that everyone who wishes to speak will be given the opportunity to do so. Each public hearing will be held in accordance with the Corps public hearing regulations at 33 CFR Part 327. Written comments to supplement the hearing records may be submitted until October 26, 2009.

The public hearings will be held on the following dates and at the following locations:

1. *Huntington District:* October 13, 2009, in Charleston, West Virginia at the Charleston Civic Center, Little Theatre. The public hearing will start at 7 p.m. Additional information on this public hearing will be available at: *http://www.lrh.usace.army.mil/permits/publicnotices/wv/.*

2. *Huntington District:* October 15, 2009, in Cambridge, Ohio at the Pritchard Laughlin Civic Center. The public hearing will start at 7 p.m. Additional information on this public hearing will be available at: *http://www.lrh.usace.army.mil/permits/publicnotices/oh/.*

3. *Louisville District:* October 13, 2009, in Pikeville, Kentucky at the East Kentucky Expo Center. The public hearing will start at 7 p.m. Additional information on this public hearing will be available at: *http://www.lrl.usace.army.mil/.*

4. *Nashville District:* October 13, 2009, in Knoxville, Tennessee. The public hearing will start at 7 p.m. Additional information on this public hearing will be available at: *http://www.lrn.usace.army.mil/cof/special_notices.htm.*

5. *Pittsburgh District:* October 15, 2009, in Pittsburgh, Pennsylvania. The public hearing will start at 7 p.m. Additional information on this public hearing will be available at: *http://www.lrp.usace.army.mil/or/or-f/public_notice.htm.*

6. *Norfolk District:* October 15, 2009, in Big Stone Gap, Virginia at Mountain Empire Community College. The public hearing will start at 7 p.m. Additional information on this public hearing will be available at: *http://www.nao.usace.army.mil/technical%20services/Regulatory%20branch/PN/PN.asp.*

Specific information for each public hearing, including the addresses of the

hearing locations, will be posted on the district Web sites listed above.

Dated: September 3, 2009.

Michael G. Ensch,

Chief, Operations, Directorate of Civil Works.

[FR Doc. E9–21792 Filed 9–9–09; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Record of Decision for Norfolk Harbor Channel Dredging, Norfolk and Portsmouth, VA

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy (DON), after carefully weighing the operational and environmental consequences of the proposed action, announces its decision to deepen approximately five miles of Norfolk Harbor Channel, the Federal navigational channel in the Southern Branch of the Elizabeth River, separating Norfolk and Portsmouth, Virginia. Dredging in the heavily-used waterway would occur from the Lamberts Point Deperming Station in the Lamberts Bend Reach, south to Naval Support Activity Norfolk Naval Shipyard, commonly referred to as the Norfolk Naval Shipyard (NNSY), in the Lower Reach. Dredged material would be placed at The U.S. Army Corps of Engineers' (USACE) Craney Island Dredged Material Management Area (CIDMMA). The deepening project will establish continuously safe and expeditious transit routes for U.S. Naval Ships to Lamberts Point Deperming Station and NNSY. Dredging would occur completely within the existing USACE-maintained federal navigation channel. In its decision, the Navy considered applicable executive orders, including an analysis of the effects of its actions in compliance with the Endangered Species Act, the Coastal Zone Management Act, and the National Historic Preservation Act, and the requirements of Executive Order (EO) 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations* and EO 13045, *Protection of Children from Environmental Health Risks and Safety Risks.*

The proposed action will be accomplished as set out in Alternative A, described in the Final Environmental Impact Statement (EIS) as the preferred alternative. Implementation of the preferred alternative could begin immediately.

SUPPLEMENTARY INFORMATION: The Record of Decision (ROD) has been distributed to all those individuals who requested a copy of the Final EIS and agencies and organizations that received a copy of the Final EIS. The full text of the Navy's ROD is available for public viewing on the project Web site at *http://www.norfolkdredgingeis.com,* along with copies of the Final EIS and supporting documents. Single copies of the ROD will be made available upon request by contacting Ms. Caren Hendrickson, Naval Facilities Engineering Command Mid-Atlantic, telephone 757–444–1030.

Dated: September 3, 2009.

T. M. Cruz,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. E9–21819 Filed 9–9–09; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 9, 2009.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 3, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title: Annual Performance Report for Reading First.

Frequency: Annually.

Affected Public: Business or other for profit; State, local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 54.

Burden Hours: 810.

Abstract: Section 1202 of the Elementary and Secondary Education Act describes information to be included in the annual performance report required of Reading First grantees. Submission of the annual performance report (APR) via the data collection site has been taking place since 2004 and will continue to occur between October 15 and November 30 of each year. If APR data submitted during this time frame are incomplete or inaccurate or if re-submission of data is requested by State education agencies (SEAs), additional data collection may occur at other times throughout the year. The Government Performance Results Act (GPRA) report provides national-level achievement data for all comprehension and fluency outcome measures for each year of program implementation. The national-level information includes an average of the percentage of proficient students in SEAs administering the Dynamic Indicators of Basic Early Literacy Skills (DIBELS) Oral Reading Fluency measure

and the number of SEAs showing improvement in proficiency rates on each SEA's comprehension measure from the previous year to the current year. All schools are included in the GPRA report, regardless of when schools began implementation of the Reading First program.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4124. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–21699 Filed 9–9–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

State Energy Advisory Board; Notice of Open Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a Board Meeting of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act (Pub. L. 92–463;, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: November 10–12, 2009.

ADDRESSES: North Carolina State University, Dorothy and Roy Park Alumni Center, 2450 Alumni Drive, Centennial Campus, Raleigh, NC 27606.

FOR FURTHER INFORMATION CONTACT: Gary Burch, STEAB Designated Federal Officer, Office of Commercialization and Project Management, Golden Field Office, U.S. Department of Energy, 1617 Cole Boulevard, Golden, CO 80401, Telephone 303–275–4801.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101–440).

Tentative Agenda: Discuss ways the State Energy Advisory Committee can continue to support the Department of Energy's (DOE) commercialization and deployment efforts, consider potential collaborative activities with State Energy Programs in order to facilitate renewable energy advancement, find ways to encourage energy efficiency market transformation, and update members on routine business matters affecting the Board.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Gary Burch at the address or telephone number listed above. Requests to make oral comments must be received five days prior to the meeting; reasonable provision will be made to include requested topic(s) on the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 60 days on the STEAB web site, *http://www.steab.org.*

Issued at Washington, DC, on September 4, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–21847 Filed 9–9–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Notice of Cancellation of the Transmission Agency of Northern California Transmission Project, Environmental Impact Statement

AGENCY: Western Area Power Administration, DOE.

ACTION: Cancellation of Transmission Agency of Northern California Transmission Project Environmental Impact Statement.

SUMMARY: Western Area Power Administration (Western), an agency of the Department of Energy (DOE), is canceling preparation of the Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for construction, operation, and maintenance of the proposed Transmission Agency of Northern California (TANC) Transmission Project, which would have included building and upgrading over 600 miles of 230-kilovolt (kV) and 500-kV transmission lines and associated equipment and facilities in northern California.

FOR FURTHER INFORMATION CONTACT: For further information, please contact Mr. David Young, NEPA Document Manager, Western Area Power Administration, Sierra Nevada Region, 114 Parkshore Drive, Folsom, CA 95630, telephone (916) 353–4777, fax (916) 353–4772, or e-mail *TTPEIS@wapa.gov.* For general information on DOE's NEPA review procedures or status of a NEPA review, contact Ms. Carol M. Borgstrom, Director of NEPA Policy and Compliance, GC–20, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, telephone (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: On February 23, 2009, Western issued a Notice of Intent to prepare an EIS/EIR for the construction, operation, and maintenance of the TANC Transmission Project (74 FR 8086).[1] The project, as proposed, would have included building and upgrading over 600 miles of 230-kV and 500-kV transmission lines and associated equipment and facilities in northern California. In its Notice of Intent, Western described the schedule for scoping meetings for the EIS/EIR, and advised the public that comments regarding the scope of the EIS/EIR were due by April 30, 2009. Western held all public scoping meetings as scheduled. Because of requests from agencies and the public for more time to comment, Western extended the scoping period twice, with a final comment closing on July 30, 2009.

On July 15, 2009, the TANC Commission voted to terminate proceeding further with the environmental process and to stop development work for the TANC Transmission Project. On August 3, 2009, Western received notification from TANC, terminating its agreement with Western to prepare the EIS/EIR. Termination of the agreement terminates Western's obligation to prepare the EIS/EIR and involvement in the TANC Transmission Project. As a result, Western has ceased preparation of the EIS/EIR.

[1] On July 1, 1996, DOE's Assistant Secretary for Environmental, Safety and Health delegated to Western's Administrator, the authority to approve EISs for integrating main transmission system additions.

Dated: August 27, 2009.

Timothy J. Meeks,

Administrator.

[FR Doc. E9–21850 Filed 9–9–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR09–29–001]

Cypress Gas Pipeline, LLC; Notice of Revised Petition for Rate Approval

September 2, 2009

Take notice that on August 28, 2009, Cypress Gas Pipeline, LLC (Cypress) filed a revised Statement of Rates pursuant to section 284.123(e) of the Commission's regulations. Cypress filed to lower its rate for section 311 transportation service initially submitted in Docket No. PR09–29–000 to reflect changes to its rate calculations. The revised transportation rate is effective August 1, 2009.

Any person desiring to participate in this rate proceeding must file a motion to intervene or a protest in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not 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 Tuesday, September 15, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–21731 Filed 9–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD09–8–000]

Transmission Planning Processes Under Order No. 890; Notice Announcing Panelists and Final Agenda for the September 10, 2009 Technical Conference in Atlanta, GA

September 2, 2009.

On June 30, 2009, the Commission issued a notice (June 30 Notice) scheduling staff technical conferences to examine the transmission planning processes that are being conducted pursuant to Order No. 890.[1] As stated in the June 30 Notice, these technical conferences are intended to meet the Commission's commitment that its staff would conduct an assessment of the Order No. 890 transmission planning processes.

On August 3, 2009, the Commission issued a supplemental notice (August 3 Notice) with an agenda providing details on the topics that will be discussed on the panels at each of the three conferences as well as the topics panelists should be prepared to address. The August 3 Notice also reiterated that those wishing to participate as panelists should submit a request form describing the topic(s) they wish to address. In addition, those wishing to attend each conference were asked to complete a registration form. The August 3 Notice stated that a final notice with a list of the panelists for each conference would be issued in advance of the conferences. On August 7, 2009, the Commission issued an errata notice shortening the due date for all requests from those wishing to participate as a panelist at any of the three technical conferences to August 13, 2009.

The attached agenda contains the panelists chosen for the September 10, 2009 Atlanta, Georgia technical conference to be held at: Sheraton Gateway Hotel Atlanta Airport, 1900 Sullivan Road, Atlanta, GA 30337, (770) 997–1100.

Additional panelists may be added prior to the date of the conference.

If they have not already done so, those that plan to attend the Atlanta conference should submit the registration form, located at: *https://www.ferc.gov/whats-new/registration/trans-09-10-form.asp.*[2]

Panelists will provide introductory remarks to begin the discussion of each topic identified in the August 3 notice. The purpose of the introductory remarks is to introduce the topics of discussion, and Staff intends to facilitate a constructive dialogue among all the attendees involved in the planning process and will actively seek to incorporate input from non-panelists and audience members into that dialogue. We strongly encourage all attendees to actively participate in the conference.

For further information about this conference, please contact:

Zeny Magos, Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8244, *zeny.magos@ferc.gov.*

John Yakobitis, Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8512, *john.yakobitis@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. E9–21735 Filed 9–9–09; 8:45 am]

BILLING CODE 6717–01–P

[1] *Preventing Undue Discrimination and Preference in Transmission Service,* Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g,* Order No. 890–A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g,* Order No. 890–B, 123 FERC ¶ 61,299 (2008), *order on reh'g,* Order No. 890–C, 126 FERC ¶ 61,228 (2009).

[2] The Atlanta conference will address transmission planning for entities located in the states represented in the Southeastern Association of Regulatory Utility Commissioners (SEARUC) and entities located in the Southwest Power Pool footprint. In the event a transmission provider is uncertain as to which technical conference is the appropriate forum for discussion of its planning process, such transmission providers should contact Commission staff in advance to discuss the matter. Lastly, a comment date will be set at a later date allowing for the filing of post-conference comments.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8955–6]

Science Advisory Board Staff Office; Notification of a Public Meeting and Public Teleconference(s) of the Clean Air Scientific Advisory Committee (CASAC) Particulate Matter Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces a public meeting and teleconference(s) of the Clean Air Scientific Advisory Particulate Matter Review Panel to peer review EPA's *Integrated Science Assessment for Particulate Matter: Second External Review Draft* (July 2009) and EPA's forthcoming *Risk Assessment to Support the Review of the PM Primary National Ambient Air Quality Standards: External Review Draft* (September 2009) and *Particulate Matter Urban-Focused Visibility Assessment: External Review Draft* (September 2009).

DATES: The public meeting will be held on October 5, 2009 from 8 a.m.–6 p.m. (Eastern Time) and October 6, 2009 from 8 a.m.–4 p.m. (Eastern Time). An optional public teleconference may be held on October 7, 2009 from 2 p.m.–5 p.m. (Eastern Time) if more time is needed after the face-to-face meeting of October 5–6, 2009. A teleconference will be held November 12, 2009 from 10 a.m.–12 p.m. (Eastern Time) to discuss draft letters from CASAC.

ADDRESSES: The October 5–6, 2009 meeting will be held at the Carolina Inn, 211 Pittsboro Street, Chapel Hill, NC 27516. The public teleconference(s) will be conducted by telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning the public meeting or public teleconference(s) may contact Dr. Holly Stallworth, 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) 343–9867; fax (202) 233–0643; or e-mail at *stallworth.holly@epa.gov*. General information concerning the CASAC can be found on the EPA Web site at *http://www.epa.gov/casac*.

SUPPLEMENTARY INFORMATION: *Background:* The Clean Air Scientific Advisory Committee (CASAC) was established under section 109(d)(2) of the Clean Air Act (CAA or Act) (42 U.S.C. 7409) as an independent scientific advisory committee. CASAC provides advice, information and recommendations on the scientific and technical aspects of air quality criteria and national ambient air quality standards (NAAQS) under sections 108 and 109 of the Act. The CASAC is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App 2. The Panel will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Section 109(d)(1) of the CAA requires that the Agency periodically review and revise, as appropriate, the air quality criteria and the National Ambient Air Quality Standard (NAAQS) for the six ''criteria'' air pollutants, including particulate matter (PM). EPA conducts scientific assessments to determine both primary (health-based) and secondary (welfare-based) standards for each of these pollutants. As part of that process, EPA's Office of Research and Development (ORD) has released the *Integrated Science Assessment for Particulate Matter* (Second External Review Draft, July 2009) for review by CASAC at the October 5–6, 2009 meeting. EPA's Office of Air and Radiation (OAR) will release two additional documents for CASAC review and public comment entitled *Risk Assessment to Support the Review of the PM Primary National Ambient Air Quality Standards: External Review Draft* (September 2009) and *Particulate Matter Urban-Focused Visibility Assessment: External Review Draft* (September 2009) on or about September 4, 2009. The purpose of the October 5–6, 2009 meeting is to review these three documents. In addition, this meeting will also include a discussion with CASAC of an EPA/OAR document entitled *Policy Assessment for the Review of the Particulate Matter National Ambient Air Quality Standards: Preliminary Draft* (September 2009) on the nature of the policy assessment document including the overall structure, areas of focus, and level of detail. The EPA plans to release this preliminary draft document on or about September 15, 2009. If additional time is needed to complete the agenda after the October 5–6, 2009 face-to-face meeting, a public teleconference will be held on October 7, 2009 from 2 p.m.–5 p.m. (Eastern Time). To review and approve CASAC's draft letters on the three review documents, a public teleconference will be held on November 12, 2009 from 10 a.m.–12 p.m. (Eastern Time).

Background information about the formation of the CASAC Particulate Matter Review Panel was published in the **Federal Register** on March 8, 2007 (72 FR 10527–10528). The Panel previously held a public teleconference on November 30, 2007 (announced in 72 FR 63177–63178) to provide consultative advice on EPA's draft *Integrated Review Plan for the National Ambient Air Quality Standards for Particulate Matter* (October 2007), the first document in this review of the PM NAAQS. On April 1–2, 2009, CASAC reviewed the *Integrated Science Assessment for Particulate Matter* (First External Review Draft, December 2008), and provided consultative advise on *Particulate Matter National Ambient Air Quality Standards: Scope and Methods Plan for Health Risk* (February 2009) and *Exposure Assessment* and *Particulate Matter National Ambient Air Quality Standards: Scope and Methods Plan for Urban Visibility Impact Assessment* (February 2009). The April 12, 2009 meeting was announced February 19, 2009 in 74 FR 7688–7689.

Technical Contacts: Any questions concerning EPA's *Integrated Science Assessment for Particulate Matter* (July 2009) should be directed to Dr. Lindsay Stanek, ORD, at *stanek.lindsay@epa.gov* or 919–541–7792. Any questions concerning EPA's *Risk Assessment to Support the Review of the PM Primary National Ambient Air Quality Standards: External Review Draft* (September 2009) should be directed to Dr. Zachary Pekar, OAR, at *pekar.zachary@epa.gov*; telephone: 919–541–3704. Any questions concerning *Particulate Matter Urban-Focused Visibility Assessment* (September 2009) should be directed to Ms. Vicki Sandiford, OAR, at *sandiford.vicki@epa.gov* or 919–541–2629. Any questions concerning *Policy Assessment for the Review of Particulate Matter National Ambient Air Quality Standards* (September 2009) should be directed to Ms. Beth Hassett-Sipple, OAR, at *hassett-sipple.beth@epa.gov* or 919–541–4605.

Availability of Meeting Materials: A meeting agenda, charge questions and other materials for the October 5–6, 2009 meeting will be placed on the CASAC Web site at *http://yosemite.epa.gov/sab/sabpeople.nsf/WebCommitteesSubcommittees/CASAC%20Particulate%20Matter%20Review%20Panel* (*see* links to ''Current Advisory Activities''). CASAC's draft letters on the three review documents will be at this same URL prior to the

November 12, 2009 teleconference. The *Integrated Science Assessment for Particulate Matter: Second External Review Draft* (July 2009) is available at *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_2007_isa.html.* The *Risk Assessment to Support the Review of the PM Primary National Ambient Air Quality Standards: External Review Draft* (September 2009) and the *Particulate Matter Urban-Focused Visibility Assessment: External Review Draft* (September 2009) will be available on or before September 4, 2009 and the *Policy Assessment for the Review of Particulate Matter National Ambient Air Quality Standards: Preliminary Draft* (September 2009) will be available on or about September 15, 2009 at *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_index.html.*

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for consideration on the topics included in this advisory activity. *Oral Statements:* To be placed on the public speaker list for the October 5–6, 2009 meeting, interested parties should notify Dr. Holly Stallworth, DFO, by e-mail no later than September 28, 2009. Individuals making oral statements will be limited to five minutes per speaker. To be placed on the public speaker list for the November 12, 2009 teleconference, interested parties should notify Dr. Stallworth, DFO, by e-mail no later than November 9, 2009. Individuals making oral statements on the teleconference will be limited to three minutes per speaker. *Written Statements:* Written statements for the October 5–6, 2009 meeting should be received in the SAB Staff Office by September 28, 2009, so that the information may be made available to the CASAC Panel for its consideration prior to this meeting. Written statements for the November 12, 2009 meeting should be received in the SAB Staff Office by November 9, 2009. Written statements should be supplied to the DFO in the following formats: one hard copy with original signature and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, MS Word, WordPerfect, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format). Submitters are asked to provide versions of each document submitted with and without signatures, because the SAB Staff Office does not publish documents with signatures on its Web sites.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Stallworth at the phone number or e-mail address noted above, preferably at least ten days prior to the teleconference, to give EPA as much time as possible to process your request.

Dated: September 2, 2009.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. E9–21821 Filed 9–9–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8946–8]

National Recommended Final Water Quality Criteria for Acrolein

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of final criteria.

SUMMARY: Pursuant to section 304(a) of the Clean Water Act (CWA), the Environmental Protection Agency (EPA) is announcing the availability of final national recommended water quality criteria for the protection of aquatic life for acrolein. Draft national recommended water quality criteria for acrolein were published for scientific views from the public on December 17, 2008 at 73 FR 76644. The final criteria published today are based on EPA's *Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses* (1985), (EPA/R–85–100). EPA's recommended section 304(a) water quality criteria provide guidance to States and authorized Tribes in adopting water quality standards for protecting aquatic life and human health and provide guidance to EPA for promulgating Federal regulations under CWA section 303(c), when such action is necessary.

ADDRESSES: Scientific views received from the public on the draft acrolein criteria are available from the EPA Docket Center and are identified by Docket ID No. EPA–HQ–OW–2008–0795. They may be accessed online at:

- *http://www.regulations.gov:* Follow the on-line instructions for reviewing comments.
- *E-mail: OW–Docket@epa.gov.*
- *Mail:* U.S. Environmental Protection Agency; EPA Docket Center (EPA/DC) Water Docket, MC 2822T; 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- *On Site:* EPA Docket Center, 1301 Constitution Ave, NW., EPA West, Room 3334, Washington DC 20460.

For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Office of Water Docket/EPA/DC, 1301 Constitution Ave, NW., EPA West, Room 3334, Washington DC 20460. This Docket Facility is open from 8:30 a.m. until 4:30 p.m., EST, 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 is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: Dr. Frank Gostomski, Health and Ecological Criteria Division (4304T), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460; (202) 566–1105; *gostomski.frank@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What Are Water Quality Criteria?

Water quality criteria are scientifically derived numeric values that protect aquatic life or human health from the deleterious effects of pollutants in ambient water.

Section 304(a)(1) of the Clean Water Act requires EPA to develop and publish and, from time to time, revise, criteria for water quality accurately reflecting the latest scientific knowledge. Water quality criteria developed under section 304(a) are based solely on data and scientific judgments on the relationship between pollutant concentrations and environmental and human health effects. Section 304(a) criteria do not reflect consideration of economic impacts or the technological feasibility of meeting the chemical concentrations in ambient water.

Section 304(a) criteria provide guidance to States and authorized Tribes in adopting water quality standards that ultimately provide a basis for controlling discharges or releases of pollutants. The criteria also provide guidance to EPA when promulgating Federal regulations under section 303(c) when such action is necessary. Under the CWA and its implementing regulations, States and authorized Tribes are to adopt water quality criteria to protect designated uses (*e.g.*, public

water supply, recreational use, industrial use). EPA's recommended water quality criteria 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 differ from these recommendations.

II. What Are the Acrolein Criteria?

Today, EPA is publishing final national recommended water quality criteria (NRWQC) for protecting aquatic life for acrolein. These final criteria are based on EPA's *Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses* (1985), (EPA/R–85–100). These Guidelines describe the Agency's current approach for deriving national recommended water quality criteria to protect aquatic life. Reliable sources provided toxicity data and other information on the effects of acrolein, which were subjected to both internal and external peer review. Scientific views were also received from the public on the draft acrolein criteria. The comments received did not warrant modification of the draft criteria for acrolein. The comments and EPA responses can be found in the docket.

Freshwater: Freshwater aquatic organisms and their uses should not be affected unacceptably if the acute (one-hour average) concentration of acrolein does not exceed 3.0 µg/l more than once every three years on the average, and if the chronic (four-day average) concentration of acrolein does not exceed 3.0 µg/l more than once every three years on the average.

Saltwater: Saltwater criteria cannot be derived for acrolein at this time because of a lack of acute and chronic toxicity data.

III. What Is the Relationship Between the Water Quality Criteria and State or Tribal Water Quality Standards?

As part of the water quality standards triennial review process defined in Section 303(c)(1) of the CWA, the States and authorized Tribes are responsible for maintaining and revising water quality standards. Water quality standards consist of designated uses, water quality criteria to protect those uses, a policy for antidegradation, and general policies for application and implementation. Section 303(c)(1) requires States and authorized Tribes to review and modify, if appropriate, their water quality standards at least once every three years.

States and authorized Tribes must adopt water quality criteria that protect designated uses. Protective criteria are based on a sound scientific rationale and contain sufficient parameters or constituents to protect the designated uses.

Consistent with 40 CFR131.21 (*see: EPA Review and Approval of State and Tribal Water Quality Standards* (65 FR 24641, April 27, 2000)), water quality criteria adopted by law or regulation by States and authorized Tribes prior to May 30, 2000, are in effect for CWA purposes unless superseded by Federal regulations (*see*, for example, the *National Toxics Rule*, 40 CFR 131.36; *Water Quality Standards for Idaho*, 40 CFR 131.33). New or revised water quality criteria adopted into law or regulation by States and authorized Tribes on or after May 30, 2000 are in effect for CWA purposes only after EPA approval.

IV. Where Can I Find More Information About Water Quality Criteria and Water Quality Standards?

For more information about water quality criteria and Water Quality Standards refer to the following: *Water Quality Standards Handbook* (EPA 823–B94–005a); *Advanced Notice of Proposed Rule Making (ANPRM)*, (63FR36742); *Water Quality Criteria and Standards Plan—Priorities for the Future* (EPA 822–R–98–003); *Guidelines and Methodologies Used in the Preparation of Health Effects Assessment Chapters of the Consent Decree Water Criteria Documents* (45FR79347); *Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health* (2000), (EPA–822–B–00–004); *Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses* (EPA 822/R–85–100); *National Strategy for the Development of Regional Nutrient Criteria* (EPA 822–R–98–002); and *EPA Review and Approval of State and Tribal Water Quality Standards* (65 FR 24641).

You can find these publications through EPA's National Service Center for Environmental Publications (NSCEP, previously NCEPI) or on the Office of Science and Technology's Home-page (*http://www.epa.gov/waterscience*).

Dated: August 12, 2009.

Peter S. Silva,

Assistant Administrator for Water.

[FR Doc. E9–21820 Filed 9–9–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8955–7]

National Environmental Justice Advisory Council; Notification of Public Teleconference and Public Comment

AGENCY: Environmental Protection Agency.

ACTION: Notification of Public Teleconference and Public Comment.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), Public Law 92–463, the U.S. Environmental Protection Agency (EPA) hereby provides notice that the National Environmental Justice Advisory Council (NEJAC) will host a public teleconference call on Thursday, September 24, 2009. The primary topic of discussion on the September 24 call will be EPA's national enforcement priorities. This call, as well as all NEJAC meetings, is open to the public. There will be a public comment period from 2:30 p.m. to 4 p.m. Eastern Time. Members of the public are encouraged to provide comments relevant to this topic. For additional information about registering to participate on the call or to provide public comment during the call, *please see* **SUPPLEMENTARY INFORMATION.** Due to a limited number of telephone lines, participation will be on a first-come basis.

DATES: The NEJAC teleconference call will begin promptly at 1 p.m. Eastern Time on Thursday, September 24, 2009. The call will include a discussion of EPA's national enforcement priorities and a public comment session relevant to this topic (*see* **SUPPLEMENTARY INFORMATION**). Members of the public who wish to participate on the call, or to provide public comment must pre-register by 11 a.m. Eastern Time Wednesday, September 23.

FOR FURTHER INFORMATION CONTACT: Questions concerning the teleconference call should be directed to Aaron Bell, U.S. Environmental Protection Agency, at 1200 Pennsylvania Avenue, NW., (MC2201A), Washington, DC 20460; by telephone at (202) 564–1044, via e-mail at *Bell.Aaron@epa.gov;* or by FAX at (202) 564–1624. Additional information about the meeting is available on the following Web site: *http://www.epa.gov/compliance/environmentaljustice/nejac/meetings.html.*

Advanced registration for all participants is needed due to a limited number of telephone lines. To register online, visit the Web site above. If unable to register online, requests for

advance-registration forms should be sent to Ms. Joi Ross, APEX Direct Inc., by phone at (630) 372–8080, by fax at (630) 372–4394, or by e-mail at *jross@alwayspursuingexcellence.com.* Please provide name, organization, and telephone number for follow-up as necessary. Non-English speaking attendees wishing to arrange for a foreign language interpreter also may make appropriate arrangements using these numbers.

Correspondence concerning the meeting should be sent to Ms. Victoria Robinson, NEJAC NEJAC Designated Federal Officer, U.S. Environmental Protection Agency, at 1200 Pennsylvania Avenue, NW., (MC2201A), Washington, DC 20460; via e-mail at *Robinson.Victoria@epa.gov;* by telephone at (202) 564–6349; or by FAX at (202) 564–1624. Additional information about the meeting is available at the Internet Web site: *http://www.epa.gov/compliance/environmentaljustice/nejac/meetings.html.*

SUPPLEMENTARY INFORMATION: The Charter of the NEJAC states that the advisory committee shall provide independent advice to the Administrator on areas that may include, among other things, ''advice about broad, cross-cutting issues related to environmental justice, including environment-related strategic, scientific, technological, regulatory and economic issues related to environmental justice. The teleconference call shall be used to receive comments, discuss and provide recommendations primarily regarding EPA's national enforcement priorities.

A. Public Comment: Individuals or groups making remarks during the public comment period will be limited to a total time of five minutes. Only one representative of a community, organization or group will be allowed to speak. Written comments can also be submitted for the record. The suggested format for individuals providing public comments is as follows: Name of Speaker, Name of Organization/Community, Address/Telephone/E-mail, Description of Concern and its Relationship to a Specific Policy Issue(s), and Recommendations or desired outcome. Written comments received by 11 a.m. Eastern Time Wednesday, September 23, 2009 will be included in the materials distributed to the members of the NEJAC. Written comments received after that time will be provided to the NEJAC as logistics allow. All information should be sent Ms. Joi Ross listed in the CONTACT section above.

B. Information about Services for Individuals with Disabilities: For information about access or services for individuals with disabilities, please contact Ms. Joi Ross listed in the **FOR FURTHER INFORMATION CONTACT** section above. To request special accommodations for a disability, please contact Ms. Hammond, at least 10 days prior to the call, to give EPA sufficient time to process your request. All requests should be sent to the address, e-mail, or fax number listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Dated: September 9, 2009.

Victoria Robinson,

Designated Federal Officer, National Environmental Justice Advisory Council.

[FR Doc. E9–21829 Filed 9–9–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–0492; FRL–8955–2]

Release of Draft Documents Related to the Review of the National Ambient Air Quality Standards for Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Availability of draft documents for public comment.

SUMMARY: On or about September 4, 2009, the Office of Air Quality Planning and Standards (OAQPS) of EPA is making available for public comment two draft assessment documents: *Risk Assessment to Support the Review of the PM Primary National Ambient Air Quality Standards—External Review Draft* and *Particulate Matter Urban-Focused Visibility Assessment—External Review Draft.* These draft documents describe the quantitative analyses that are being conducted as part of the review of the National Ambient Air Quality Standards (NAAQS) for particulate matter (PM).

DATES: Comments should be submitted on or before October 15, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2007–0492, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* Comments may be sent by electronic mail (e-mail) to *a-and-r-docket@epa.gov,* Attention Docket ID No. EPA–HQ–OAR–2007–0492.
- *Fax:* Fax your comments to 202–566–9744, Attention Docket ID. No. EPA–HQ–OAR–2007–0492.
- *Mail:* Send your comments to: Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2007–0492.
- *Hand Delivery or Courier:* Deliver your comments to: EPA Docket Center, 1301 Constitution Ave., NW., Room 3334, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2007–0492. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other

material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The Docket telephone number is 202–566–1742; fax 202–566–9744.

FOR FURTHER INFORMATION CONTACT: For questions related to the draft document titled, *Risk Assessment to Support the Review of the PM Primary National Ambient Air Quality Standards: External Review Draft* (September 2009), please contact Dr. Zachary Pekar, Office of Air Quality Planning and Standards (Mail code C504–06), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; e-mail: *pekar.zachary@epa.gov*; telephone: 919–541–3704; fax: 919–541–0237.

For questions related to the draft document titled, *Particulate Matter Urban-Focused Visibility Assessment—External Review Draft* (September 2009), please contact Ms. Vicki Sandiford, Office of Air Quality Planning and Standards (Mail code C504–06), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; e-mail: *sandiford.vicki@epa.gov*; telephone: 919–541–2629; fax: 919–541–0237.

For questions related to the preliminary draft document, *Policy Assessment for the Review of the Particulate Matter National Ambient Air Quality Standards: Preliminary Draft* (September 2009), please contact Ms. Beth Hassett-Sipple, Office of Air Quality Planning and Standards (Mail code C504–06), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; e-mail: *hassett-sipple.beth@epa.gov*; telephone: 919–541–4605; fax: 919–541–0237.

General Information

A. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.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:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- 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.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Make sure to submit your comments by the comment period deadline identified.

SUPPLEMENTARY INFORMATION: Under section 108(a) of the Clean Air Act (CAA), the Administrator identifies and lists certain pollutants which ''cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare.'' The EPA then issues air quality criteria for these listed pollutants, which are commonly referred to as ''criteria pollutants.'' The air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air, in varying quantities.'' Under section 109 of the CAA, EPA establishes primary (health-based) and secondary (welfare-based) NAAQS for pollutants for which air quality criteria are issued. Section 109(d) of the CAA requires periodic review and, if appropriate, revision of existing air quality criteria. The revised air quality criteria reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. The EPA is also required to periodically review and revise the NAAQS, if appropriate, based on the revised criteria.

Air quality criteria have been established for PM and NAAQS have been established for $PM_{2.5}$ and PM_{10}, to provide protection from fine and coarse particles, respectively. Presently, EPA is reviewing the air quality criteria and NAAQS for PM. The EPA's overall plan and schedule for this review is presented in the *Integrated Review Plan for the National Ambient Air Quality Standards for Particulate Matter.*[1] A draft of the integrated review plan was released for public review and comment in October 2007 and was the subject of a consultation with the CASAC on November 30, 2007 (72 FR 63177; November 8, 2007). Comments received from that consultation and from the public were considered in finalizing the plan and in beginning the review of the air quality criteria.

As part of EPA's review of the primary (health-based) and secondary (welfare-based) PM NAAQS, the Agency is conducting quantitative assessments characterizing (1) the health risks associated with exposure to ambient PM and (2) urban visibility impairment associated with PM. The EPA's plans for conducting these assessments, including the proposed scope and methods of the analyses, were presented in two planning documents titled, *Particulate Matter National Ambient Air Quality Standards: Scope and Methods Plan for Health Risk and Exposure Assessment* and *Particulate Matter National Ambient Air Quality Standards: Scope and Methods Plan for Urban Visibility Impact Assessment* (henceforth, Scope and Methods Plans).[2] These documents were released for public comment in February 2009 and were the subject of a consultation with the CASAC on April 2, 2009 (74 FR 11580; March 18, 2009). Comments received from the CASAC consultation (Samet, 2009)[3] as well as public comments on the Scope and Methods Plans have been considered in developing the draft assessment documents being released at this time.

The draft documents announced today convey the approaches taken to assess exposures to ambient PM and to characterize associated health risks or urban visibility impairment, as well as present the initial key results, observations, and related uncertainties associated with the quantitative analyses performed. These draft

[1] EPA 452R–08–004; March 2008; Available: *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_2007_pd.html.*

[2] EPA–452/P–09–001 and –002; February 2009; Available: *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_2007_pd.html.*

[3] *See http://yosemite.epa.gov/sab/sabproduct.nsf/4620a620d0120f93852572410080d786/350899ec134552948525746600691de5!OpenDocument.*

documents will be available on or about September 4, 2009, through the Agency's Technology Transfer Network (TTN) Web site at *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_index.html.* These documents may be accessed in the ''Documents from Current Review'' section under ''Risk and Exposure Assessments.'' The EPA is soliciting advice and recommendations from the CASAC by means of a review of the draft documents at an upcoming public meeting of the CASAC scheduled in Chapel Hill, NC. Information about this public meeting, including the date and location, will be published as a separate notice in the **Federal Register**. Following the CASAC meeting, EPA will consider comments received from the CASAC and the public in preparing revisions to these assessment documents.

In addition, on or about September 15, 2009, EPA will make available a third draft document: *Policy Assessment for the Review of the National Ambient Air Quality Standards: Preliminary Draft.* The development of this document is a result of recent changes to the NAAQS review process. On May 21, 2009, Administrator Jackson called for key changes to the NAAQS review process including reinstating a policy assessment document that contains staff analyses of the scientific bases for alternative policy options for consideration by senior Agency management prior to rulemaking. This document, which builds upon the historical ''Staff Paper,'' will serve to ''bridge the gap'' between the scientific information and the judgments required of the Administrator in determining whether it is appropriate to retain or revise the standards. In conjunction with this change, EPA will no longer issue a policy assessment in the form of an Advance Notice of Proposed Rulemaking (ANPR).[4]

The preliminary draft Policy Assessment (PA) builds upon information presented in the *Integrated Science Assessment for Particulate Matter* (Second External Review Draft)[5] and the two draft assessment documents described above. This preliminary draft PA will include several chapters but is not intended to be a complete draft PA document in that it will not include staff conclusions on a range of policy options that could be appropriate for the Administrator to consider concerning whether, and if so how, to revise the primary and secondary PM NAAQS. It is instead being released for informational purposes to facilitate a discussion with CASAC on the overall structure, areas of focus, and level of detail to be included in an external review draft of the document, which EPA plans to release for CASAC review and public comment later this year.

The preliminary draft PA may be accessed online through EPA's TTN Web site at *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_index.html.* This document may be accessed in the ''Documents from Current Review'' section under ''Policy Assessments.'' The discussion with CASAC on this preliminary draft PA will be held at the same meeting that CASAC will review of the second draft ISA and the two draft assessment documents described above.

The draft documents briefly described above do not represent and should not be construed to represent any final EPA policy, viewpoint, or determination. The EPA will consider any public comments submitted in response to this notice when revising the documents.

Dated: September 2, 2009.

Jeffrey S. Clark,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. E9–21822 Filed 9–9–09; 8:45 am]

BILLING CODE 6560–50–P

[4] *See http://www.epa.gov/ttn/naaqs/review.html* for a copy of Administrator Jackson's May 21, 2009 memorandum and for additional information on the NAAQS review process.

[5] EPA/600/R–08/139B; July 2009; Available: *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_2007_isa.html.*

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2003–0044; FRL–8955–3]

Risk Management Programs Under Section 112(r)(7) of the Clean Air Act as Amended; Contractor Access to Confidential Business Information and Address Change for the Submission of Risk Management Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA has authorized the following contractor to access information that has been, or will be, submitted to EPA under section 112(r) of the Clean Air Act (CAA) as amended: CGI Federal, Inc. and its subcontractor, Management Support Technology, Inc. (MSTI), (GSA Contract #GS–35F4797H to #1518, expiring March 30, 2012). The EPA announces a new address to which Risk Management Plans (RMPs) are to be sent. Some of the information submitted under section 112(r) may be claimed to be confidential business information (CBI) by the submitter.

DATES: RMPs may be sent to the new address effective September 21, 2009.

FOR FURTHER INFORMATION CONTACT: Armando Santiago, Office of Solid Waste and Emergency Response, MC: 5104a, U.S. Environmental Protection Agency, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The EPA is issuing this notice to inform all submitters of information under section 112(r) of the CAA that EPA may provide the above-mentioned contractor and its subcontractor access to these materials on a need-to-know basis. This contractor will provide technical support to the Office of Solid Waste and Emergency Response in the receipt, processing and storage of Risk Management Plans submitted to EPA under the CAA. In accordance with 40 CFR 2.301(h), EPA has determined that the contractor and its subcontractor require access to CBI submitted to EPA under sections 112(r) and 114 of the CAA in order to perform work satisfactorily under the above-noted contract. The contractor's and subcontractor's personnel will be given access to information submitted under section 112(r) of the CAA. Some of the information may be claimed or determined to be CBI. The contractor's and subcontractor's personnel will be required to sign nondisclosure agreements prior to receiving access to CBI. All contractor access to CAA CBI will take place at the contractor's facility. The contractor will have appropriate procedures and facilities in place to safeguard the CAA CBI to which the contractor and its subcontractor have access. Clearance for access to CBI is scheduled to expire on March 30, 2012 or at contract termination.

Risk Management Plans submitted to EPA should be mailed to: Risk Management Plan (RMP) Reporting Center, P.O. Box 10162, Fairfax, VA 22038. Courier deliveries and express mail should be addressed to: RMP Reporting Center, c/o CGI Federal, 12601 Fair Lakes Circle, Fairfax, VA 22033.

Dated: August 28, 2009.

Deborah Y. Dietrich,

Director, Office of Emergency Management.

[FR Doc. E9–21824 Filed 9–9–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 24, 2009.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Bank Applications Officer) 33 Liberty Street, New York, New York 10045–0001:

1. The Sumitomo Trust & Banking Co., Ltd., Osaka, Japan; to acquire Nikko Asset Management Co., Ltd., Tokyo, Japan, and thereby indirectly acquire Nikko Asset Management Americas, Inc., New York, New York, and engage in investment advisory activities, pursuant to Section 225.28(b)(6) of Regulation Y.

Board of Governors of the Federal Reserve System, September 4, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–21793 Filed 9–9–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

TIME AND DATE: September 15, 2009—10 a.m.

PLACE: 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.

STATUS: A portion of the meeting will be in open session and the remainder of the meeting will be in closed session

Matters To Be Considered

Open Session

1. *Docket No. 06–01:* Worldwide Relocations, Inc.; *et al.*—Possible Violations of Sections 8, 10, and 19 of the Shipping Act of 1984 and the Commission's Regulations at 46 CFR 515.3, 515.21, and 520.3—Request for Extension of Time.
2. *Docket No. 02–15:* Passenger Vessel Financial Responsibility.
3. Statutory Re-codification of 46 CFR.
4. FY 2009 Budget Status Update.

Closed Session

1. Staff Briefing Regarding Global Economic Downturn and Potential Impact on Stakeholders.
2. Passenger Vessel Operator Regulatory Initiatives.
3. Internal Administrative Practices and Personnel Matters.

Contact Person for More Information: Karen V. Gregory, Secretary, (202) 523–5725.

Karen V. Gregory,

Secretary.

[FR Doc. E9–21948 Filed 9–8–09; 4:15 pm]

BILLING CODE 6730–01–P

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; Revised Privacy Act System of Records

AGENCY: General Services Administration.

ACTION: Notice of a revised Privacy Act system of records.

SUMMARY: GSA reviewed its Privacy Act systems to ensure that they are relevant, necessary, accurate, up-to-date, covered by the appropriate legal or regulatory authority, and compliant with OMB M–07–16. This notice is an updated Privacy Act system of records notice.

DATES: Effective October 13, 2009.

FOR FURTHER INFORMATION CONTACT: Call or e-mail the GSA Privacy Act Officer: telephone 202–208–1317; e-mail *gsa.privacyact@gsa.gov.*

ADDRESSES: GSA Privacy Act Officer (CIB), General Services Administration, 1800 F Street, NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION: GSA reviewed this Privacy Act system of records notice to ensure that it is relevant, necessary, accurate, up-to-date, covered by the appropriate legal or regulatory authority, and is in compliance with the Secure Flight Program. Nothing in the revised system notice indicates a change in authorities or practices regarding the collection and maintenance of information, nor do the changes impact individuals' rights to access or amend their records in the systems of records.

Dated: September 4, 2009.

Cheryl M. Paige,

Director, Office of Information Management.

GSA/GOVT–3

SYSTEM NAME:

Travel Charge Card Program.

SYSTEM LOCATION:

This system of records is located in the finance office of the local installation of the Federal agency for which an individual has traveled. Records necessary for a contractor to perform under a contract are located at the contractor's facility.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system are current Federal employees who have their own government assigned charge card and all other Federal employees and authorized individuals who use a Federal account number for travel purposes.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include name, address, Social Security Number, date of birth, employment information, telephone numbers, information needed for identification verification, travel authorizations and vouchers, charge card applications, charge card receipts, terms and conditions for use of charge cards, and monthly reports from contractor(s) showing charges to individual account numbers, balances, and other types of account analyses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5707 and as implemented by the Federal Travel Regulation, 41 CFR 300–304; E.O. 9397; E.O. 11609; Public Law 107–56 Sec. 326; Public Law 109–115 Sec. 846.

PURPOSE:

To assemble in one system information to provide government agencies with: (1) Necessary information on the commercial travel and transportation payment and expense control system, which provides travelers charge cards and the agency an account number for official travel and related

travel expenses on a worldwide basis; (2) attendant operational and control support; and (3) management information reports for expense control purposes.

ROUTINE USES OF THE SYSTEM RECORDS, INCLUDING CATEGORIES OF USERS AND THEIR PURPOSES FOR USING THE SYSTEM:

a. To another Federal agency, Travel Management Center (TMC), online booking engine suppliers and the airlines that are required to support the Department of Homeland Security/ Transportation Security Administration (DHS/TSA) Secure Flight Program. In this program, DHS/TSA assumes the function of conducting pre-flight comparisons of airline passenger information to Federal Government watch lists. In order to supply the appropriate information, these mentioned parties are responsible for obtaining new data fields consisting of personal information for date of birth, gender, known traveler number and redress number. At this time, the redress number and known traveler number are optional but may be required to be stored in another phase of the Secure Flight program.

b. To disclose information to a Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, implementing, or carrying out a statute, rule, regulation, or order, where an agency becomes aware of a violation or potential violation of civil or criminal law or regulation.

c. To disclose information to a Member of Congress or a congressional staff member in response to an inquiry made at the request of the individual who is the subject of the record.

d. To disclose information to the contractor in providing necessary information for issuing credit cards.

e. To disclose information to an appeal, grievance, or formal complaints examiner; equal employment opportunity investigator; arbitrator; exclusive representative; or other official engaged in investigating, or settling a grievance, complaint, or appeal filed by an employee.

f. To disclose information to officials of labor organizations recognized under Public Law 95–454, when necessary to their duties of exclusive representation on personnel policies, practices, and matters affecting working conditions.

g. To disclose information to a Federal agency for accumulating reporting data and monitoring the system.

h. To disclose information in the form of listings, reports, and records of all common carrier transactions including refunds and adjustments to an agency by the contractor to enable audits of carrier charges to the Federal government.

i. To appropriate agencies, entities, and persons when (1) The Agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by GSA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with GSA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

j. To a Federal agency in connection with the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation; the letting of a contract; or the issuance of a grant, license, or other benefit to the extent that the information is relevant and necessary to a decision.

k. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), or the Government Accountability Office (GAO) when the information is required for program evaluation purposes.

l. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant.

m. To the National Archives and Records Administration (NARA) for records management purposes.

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

STORAGE:

Paper records are stored in file folders. Electronic records are stored within a computer and associated equipment.

RETRIEVABILITY:

Records are filed and retrieved by name, Social Security Number, and/or credit card number.

SAFEGUARDS:

Paper records are stored in lockable file cabinets or secured rooms. Electronic records are protected by passwords, access codes, and entry logs. There is restricted access to credit card account numbers, and information is released only to authorized users and officials on a need-to-know basis.

RETENTION AND DISPOSAL:

Records are kept for 3 years and then destroyed, as required by the General Records Retention Schedules issued by the National Archives and Records Administration (NARA).

SYSTEM MANAGER AND ADDRESS:

Assistant Commissioner, Office of Travel, Motor Vehicle, and Card Services (QM), Federal Acquisition Service, General Services Administration, Crystal Park Building 3, 2200 Crystal Drive, Arlington, VA 22202.

NOTIFICATION PROCEDURE:

Inquiries by individuals should be addressed to the Finance Officer of the agency for which they traveled.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the Finance Officer of the agency for which they traveled. Individuals must furnish their full name and the authorizing agency and its component to facilitate the location and identification of their records.

CONTESTING RECORD PROCEDURE:

Individuals wishing to request amendment of their records should contact the Finance Officer of the agency for which they traveled. Individuals must furnish their full name and the authorizing agency and component for which they traveled.

RECORD SOURCE CATEGORIES:

Charge card applications, monthly reports from the contractor, travel authorizations and vouchers, credit card companies, and data interchanged between agencies.

[FR Doc. E9–21921 Filed 9–9–09; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the National Vaccine Advisory Committee

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science.

ACTION: Notice; amendment.

SUMMARY: A notice was published in the **Federal Register** on Wednesday, August 26, 2009, Vol. 74, No. 164, to announce that a meeting of the National Vaccine Advisory Committee will be held on September 15 and 16, 2009. The meeting is open to the public. The meeting proceedings also will be Webcast; the Webcast can be viewed at *http://videocast.nih.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Andrea Krull, Public Health Advisor, National Vaccine Program Office, Department of Health and Human Services, Room 715H Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. Phone: (202) 690–5566; Fax: (202) 260–1165: e-mail; *nvpo@hhs.gov.*

Dated: September 3, 2009.

Bruce Gellin,

Deputy Assistant Secretary for Health, Director, National Vaccine Program Office.

[FR Doc. E9–21750 Filed 9–9–09; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[HHS–XXXX–N]

Secretarial Review and Publication of the Annual Report to Congress Submitted by the Contracted Consensus-Based Entity Regarding Performance Measurement

AGENCY: Office of the Secretary of Health and Human Services, HHS.

ACTION: Notice.

SUMMARY: This notice acknowledges the Department of Health and Human Services' (HHS) receipt and review of the annual report submitted to the Secretary and Congress by the contracted consensus-based entity regarding performance measurement as mandated by section 183 of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA). The statute requires HHS to publish not later than six months after receiving the annual report to Congress in the **Federal Register** together with any Secretarial comments.

FOR FURTHER INFORMATION CONTACT: Patrick Conway, (202) 690–7858.

I. Background

Rising health care costs coupled with the growing concern over the level and variation in quality and efficiency in the provision of health care raise important challenges for the United States. Congress mandated the Secretary of the Department of Health and Human Services (HHS) to contract with a consensus-based entity regarding performance measurement to support HHS' efforts to achieve value as a purchaser of high-quality, patient-centered, and financially sustainable health care. Section 183 of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) added section 1890 to the Social Security Act (the Act). The statute mandates that the contract shall be competitively awarded for a period four years and may be renewed under a subsequent competitive contracting process.

In January 2009, the competitive contract was awarded by HHS to the National Quality Forum (NQF) for a four year period. With respect to the scope of the HHS contract activities, NQF shall conduct its business in an open and transparent manner, provide the opportunity for public comment and ensure membership fees do not pose a barrier to participation in the scope of HHS' contract activities, if applicable.

The HHS four-year contract with NQF includes the following major tasks:

Formulation of National Strategy and Priorities for Health Care Performance Measurement—NQF shall synthesize evidence and convene key stakeholders on the formulation of an integrated national strategy and priorities for health care performance measurement in all applicable settings. NQF shall give priority to measures: That address the health care provided to patients with prevalent, treatment of high-cost chronic diseases; provide the greatest potential for improving quality, efficiency and patient-centered health care; and may be implemented rapidly due to existing evidence, standards of care or other reasons. NQF shall consider measures that assist consumers and patients in making informed health care decisions; address health disparities across groups and areas; and address the continuum of care across multiple providers, practitioners and settings.

Implementation of a Consensus Process for Endorsement of Health Care Quality Measures—NQF shall implement a consensus process for endorsement of standardized health care performance measures which shall consider whether measures are evidence-based, reliable, valid, verifiable, relevant to enhanced health outcomes, actionable at the caregiver level, feasible to collect and report, and responsive to variations in patient characteristics such as health status, language capabilities, race or ethnicity, and income level and is consistent across types of providers including hospitals and physicians.

Maintenance of Consensus Endorsed Measures—NQF shall establish and implement a maintenance process to ensure that endorsed measures are updated (or retired if obsolete) as new evidence is developed.

Promotion of Electronic Health Records—NQF shall promote the development and use of electronic health records that contain the functionality for automated collection, aggregation, and transmission of performance measurement information.

Focused Measure Development, Harmonization, and Endorsement Efforts to Fill Critical Gaps in Performance Measurement—At the request and direction of HHS, NQF shall complete targeted tasks to support performance measurement development, harmonization, endorsement and/or gap analysis.

Development of a Public Web site for Project Documents—NQF shall develop a public Web site to provide access to project documents and processes. The HHS contract work is found at: *http://www.qualityforum.org/projects/ongoing/hhs/.*

Annual Report to Congress and the Secretary—Under section 1890(b)(5)(A) of the Act, by not later than March 1 of each year (beginning with 2009), NQF shall submit to Congress and the Secretary of HHS an annual report. The report shall contain a description of the implementation of quality measurement initiatives under the Act and the coordination of such initiatives with quality initiatives implemented by other payers; a summary of activities and recommendations from the national strategy and priorities for health care performance measurement task; and a discussion of performance by NQF of the duties required under the HHS contract. Due to the award of the contract to NQF in mid January 2009, the first annual report covers the performance period of January 14, 2009 to February 28, 2009.

In March 2009, NQF submitted the annual report to Congress and the Secretary of HHS. Section 1890(b)(5)(B) of the Social Security Act, as created by section 183 of MIPPA, requires the Secretarial review of the annual report to Congress upon receipt and the publication of the report in the **Federal Register** together with any Secretarial comments not later than 6 months after receiving the report. This notice complies with the review and publication requirements of the statutory mandate.

First NQF Report to Congress and HHS Secretary

Submitted in March 2009, the first annual report to Congress and the Secretary spans the period of January 14, 2009 to February 28, 2009. The first annual report reflects six weeks post contract award. Given the short timeframe between the contract award and the requirement for the annual report, it reflects a description of the NQF work-to-date as of March 2009 and future plans to comply with the schedule of deliverables. Additional

time under the contract will provide NQF the opportunity to report on its specific activities and deliverables provided to HHS in the next annual report and future annual reports. A copy of NQF's submission of the March 2009 annual report to Congress and the Secretary of HHS can be found at: *http://www.qualityforum.org/projects/ongoing/hhs*. The NQF annual report is reproduced in section III of this notice.

II. NQF March 2009 Annual Report

Improving Health Care Performance:

Setting Priorities and Enhancing Measurement Capacity

Report to Congress and the Secretary of the U.S. Department of Health and Human Services

Covering the Period of January 14, 2009 to February 28, 2009

The mission of the National Quality Forum is to improve the quality of American health care by setting national priorities and goals for performance improvement, endorsing national consensus standards for measuring and publicly reporting on performance, and promoting the attainment of national goals through education and outreach programs.

Section 183 of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) mandates a Department of Health and Human Services (HHS) contract with a consensus-based entity regarding performance measurement (Section 1890 of the Social Security Act (the Act)). The National Quality Forum (NQF) was awarded the HHS contract through a competitive contracting mechanism to serve as the consensus-based entity. The statute mandates the submission of an annual report to both Congress and the Secretary of Health and Human Services by the consensus-based entity awarded the HHS contract (Section 1890(b)(5)(A) of the Act). The statute specifically requires the Secretarial review of such report upon receipt and the publication of such report in the **Federal Register** together with any Secretarial comments not later than 6 months after receiving the report (Section 1890(b)(5)(B) of the Act). This report was prepared by NQF. The report does not necessarily reflect the views of HHS. All HHS comments on this report will be provided at the time of its publication in the **Federal Register**. This report is part of contract number HHSM–500–2009–00010C. National Quality Forum, 601 Thirteenth Street, NW., Suite 500 North, Washington, DC 20005, Fax 202–783–3434, *http://www.qualityforum.org*.

Executive Summary

There is widespread and growing awareness from all levels of government that health care reform is a critical component of economic recovery—and that reform must address health care quality, safety, costs, access, and disparities in care. Truly better quality of care—care that is more effective, safe, and efficient—is an imperative for aiding our nation's economic recovery and making good on our commitment to cover the uninsured.

Numerous efforts are under way to advance the quality improvement agenda. These include the pay-for-performance and pay-for-reporting initiatives being undertaken by public and private sector purchasers; public reporting of performance information by the Centers for Medicare & Medicaid Services (CMS), State governments, and others; quality oversight by regulatory, accreditation, and professional certification bodies; and quality improvement activities being conducted by CMS' quality improvement organizations (QIOs), End-Stage Renal Disease Network Organizations, health care providers, practitioners, and others.

The overarching goal of all of our work is to improve the quality and affordability of health care by providing information to consumers and others to assist them in making more informed health care decisions, and to providers and practitioners to drive quality improvement. Measuring health care performance and then sharing those results with those who provide services and those who purchase and receive them are the cornerstones of a system that fosters not just incremental gains, but continued large-scale quality improvement.

Performance information is needed to support quality improvement, reform payment programs to promote value, and engage patients in making better choices and managing their health conditions. Performance measurement is a key building block for improving the quality of care.

Recognizing the need to strengthen the nation's performance measurement capacity, Congress included a provision within the Medicare Improvements for Patients and Providers Act of 2008 (PL 110–275), directing the Secretary of the Department of Health and Human Services (DHHS) to contract with a ''consensus-based entity, such as the National Quality Forum.'' The entity shall:

- Synthesize evidence and convene key stakeholders to make recommendations, with respect to activities conducted under this Act, on an integrated national strategy and priorities for health care performance measurement in all applicable settings.
- Provide for the endorsement of standardized health care performance measures.
- Establish and implement a process to ensure that measures endorsed are updated (or retired if obsolete) as new evidence is developed.
- Promote the development and use of electronic health records that contain the functionality for automated collection, aggregation, and transmission of performance measurement information.
- Submit an annual report to Congress and the Secretary.

Under the contract, DHHS has asked that measures focus on ''outcomes and efficiencies that matter to patients, align with electronic collection at the front end of care, encompass episodes of care when possible, and be attributable to providers where possible. A premium must be placed on developing measures in key areas that will have the greatest impact in improving quality and value, rather than focusing on developing a large number of measures that may be easiest to produce, such as process measures.'' On January 14, 2009, the National Quality Forum (NQF) was awarded a contract that addresses and is responsive to Section 183 of the Medicare Improvements for Patients and Providers Act of 2008. The contract, which has a period of performance of four years, is being incrementally funded on a yearly basis.

As a part of its work under the contract, NQF is required to produce an Annual Report to Congress by March 1 each year. Because this contract only recently commenced on January 14, 2009, this initial report to Congress provides a ''look forward.'' More specifically, it focuses on two areas:

- Recent accomplishments that provide a foundation for work under this contract, and
- Strategic direction and key challenges that lie ahead.

Foundation for Work: Background and Recent Accomplishments

NQF is a not-for-profit, multi-stakeholder membership organization whose mission is to improve the quality of American health care by:

- Setting national priorities and goals for performance improvement;
- Endorsing national consensus standards for measuring and publicly reporting on performance, and on promoting the attainment of national goals through education and outreach programs.

NQF's membership includes more than 375 organizations representing virtually every sector of the health care system. The work to be conducted under this DHHS contract will directly relate to NQF's core competencies and recent accomplishments in three areas:

- Setting National Priorities and Goals. NQF has convened leaders from major stakeholder groups and through this process has identified National Priorities and Goals for Performance Improvement. This work provides a foundation for the priority-setting efforts under this contract which focus on clinical conditions.
- Endorsing performance measures. NQF's consensus development process has resulted in more than 400 endorsed measures.
- Facilitating the development of electronic health records to support measurement and improvement. NQF has worked to identify the types of information that need to be included in an EHR to enable reporting on quality metrics.

Setting National Priorities and Goals

The National Priorities Partnership, convened by NQF, is a collaborative effort of 28 major national organizations representing multiple stakeholders, including consumer groups, employers, government, health plans, health care organizations, health care professionals, accrediting and certifying bodies, and quality alliances. The Partnership set National Priorities and Goals intended to focus performance improvement efforts on high-leverage areas—those with the most potential in the near term to result in substantial improvements in health and health care—and thus accelerate fundamental change in our health care delivery system. Taking action on the high-leverage Priorities and Goals, the Partners, individually and collectively, have the capacity to significantly advance health care reform. In November 2008, the Partnership released the results of its initial work in a report: National Priorities and Goals: Aligning our Efforts to Transform America's Health Care (see Appendix A for the executive summary).

The National Priorities and Goals were selected because they address four major challenges: Eliminating harm, eradicating disparities, reducing disease burden, and eliminating waste. The National Priorities fall into six areas:

- Engage patients and families in managing their health and making decisions about their care.
- Improve the health of the population.
- Improve the safety and reliability of America's health care system.
- Ensure patients receive well-coordinated care within and across all health care organizations, settings, and levels of care.
- Guarantee appropriate and compassionate care for patients with life-limiting illnesses.
- Eliminate overuse while ensuring the delivery of appropriate care.

The Partners are now developing action plans to achieve the National Priorities and Goals, which will entail alignment of key environmental drivers, such as public reporting, payment, and accreditation and certification programs. Learn more at *http://www.nationalprioritiespartnership.org*.

Endorsing Performance Measures

Advancing quality improvements requires valid, meaningful measurement. Simply put, you cannot improve what you cannot measure. Measures make it possible to more effectively focus our quality improvement efforts by helping identify what is working and what needs additional improvement. NQF is a private sector, standard-setting organization, and one of its roles is to evaluate measures and select the ''best in class.'' Use of NQF-endorsed® measures facilitates making apples-to-apples comparisons.

NQF is a voluntary consensus standard-setting organization as defined by the National Technology Transfer and Advancement Act of 1995 (NTTAA) and the Office of Management and Budget Circular A–119. Standard-setting organizations recognized under NTTAA must comply with strict requirements pertaining to multi-stakeholder involvement, transparency of decisionmaking, and due process.

The consensus development process (CDP) is the formal process by which NQF achieves consensus and endorses measures. There are seven steps in the endorsement process: Formation of a steering committee, calls for measures, measure evaluation, public comment, member voting, review by the consensus standards approval committee and board of directors, and appeals. The CDP reflects a careful process designed to produce consensus from disparate groups across the health care industry, including consumers, purchasers, providers, public and community health, suppliers, quality improvement and measurement organizations, and health plans.

Using this process, NQF has endorsed more than 400 quality measures for a variety of health care settings.

In 2008, NQF conducted consensus development projects in the following areas:

- Perinatal Care;
- Home Health Care;
- Ambulatory Care;
- Emergency Care;
- Health Information Technology;
- Hospital Care;
- Immunization;
- Outpatient Imaging.

Much of the support for these projects was provided by CMS and the Agency for Health care Research and Quality (AHRQ), as well as private foundations.

Facilitating the Development of Electronic Health Records To Support Measurement and Improvement

NQF also serves as an important ''bridge'' between the quality and health information technology communities to facilitate the development of electronic health records (EHRs) and personal health records (PHRs) that are capable of supporting performance measurement, reporting, and improvement. That work has two objectives. First, performance measures need to have turnkey measurement specifications that allow ready incorporation directly into EHRs and PHRs. Second, EHRs and PHRs must be able to capture the necessary data and possess the necessary functionality to calculate and report the performance information and provide the associated clinical decision-support to practitioners to improve performance.

NQF's Health Information Technology Expert Panel (HITEP), funded with support from AHRQ, produced its first report in January 2009 Recommended Common Data Types and Prioritized Performance Measures for Electronic Health Care Information Systems (see Appendix B for the executive summary). This report identifies the types of data that must be captured in EHRs to calculate the performance measures that are currently used by Medicare for public reporting purposes. Through its measure endorsement process, NQF is working with measure developers to encourage the adoption of common conventions for specifying measures that will make it easier for vendors to build EHRs and PHRs capable of calculating the measures and providing the associated clinical decision-support to assist providers in improving their performance. HITEP is now working closely with the DHHS Office of the National Coordinator to ensure that the ''Quality Data Set''—the types of data that need to be captured in EHRs and PHRs to support quality measurement and performance improvement—gets translated into health information technology standards, which in turn

become requirements for EHR certification by the Certification Commission for Health Information Technology.

Strategic Direction and Challenges Ahead

NQF has for many years received federal support, primarily in the form of grants and contracts for very specific projects (*e.g.*, a project to review physician-level measures related to cancer care). This new DHHS contract supports development and execution of a comprehensive, multi-year work plan for performance measurement. This contract will bolster, very significantly, six key functions of the quality measurement infrastructure.

Further Enhance the National Priorities and Goals. The current set of National Priorities and Goals represents cross-cutting areas that apply to all or many patients and conditions, like safety and care coordination. Over the coming year, a prioritized list will be developed of the top 20 conditions that account for 90 percent of Medicare costs, based on various criteria, including health and cost burden and opportunity for improvement. This two-dimensional framework—cross-cutting areas and conditions—will be used to focus the work of both NQF and other key players to achieve rapid improvement.

Building Measure Sets for Patient-Focused Episodes. Over the coming two to three years, measure sets will be identified for each of the top 20 conditions that include measures of the health care process (*e.g.*, effectiveness and safety measures), patient engagement, in decision making, patient outcomes, and cost. This framework moves the measurement field from a focus on the provision of individual services provided in one setting to an ''episode'' view that fosters patient engagement care coordination, efficiency, and accountability for outcomes.

Identify Critical Gaps in Measures. Measures will be needed to gauge progress in meeting the National Priorities and Goals, and efforts are now under way to identify gaps in the portfolio of NQF-endorsed measures. The mapping of available measures to conditions/patient-focused episodes will also reveal gaps.

Identify Areas for New Measure Development. Based on the ''gap analysis'' discussed above, an environmental scan will be conducted to determine if measures are available for endorsement or whether new ones need to be developed and which measures may be of most importance to the Medicare, Medicaid, or CHIP populations. There is also a significant need to identify where composite measures (combinations of two or more individual measures to produce an overall score) should be developed to provide an overall indication of performance in particular areas (*e.g.*, preventive services, safety).

Measure Maintenance and Retooling. The ability to examine measures on an ongoing basis with built-in requirements for regular measure maintenance helps ensure that the best measures are available for public reporting, health care performance assessment, and quality improvement. Performance measures must be maintained to reflect new clinical evidence, as well as ''lessons learned'' from their use in the field. NQF requires that measures undergo maintenance on a three-year cycle, or sooner if necessary. There is also a critical need to retool measures to run off of electronic data sources (*e.g.*, EHRs, administrative data, registries).

Further Strengthen Relationships Between the Quality Community and the Health Information Technology Community. NQF will foster ongoing communication and collaboration between the performance measurement community and the health information technology community, and ensure proper coordination of standard-setting activities that occur in the quality community (*e.g.*, standards related to clinical concepts, performance measure logic, and performance measure specifications) and standard-setting activities that occur in the HIT community (*e.g.*, EHR standards for data capture, data transmission protocols).

The goals of this contract will also support key HHS work outlined in the recently enacted American Recovery and Reinvestment Act of 2009 (ARRA) in three important ways.

- Work will support the health information technology (HIT) provisions of the ARRA by facilitating communications between the HIT and quality communities to ensure that electronic health records (EHRs) and personal health records (PHRs) possess the necessary capabilities to support performance measurement, reporting and improvement. NQF's work will be of relevance to both of the HIT Policy and Standards Committees that will be established under this law.
- The prevention provisions of ARRA call for strategies to reduce health care-associated infections and to enhance chronic disease outcomes. Through the priority-setting process, the NQF contract will focus performance improvement activities on these areas, and will identify standardized performance measures that can be used for public reporting and to assess the effectiveness of these programs.
- The comparative effectiveness research program of ARRA will provide new evidence on what treatments work and do not work to inform providers and consumers to use the best care available. Through its priority-setting and endorsement processes, NQF will likely identify key gaps in the evidence base, and this information will be shared with the comparative effectiveness program to help guide its agenda-setting activities.

Conclusion

Health care is going through a period of extraordinary change with efforts aimed at major reform of the health system. NQF is working closely with DHHS to ensure that the work under this contract provides the greatest value and support for health care reform that will give more people access to high quality, affordable health care.

This new contract will produce tangible benefits that are critical to establishing the measurement and reporting infrastructure necessary to achieve broader health reform objectives. Identifying national priorities for performance improvement, and measuring and reporting on the performance of health plans, health care providers, and practitioners against robust uniform national standards, will provide the needed foundation for achieving better patient outcomes, improved patient experience, and more affordable health care.

This contract will help establish a comprehensive portfolio of quality and efficiency measures that will allow the federal government to more clearly see how and whether health care spending is achieving the best results for patients and taxpayers, strengthening a core building block of the nation's capacity to provide high-value health care.

Appendix A—Report of the National Priorities Partnership National Priorities and Goals: Aligning our Efforts To Transform America's Health care (Executive Summary)

The Partners & Acknowledgements

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The Partners divided into a number of working groups to accomplish the work of the Partnership. We wish to thank the following experts who contributed significantly to our deliberations: Stephanie Alexander (Premier, Inc.), Carmella Bocchino (America's Health Insurance Plans), Kent Bottles (Institute for Clinical Systems Improvement), Maureen Corry (Childbirth Connection), Jay Crosson (Council of Accountable Physician Practices), Rita Munley Gallagher (American Nurses Association), Lea Anne Gardner (American College of Physicians), Paul Gitman (North Shore Long Island Jewish Health System), Trent Haywood (VHA, Inc.), Richard Hellman (American Association of Clinical Endocrinologists), Ronald A. Henrichs (American Academy of Dermatology), Michelle Johnston-Fleece (American Board of Internal Medicine), Norman Kahn (Council of Medical Specialty Societies), David Kindig (University of Wisconsin-Madison, School of Medicine), Jerod Loed (The Joint Commission), Michael Maciosek (HealthPartners Research Foundation), John Mastrojohn III (National Hospice and Palliative Care Organization), Kristen McNiff (American Society of Clinical Oncology), Diane Meier (Center To Advance Palliative Care), David Meyers (Agency for Health Care Research and Quality), Sean Morrison (National Palliative Care Research Center), Naomi Naierman (American Hospice Foundation), Harvey Neiman (American College of Radiology), Marsha Nelson (American Hospice Foundation), Lee Partridge (National Partnership for Women and Families), Robert Plovnick (American Psychiatric Association), Leif Solberg (HealthPartners Research Foundation), James Tulsky (Duke University, Center for Palliative Care), Margaret Van Amringe (The Joint Commission), and W. Douglas Weaver (American College of Cardiology). We wish to thank Michael Lauer (National Institutes of Health), Brad Perkins (Centers for Disease Control and Prevention), and Ed Sondik (Centers for Disease Control and Prevention) for their many contributions to this effort in support of their respective primary representatives on the Partnership.

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Association of Women's Health, Obstetric and Neonatal Nurses, National Council of State Boards of Nursing, and the American Psychiatric Nurses Association. The National Quality Forum staff teams contributed tirelessly to this effort, led by Karen Adams, Vice President of National Priorities, and Alicia C. Aebersold, Vice President of Communications. We wish to recognize the hard work of Nadine Allen, Ciarra Day, Stacy Fiedler, Sands Hakimi, Sara Maddox, Jeff Patyk, Bryan Pruitt, Dan Rafter, Mariam Rauf, Leslie Reeder-Thompson, Amy Stern, and Katharine Torrey. Special thanks to Wendy Vernon and Rebecca Fleischauer, who did a remarkable job drafting and editing significant sections of the report. And to Anisha Dharshi for her support of the working groups and her meticulous proofing of the final report. We wish to thank Helen Burstin, Senior Vice President of Performance Measurement for her guidance throughout this process, her service to the working groups, and her many contributions to the content and editing of this report.

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Executive Summary

National Priorities and Goals: Aligning Our Efforts To Transform America's Health Care

The promise of our health care system is to provide all Americans with access to health care that is safe, effective, and affordable. But our system as it is today is not delivering on that promise. In recent years, we have seen remarkable efforts that demonstrate how well health care organizations can do in delivering on this promise, but these examples stand out because they are the exception, not the norm. To improve our results, we must fundamentally change the ways in which we deliver care, and this will require focused and combined efforts by patients, health care organizations, health care professionals, community members, payers, suppliers, government organizations, and other stakeholders. The National Priorities Partnership—a collaborative effort of 28 major national organizations that collectively influence every part of the heath care system—is doing just that. The Partners, convened by the National Quality Forum to address the challenges of our health care system, represent multiple stakeholders drawn from the public and private sectors. These organizations believe that it will require the work of many to achieve the transformational change that is needed for the United States to have a high-performing, high-value health care system. Recent economic events, including instability of the U.S. economy and what appears to be a wide and deep recession, make addressing our health care problems even more urgent. Many Americans have seen their retirement savings decline markedly, and millions of others have lost their homes and jobs. It is clear that the health care status quo is unsustainable. Health care spending accounts for 16 percent of the GDP (gross domestic product) and is increasing at an average annual rate of around 7 percent. Americans spend more per capita on health care than any other industrialized country, yet our results on many important indicators of quality fall significantly below those of similar nations. The time for serious and transformational change is now. As a first step, the Partners have identified a set of National Priorities and Goals to help focus performance improvement efforts on high-leverage areas—those with the most potential to result in substantial improvements in health and health care—and thus accelerate fundamental change in our health care delivery system.

The National Priorities and Goals

The National Priorities and Goals were selected because they collectively and individually address four major challenges—eliminating harm, eradicating disparities, reducing disease burden, and removing waste—that are important to every American. Six Priority areas have been identified in which the Partners believe our combined and collective efforts can have the most impact. While the Goals are aspirational, the success of many small scale improvement projects offers direction on how we might proceed to bring this to scale nationally.

Engage Patients and Families in Managing Their Health and Making Decisions About Their Care

We envision health care that honors each individual patient and family, offering voice, control, choice, skills in self-care, and total transparency, and that can and does adapt readily to individual and family circumstances, and differing cultures, languages and social backgrounds. The Partners will work together to ensure that: All patients will be asked for feedback on their experience of care, which health care organizations and their staff will then use to improve care. All patients will have access to tools and support systems that enable them to effectively navigate and manage their care. All patients will have access to information and assistance that enables them to make informed decisions about their treatment options.

Improve the Health of the Population

We envision communities that foster health and wellness as well as national, state, and local systems of care fully invested in the prevention of disease, injury, and disability—reliable, effective, and proactive in helping all people reduce the risk and burden of disease.

The Partners will work together to ensure that: All Americans will receive the most effective preventive services recommended by the U.S. Preventive Services Task Force. All Americans will adopt the most important healthy lifestyle behaviors known to promote health. The health of American communities will be improved according to a national index of health.

Improve the Safety and Reliability of America's Health Care System

We envision a health care system that is relentless in continually reducing the risks of injury from care, aiming for ''zero'' harm wherever and whenever possible—a system that can promise absolutely reliable care, guaranteeing that every patient, every time, receives the benefits of care based solidly in science. We envision health care leaders and health care professionals intolerant of defects or errors in care, and who constantly seek to improve, regardless of their current levels of safety and reliability. The Partners will work together to ensure that:

All health care organizations and their staff will strive to ensure a culture of safety while driving to lower the incidence of health care-induced harm, disability, or death toward zero. They will focus relentlessly on continually reducing and seeking to eliminate all

health care-associated infections (HAI) and serious adverse events. Health care-associated infections include, but are not limited to:

Catheter-associated blood stream infections
Catheter-associated urinary tract infections
Surgical site infections
Ventilator-associated pneumonia

(See the Centers for Disease Control and Prevention's Infectious Diseases in Health Care Settings for a more inclusive list.)

Serious adverse events include, but are not limited to:

Pressure ulcers
Wrong site surgeries
Falls Air embolisms
Blood product injuries
Foreign objects retained after surgery

Adverse drug events associated with high alert medications (See the National Quality Forum's Serious Reportable Events for a more inclusive list.)

All hospitals will reduce preventable and premature hospital-level mortality rates to best-in-class.

All hospitals and their community partners will improve 30-day mortality rates following hospitalization for select conditions (acute myocardial infarction, heart failure, pneumonia) to best-in-class.

Ensure Patients Receive Well-Coordinated Care Within and Across All Health Care Organizations, Settings, and Levels of Care

We envision a health care system that guides patients and families through their health care experience, while respecting patient choice, offering physical and psychological supports, and encouraging strong relationships between patients and the health care professionals accountable for their care. The Partners will work together to ensure that: Health care organizations and their staff will continually strive to improve care by soliciting and carefully considering feedback from all patients (and their families when appropriate) regarding coordination of their care during transitions.

Medication information will be clearly communicated to patients, family members, and the next health care professional and/or organization of care, and medications will be reconfirmed each time a patient experiences a transition in care.

All health care organizations and their staff will work collaboratively with patients to reduce 30-day readmission rates. All health care organizations and their staff will work collaboratively with patients to reduce preventable emergency department visits.

Guarantee Appropriate and Compassionate Care for Patients With Life-Limiting Illnesses

We envision health care capable of promising dignity, comfort, companionship, and spiritual support to patients and families facing advanced illness or dying, fully in synchrony with all of the resources that community, friends, and family can bring to bear at the end of life.

The Partners will work together to ensure that: All patients with life-limiting illnesses will have access to effective treatment for relief of suffering from symptoms such as pain, shortness of breath, weight loss, weakness, nausea, serious bowel problems, delirium, and depression.

All patients with life-limiting illnesses and their families will have access to help with psychological, social, and spiritual needs.

All patients with life-limiting illnesses will receive effective communication from health care professionals about their options for treatment; realistic information about their prognosis; timely, clear, and honest answers to their questions; advance directives; and a commitment not to abandon them regardless of their choices over the course of their illness.

All patients with life-limiting illnesses will receive high-quality palliative care and hospice services.

Eliminate Overuse While Ensuring the Delivery of Appropriate Care

We envision health care that promotes better health and more affordable care by continually and safely reducing the burden of unscientific, inappropriate, and excessive care, including tests, drugs, procedures, visits, and hospital stays.

The Partners will work together to ensure that:

All health care organizations will continually strive to improve the delivery of appropriate patient care, and substantially and measurably reduce extraneous service(s) and/or treatment(s).

The recommended areas of concentration are as follows:

Inappropriate medication use, targeting:
- Antibiotic use
- Poly pharmacy (for multiple chronic conditions; of antipsychotics)

Unnecessary laboratory tests, targeting:
- Panels (*e.g.,* thyroid, SMA 20)
- Special testing (*e.g.,* Lyme Disease with regional considerations)

Unwarranted maternity care interventions, targeting:
- Cesarean section

Unwarranted diagnostic procedures, targeting:
- Cardiac computed tomography (noninvasive coronary angiography and coronary calcium scoring)
- Lumbar spine magnetic resonance imaging prior to conservative therapy, without red flags
- Uncomplicated chest/thorax computed tomography screening Bone or joint x-ray prior to conservative therapy, without red flags Chest x-ray, preoperative, on admission, or routine monitoring Endoscopy

Inappropriate non-palliative services at end of life, targeting:
- Chemotherapy in the last 14 days of life
- Aggressive interventional procedures
- More than one emergency department visit in the last 30 days of life

Unwarranted procedures, targeting:
- Spine surgery
- Percutaneous transluminal coronary angioplasty (PTCA)/Stent
- Knee/hip replacement Coronary artery bypass graft (CABG)
- Hysterectomy
- Prostatectomy

Unnecessary consultations Preventable emergency department visits and hospitalizations, targeting:
- Potentially preventable emergency department visits
- Hospital admissions lasting less than 24 hours
- Ambulatory care sensitive conditions

Potentially harmful preventive services with no benefit, targeting:
- BRCA mutation testing for breast and ovarian cancer—female, low risk
- Coronary heart disease (CHD): Screening using electrocardiography, exercise treadmill test, electron beam computed tomography—adults, low risk
- Carotid artery stenosis screening—general adult population
- Cervical cancer screening—female over 65, average risk and female, post-hysterectomy
- Prostate cancer screening—male over 75 (From the U.S. Preventive Services Task Force D Recommendations List)vi

The Path Forward

Identifying a starter set of National Priorities and Goals is a major accomplishment, but it is only the first step in what must be a more expansive and ongoing implementation aimed at achieving the performance goals. Over the next year and beyond, we hope the National Priorities and Goals will spur action and innovation, because without coordinated actions, these goals will not be reached. The Partners have agreed to work with each other and with

policymakers, health care leaders, and the community at large, to build on the framework provided in this report, and to develop actions in each of the major areas that will drive improvements needed: Performance measurement, public reporting, payment systems, research and knowledge dissemination, professional development, and system capacity.

Health care reform is well under way and the current economic crisis makes solving the puzzles of quality, equity, and value not just an ideal, but an imperative. The National Priorities Partnership is encouraging everyone to join not in calling for reform, but in enacting it nationally and in local communities across the country. The mere existence of a shared sense of responsibility to meet specific goals can transform health care quality. Acting to meet them can revolutionize it.

i. Catlin A, Cowan C, Heffler S, *et al.,* National health spending in 2005: The slowdown continues. Health Aff, 2007;26(1):142–153.

ii. The Commonwealth Fund, ''Why Not the Best? Results from the National Scorecard on U.S. Health System Performance, 2008''.

iii. Centers for Disease Control and Prevention, Infectious Disease in Health care Settings. Available at *http://www.cdc.gov/ncidod/dhqp/id.htm.*

iv. National Quality Forum, Serious Reportable Events. Available at *http://www.qualityforum.org/projects/completed/srz/fact-sheet.asp.*

v. ''Best-in-class'' may be determined by using an accepted methodology, such as Achievable Benchmarks in Care (ABC)™.

vi. Agency for Health care Research and Quality, U.S. Preventive Services Task Force (USPSTF). Available at *http://www.ahrq.gov/clinic/prevenix.htm.*

The time for serious and transformational change is now.—The National Priorities Partnership

Appendix B—Report of the Health Information Technology Expert Panel: Recommended Common Data Types and Prioritized Performance Measures for Electronic Health Care Information Systems (Executive Summary)

As described in the Institute of Medicine's (IOM's) Crossing the Quality Chasm report, the quality of health care in the United States is substantially lacking in many pivotal areas. Complex care is typically uncoordinated, and important information is frequently unavailable when needed by providers. Consequently, unexplained variations in the delivery of health care and the underuse, overuse, and misuse of health care products and services pervade the system, compromising the quality of American medicine and jeopardizing the health of its recipients.

Measuring quality is a first step toward improving American health care. Currently, however, collecting and reporting accurate, comparative health care performance data is complex and largely a time-consuming, manual process. Quality improvement leaders have long recognized that the widespread adoption of health information technology (HIT) will automate and simplify these processes by providing electronic information. Yet, to date, most of the electronic health information readily available for quality measurement has been administrative, claims-based data, which include only limited clinical information.

Electronic health record (EHR) systems have been identified as a fundamental HIT tool for collecting high-quality electronic clinical information. The federal government and private sector leaders have increased efforts to expedite and encourage the widespread adoption of HIT by health care providers; yet significant barriers prevent the collection of needed quality information within the EHR. To compare performance nationally, all quality indicators need to measure the same concepts and speak the same language in order to consistently and reliably measure quality.

Although there is no dearth of HIT standards, such standards do not exist when defining quality metrics (*e.g.,* the definition of diabetes may be interpreted differently by different institutions). This lack of a set of precisely defined, universally adopted clinical definitions is an obstacle to measuring and comparing quality.

To address the need for standardization of health care quality measurement, the American Health Information Community (AHIC), an advisory committee to the Secretary of the Department of Health and Human Services (DHHS), established a Quality Workgroup to define how HIT can evolve to effectively support performance measurement. The workgroup recommended that an HIT expert panel be convened in order to accelerate ongoing efforts in this standardization process. The National Quality Forum (NQF) was commissioned by the Agency for Health care Research and Quality (AHRQ) to assemble and convene the expert panel and to provide a detailed account of its conclusions and recommendations. The NQF Health Information Technology Expert Panel (HITEP) members (Appendix A) were selected to ensure broad representation across the fields of quality measurement and HIT and of EHR vendors, health systems, and government organizations. With the goal of achieving automated quality measurement, the panel was charged with the following tasks:

1. Establish a priority order for the current sets of AQA Alliance—and Hospital Quality Alliance—approved measures;

2. Identify common data types from the subset of highest priority measures to be standardized for automation in EHRs and health information exchanges; and

3. Develop an overarching quality measure development framework to facilitate developing, using, and reporting on quality measures from EHR systems.

To prioritize measures for immediate attention, the panel used the IOM's priority conditions. Next, the panel identified the common data types (*e.g.,* outpatient diagnosis, laboratory result, medication order) required by these high-priority measures. The panel then developed a set of criteria (*e.g.,* level of data standardization, accuracy of data source) to assess the quality of each data type as it currently exists in EHRs. Each data type received a summary quality score from these criteria. Because measures are composed of numerous data types, the panel calculated overall scores for each measure as the average quality of its individual data types. This overall measure score can be used to assess a measure's readiness for EHR implementation and to focus efforts to improve (or replace) low-scoring measures and low-scoring data types. Although the work of HITEP was to establish an initial prioritization of measures and their associated data types, further data types should be identified as additional priorities and measures are developed.

A key product of the HITEP meetings, a list of common data types (*i.e.,* diagnoses, laboratories, medications), was submitted to the Health Information Technology Standards Panel (HITSP) for the selection of standard terminologies, or code sets (*i.e.,* ICD–9, LOINC, SNOMED), to express these data types. These computerized terminologies, identified in the HITSP Quality Interoperability Specification version 1.0, will support efforts for universal adoption of standardized performance measures in EHRs. Active engagement of standard development organizations by HITSP will aid in closing the gap between the quality and information technology enterprises. Additional

recommendations for EHR functionality will be submitted to the Certification Commission for Health Care Information Technology (CCHIT) for consideration in future certification criteria.

HITEP identified three broad requirements to improve the quality measurement information technology enterprise and suggested recommendations to CCHIT, HITSP, measure development organizations (MDOs), NQF, EHR vendors, and the HL7 EHR Technical Committee. First, quality measures should be designed to leverage the capabilities of EHRs. MDOs and NQF should work together to reinforce the use of high-quality data types during measure development and endorsement of measures into consensus national standards. Second, standard terminologies should be identified to code the common data types used in quality measure definitions. Finally, quality measure clinical information should be accurately captured in EHRs. Quality and information technology stakeholders should work with EHR vendors to develop functional criteria for software needed to capture the common data required for quality measurement.

Appendix C—Overview of the Tasks of the Contract

The contract consists of twelve tasks. The first five tasks involve overall contract management and include the development of a work plan and an internal quality assurance evaluation plan. A detailed work plan for the first year of the contract activities is under way. Tasks six through twelve represent the work of the contract. A brief synopsis of each task is provided below.

Task 6: Formulation of National Strategy and Priorities for Health Care Performance Measurement

NQF will synthesize evidence and convene key stakeholders to make recommendations on an integrated national strategy and priorities for health care performance measurement in all applicable settings. NQF will develop a framework for measure prioritization that will take into account the cost and prevalence of the conditions and the likelihood and ease of measurement to improve the quality, value and transparency of the performance of the health care system. This framework will identify those areas where no measures currently exist and will assist key stakeholders with the prioritization of those areas in which measure development may be required. NQF is currently developing a request for proposal to select a subcontractor, and under the guidance of NQF, will develop the framework and other documents that will assist with identifying critical measurement gap areas as well as prioritize those areas through endorsement of measures, reworking existing measures and/or measure development. This prioritization framework will help guide the future work of this contract and measurement priorities.

Task 7: Implementation of a Consensus Process for Endorsement of Health Care Quality Measures

NQF is a voluntary consensus standards-setting organization and has an established multi-stakeholder consensus development process to endorse measures appropriate for public reporting and quality improvement. The process involves seven steps specifically designed to develop consensus among diverse stakeholders: Formation of a steering committee, calls for measures, measure evaluation, public comment, member voting, review by the consensus standards approval committee and board of directors, and appeals. This process has been streamlined to better meet the needs of the health care industry. Using this process, NQF has endorsed more than 400 quality measures for a variety of health care settings. As part of this contract with DHHS, NQF will endorse measures and measure sets. These measures will focus on specific conditions and settings as well as across episodes of care.

Task 8: Maintenance of Consensus Endorsed Measures

As an endorsing body, NQF is responsible for maintaining endorsement of the consensus standards. Due to evolving research and implementation issues, measure maintenance is required by NQF every three years. This established process along with annual updates of the measure specifications ensures the relevancy of the endorsed measures to current health care practice. The ability to critically examine the measures on an ongoing basis with built-in requirements for regular measure maintenance provides a critical avenue to ensure that the best measures are available for public reporting health care performance and quality improvement.

Task 9: Promotion of the Electronic Health Records (EHRs)

EHRs have significant potential to improve the quality, coordination, and efficiency of patient care. In the context of performance measurement and improvement, they also have a critical role to play in collecting chart level clinical patient data, which may be reliably used in performance evaluation. The objective of this task is for performance measures to have turnkey measurement specifications that allow for ready incorporation directly into EHRs; and for EHRs to capture the necessary data and possess the necessary functionality to calculate and report the performance information and to provide the associated clinical decision-support to practitioners to improve performance. To achieve these goals, there needs to be ongoing communication and collaboration between the performance measurement community and the health information technology community. NQF is planning to convene these groups to streamline the performance measurement enterprise and to promote the use of EHRs to achieve the quality improvement goals of DHHS.

Task 10: Annual Report to Congress and the Secretary of the U.S. Department of Health and Human Services

This report will provide an update as to the progress of the tasks associated with the contract. NQF will use a structured system for data gathering and reporting, and on a monthly basis, will gather information for inclusion in the final report. The annual report will be available on the NQF Web site for public viewing after copies are submitted to the Secretary and to Congress.

Task 11: Development of a Public Web Site for Project Documents

NQF will provide electronic access on a public website to all of the project's final and revised reports, standard operating procedures for consensus-building and maintenance procedures, and working documents deemed necessary as part of their consensus-building processes for any and all tasks issued under this contract. Planning is underway for Web site layout and the Web site will ''go live'' in June 2009.

Task 12: Focused Measure Development, Harmonization, and Endorsement Efforts To Fill Critical Gaps in Performance

NQF is prepared to address measurement gaps identified in Task 6 of this contract in a timely, efficient, and effective manner. NQF will respond to up to ten requests annually to fill critical gap areas through measure endorsement, measure harmonization, measure restructuring, and measure development. NQF will subcontract with established measure developers to develop new measures, including composite measures and/or re-working

existing measures to fill critical gaps in measures of health care performance.

National Quality Forum, 601 Thirteenth Street, NW., Suite 500 North, Washington, DC 20005, Fax 202–783–3434, *http://www.qualityforum.org.*

III. Secretarial Comments on the Annual Report to Congress

The Secretary is pleased with the scope and vision of NQF's March 2009 annual report. The contract with this consensus-based entity, NQF, provides a unique opportunity to further enhance HHS' efforts to foster a collaborative, multi-stakeholder approach to increase the availability of national voluntary consensus standards for quality and efficiency measures to ensure broad transparency in achieving value in health care delivery. An internal multidisciplinary cross-component HHS team is working collaboratively with NQF to ensure a clear multi-year vision to ensure the most efficient and effective utilization of the HHS contract. HHS looks forward to the ongoing opportunity to collaborate with the broader health care community as part of this NQF contract to ensure a consensus-based national strategy and priority setting process for health care measurement focusing on high-quality, patient-centered, efficient health care delivery.

IV. Future Steps

The consensus based contract with NQF is a four year contract. During the first year of the contract, NQF shall complete deliverables for each task. HHS will task NQF with single year and multi-year projects.

Formulation of National Strategy and Priorities for Health Care Performance Measurement

During the first year of the HHS contract, NQF will create a framework for measurement prioritization by conducting an environmental scan of at a minimum, the 20 patient conditions that account for over 95% of costs to the Medicare program. NQF is establishing a steering committee to oversee the prioritization process.

Maintenance of Consensus Endorsed Measures

During the first year of the HHS contract, NQF is maintaining endorsed measures relevant to HHS-wide programs and will be maintaining consensus-based endorsed measures as developed under the priority process.

Promotion of Electronic Health Records

During the first year of the HHS contract, NQF is supporting the promotion of electronic health records and quality measurement incorporation as part of HHS-wide efforts.

Focused Measure Development, Harmonization, and Endorsement Efforts to Fill Critical Gaps in Performance Measurement

During the first year of the HHS contract NQF is supporting a variety of performance measurement efforts including, but not limited to, the areas of efficiency, harmonization, outcomes, patient safety, care coordination, ICD–10, palliative care, and nursing home quality metrics.

The public is encouraged to give input through the NQF process and will be able to track the progress on work related to this contract on the NQF Web site located at: *http://www.qualityforum.org/projects/ongoing/hhs/*.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

Dated: September 3, 2009.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

[FR Doc. E9–21783 Filed 9–4–09; 4:15 pm]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Head Start Program Administrative Practice and Procedure; Appeal Procedures, 45 CFR Part 1303.

OMB No.: 0980–0242.

Description: Section 646 of the Head Start Act requires the Secretary of Health and Human Services to prescribe a timeline for conducting administrative hearings when adverse actions are taken or proposed against Head Start and Early Head Start grantees and delegate agencies. The Office of Head Start is proposing to renew, without changes, this rule, which implements these requirements and which prescribes when a grantee must submit certain information and what that information shall include.

Respondents: Head Start and Early Head Start grantees and Delegate Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Rule	20	1	26	520

Estimated Total Annual Burden Hours: 520.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7245, Attn: Desk Officer for the Administration for Children and Families.

Dated: September 3, 2009.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. E9–21718 Filed 9–9–09; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of Federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Use of a Modified Adaptor Molecule LAT to Improve Immunotherapy for Cancer and Other Diseases

Description of Technology: One problem with the development of immunotherapy for cancer or other diseases is the inability to stimulate a sufficient immune response in patients to tumor associated antigens. The Linker Adapted for T Cell Signaling molecule (LAT) has been shown to be an important molecule in T cell signaling. The inventions described and claimed in this patent application illustrate a new supportive role for LAT which may be harnessed to improve a patient's immune response to tumor-associated antigens.

A number of approaches to improving the immune response in cancer immunotherapy have been investigated. One such approach is to be able to influence the potency of T Cell Signaling. This invention exploits the role of LAT in T Cell signaling and provides a means to create a more intense and effective T Cell response. This would have the end result of improving the overall response of a patient's immune system to the presence of tumor-associated antigens.

With T Cell signaling being important in the body's immune response to bacterial and viral antigens it may also be possible to harness the modified LAT molecules to improve the immune response in developing immunotherapy for infectious disease.

Applications

- As an adjuvant with immunotherapeutic agents to improve the overall response of a patient's immune system to tumor associated antigens.
- As an adjuvant with immunotherapeutic agents to improve the overall response of a patient's immune system to bacterial associated antigens.
- As an adjuvant with immunotherapeutic agents to improve the overall response of a patient's immune system to viral associated antigens.

Advantages: Enhanced T Cell Signaling should improve the overall effectiveness of immunotherapy producing a more robust patient response.

Development Status: Early stage, significant development efforts required to reach proof of principle.

Inventors: Lawrence E. Samelson *et al.* (NCI).

Publication: This work has not yet been published.

Patent Status

- U.S. Provisional Application No. 61/176,231 filed May 7, 2009 (HHS Reference No. E–159–2009/0–US–01).
- Interested parties wishing to review the U.S. Patent Application will need to sign a CDA.

Related Technologies: The NIH also has three patents related to the basic LAT molecule (HHS Reference No. E–010–1998)—US 7,118,889, AU 750543, and AU 776495—and several pending applications in the US published as 20060073562 A1 and 20070134749 A1 and corresponding applications in Canada (2316769) and Europe (1 141 281 A1).

Licensing Status: Available for licensing.

Licensing Contact: Susan S. Rucker; 301–435–4478; *ruckersu@mail.nih.gov.*

Immunogenic Tumor-Associated Antigen SPANX–B for Selective Cancer Immunotherapy

Description of Technology: Researchers at the National Institutes of Health (NIH) have characterized a novel tumor-associated antigen, SPANX–B, that is naturally immunogenic and is expressed in a variety of human malignancies, including melanoma and lung, colon, renal, ovarian and breast carcinomas. In melanoma specifically, SPANX–B expression is associated with advanced and metastatic disease. Moreover, the researchers have found several agonist epitope peptides from SPANX–B which can be used to activate the immune system to eradicate tumors utilizing T cells. SPANX–B peptides have significant clinical and immunotherapeutic potential for the development of cancer diagnostic assays and potent protective and/or therapeutic vaccines to combat a wide-range of cancers.

Applications

- *In vitro* diagnostic assays for highly-metastatic melanomas or other cancers.
- Therapeutic monoclonal antibodies.
- Cancer vaccine development.

Advantages

- *Immunogenic:* SPANX–B peptides are naturally able to elicit immune response.
- Expressed in a wide-range of cancers.
- Use of epitope peptides facilitates the activation of cells of the more therapeutically effective branch of the immune system.
- *Small epitope peptides:* Can be more easily manufactured in contrast to recombinant proteins.

Development Status: Pre-clinical.

Market: Cancer; Cancer, Therapy; Cancer, Diagnostics/Prognostics.

Inventors: Arya Biragyn (NIA) and Vladimir Larionov (NCI).

Publication: G Almanzar *et al.* Sperm-derived SPANX–B is a clinically relevant tumor antigen that is expressed in human tumors and readily recognized by human CD4+ and CD8+ T cells. Clin Cancer Res. 2009 Mar 15;15(6):1954–1963.

Patent Status: U.S. Provisional Application No. 61/156,435 filed February 27, 2009 (HHS Reference No. E–089–2009/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Patrick P. McCue, Ph.D.; 301–435–5560; *mccuepat@mail.nih.gov.*

Collaborative Research Opportunity: The National Institute on Aging, Laboratory of Immunology, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the use of SPANX–B-based therapeutic approaches to combat

cancers. Please contact John D. Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Biomarkers for Sjögren's Syndrome

Description of Technology: This technology provides differentially-expressed microRNAs that may be utilized for the development of diagnostics and therapeutics for Sjögren's syndrome.

Sjögren's syndrome is an autoimmune disorder in which immune cells attack and destroy the glands that produce tears and saliva. The hallmark symptoms of this disorder are dry mouth and dry eyes, but it can also cause serious complications throughout the body. Sjögren's syndrome affects as many as four million people in the United States, making it the second most common autoimmune rheumatic disease. Unfortunately, there is currently no cure for Sjögren's syndrome, nor is there a specific treatment to restore gland secretion. Treatment is generally symptomatic and supportive, including moisture replacement therapies and the use of non-steroidal anti-inflammatory drugs to treat musculoskeletal symptoms. For individuals with severe complications, corticosteroids or immunosuppressive drugs are often prescribed, but these drugs can have serious side effects.

The inventors have identified microRNAs that are differentially expressed in patients with Sjögren's syndrome compared to the normal population; these biomarkers can be used to diagnose Sjögren's syndrome, and are potential targets for treatment of this disease. The inventors have also identified microRNAs associated with high or low salivary flow in this patient population; these markers may serve as targets for therapeutics that restore salivary flow.

Applications: Development of diagnostics and therapeutics for Sjögren's syndrome.

Development Status: Discovery stage.

Market: Sjögren's syndrome affects four million people in the United States.

Inventors: Ilias Alevizos and Gabor G. Illei (NIDCR).

Related Publication: A Michael *et al.* Exosomes from human saliva as a source of microRNA biomarkers. Oral Dis. 2009 Jul 15. Epub ahead of print, doi: 10.1111/j.1601–0825.2009.01604.x.

Patent Status: U.S. Provisional Application No. 61/165,142 filed March 31, 2009 (HHS Reference No. E–018–2009/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Tara Kirby, PhD; 301–435–4426; *tarak@mail.nih.gov.*

Collaborative Research Opportunity: The NIDCR is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize differentially-expressed microRNAs. Please contact David Bradley at *bradleyda@nidcr.nih.gov.*

Treatment of Airway Diseases, Including Asthma and COPD, by Targeting Airway Hyperresponsiveness

Description of Technology: This technology provides methods of treatment for airway diseases, including asthma and chronic obstructive pulmonary disease (COPD), utilizing molecules that target the airway hyperresponsiveness (AHR) pathway.

Airway diseases are a major health burden in the developed world. A major component of airway disease is airway hyperresponsiveness (AHR), defined as the exaggerated airway constrictive response to external triggers. The inventors have shown that inter-alpha-trypsin inhibitor (IaI), a mammalian protein involved in tissue inflammation and repair, is necessary for the development of AHR, and that inhibitors of IaI prevent the development of AHR. Specifically, the inventors tested their hypothesis that IaI inhibition or absence modifies airway smooth muscle cell binding to hyaluronan, a molecule known to contribute to the response to non-infectious lung injury, which also mediates induced AHR.

Claims in the provisional patent application are directed to methods of treating an airway disease or disorder by administering an inhibitor of IaI, such as an antibody, a polypeptide, a carbohydrate, a small molecule, or an antisense compound.

Applications: Development of therapeutics for airway diseases, including asthma and COPD.

Development Status: Discovery stage.

Market: Asthma affects over six percent of the U.S. population, and COPD affects approximately five percent. The combined asthma/COPD market is expected to reach over $25 billion in 2017.

Inventors: Stavros Garantziotis (NIEHS) *et al.*

Related Publication: S Garantziotis *et al.* Hyaluronan mediates ozone-induced airway hyperresponsiveness in mice. J Biol Chem. 2009 Apr 24;284(17):11309–11317.

Patent Status: PCT Application Serial No. PCT/US09/039157 filed April 1, 2009 (HHS Reference No. E–009–2009/0–PCT–02).

Licensing Status: Available for licensing.

Licensing Contact: Tara Kirby, PhD; 301–435–4426; *tarak@mail.nih.gov.*

Collaborative Research Opportunity: The NIEHS Division of Intramural Research is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact Dr. Elizabeth M. Denholm, Director of the Office of Technology Transfer, at *denholme@neihs.nih.gov* for more information.

MRI Coil Holder for Both Dynamic and Static Imaging of Joints

Description of Technology: Two new designs of the MRI coil, each of which can be used for both dynamic and static imaging of joints, particularly knee and ankle joints, have been developed. The first design is based on the current cylindrical coil designs: While maintaining the overall shape, the top portion of the coil can slide, providing room for joint movement during a dynamic exam. To improve the signal-to-noise ratio, the adjustable section would be able to transmit and receive the MRI signal. The second design describes a coil in the form of a rectangular prism. The sides would be adjustable so that the size and proportion of the coil can be changed. The top of the coil can slide, providing room for a bent knee. All four sides of the coil would be able to transmit and receive the MRI signal.

Applications: MRI (human and veterinary).

Advantages: Allows for higher quality dynamic imaging while maintaining current quality of static imaging, particularly useful for imaging knee and ankle joints while they move. Housing is adjustable to allow for bent joints while maintaining a favorable signal-to-noise ratio.

Development Status: Detailed design drawings have been completed.

Inventors: Frances T. (Sheehan) Gavelli and Nicole A. Wilson (NIHCC).

Patent Status: U.S. Provisional Application No. 61/151,300 filed February 10, 2009 (HHS Reference No. E–298–2008/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Bruce Goldstein, J.D., M.S.; 301–435–5470; *goldsteb@mail.nih.gov.*

Dated: September 1, 2009.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E9–21786 Filed 9–9–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of Federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

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Rapid Diagnostic Applications of Phage

Description of Technology: The NIH has available for licensing two techniques for rapid detection of a particular bacteria strain. Similar detection using currently available technologies take 1–2 days; this technology reduces the time to less than one hour. These technologies utilize phage, which has no pathogenic effect on higher plants and animals and are part of approved food-preparation formulations, indicating their known safety profile and an existing regulatory pathway. The first technique involves a phage that incorporates a reporter gene (*e.g.,* luciferase) that will be expressed only when the phage successfully infects a bacterium. This technique is particularly useful where only bacteria-killing (''lytic'') phages are known because the method also deactivates the lytic genes, enabling infection and subsequent detection. The second technique involves an engineered phage that will bind with quantum dots upon infection of bacteria; if a sample is treated first with this phage and then with quantum dots, the sample will only respond if the bacteria are present. Both techniques can be used to diagnose a clinical sample (tissue, blood, etc.) or an environmental isolate.

Applications

- Bacterial detection and diagnostics, including clinical or environment samples.
- Food safety and biodefense.

Advantages

- Detection methods are novel, rapid, and potentially applicable in many contexts (*e.g.,* clinic, food preparation, bioterror response).
- Phage is easy and inexpensive to cultivate.
- Phage is on sale in the US for food-preparation formulations and thus has a known regulatory pathway.

Development Status: A range of phages have been synthesized, many of which have been tested proof-of-principle using major standardized testing systems.

Inventors: Dr. Carl Merrill (NIMH), Dr. Sankar Adhya (NCI), *et al.*

Publications

1. R Edgar *et al.* High-sensitivity bacterial detection using biotin-tagged phage and quantum-dot nanocomplexes. Proc Natl Acad Sci. USA 2006 Mar 28;103(13):4841–4845.
2. C Merril *et al.* The prospect for bacteriophage therapy in Western medicine. Nat Rev Drug Discov. 2003 Jun;2(6):489–497.

Patent Status

HHS Reference No. E–169–2004—U.S. Patent Application No. 11/547,587 filed 05 Oct 2006.

HHS Reference No. E–281–2005—U.S. Patent Application No. 11/884,604 filed 17 Aug 2007.

HHS Reference No. E–318–2000—Research Materials (patent protection is not being pursued for this technology): ''Method for Determining Sensitivity to a Bacteriophage.''

Licensing Status: Technologies are available for licensing, either individually or as a package.

Licensing Contact: Bruce Goldstein, J.D., M.S.; 301–435–5470; *goldsteb@mail.nih.gov.*

Collaborative Research Opportunity: The NCI Laboratory of Molecular Biology is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact John D. Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Therapeutic Antibacterial Applications of Phage

Description of Technology: The NIH, in collaboration with others, has developed three groups of inventions related to the use of bacteriophages in therapeutic situations. The first group is a method of adapting phages to survive in the body substantially longer than wild-type phages, using serial passaging and/or genetic engineering. The second group involves phages designed to bind the toxins and cytokines that killed bacteria release into the bloodstream, reducing the pathogenic properties of the bacteria. The third group is a method of engineering a phage to have multiple binding sites, such that a single phage can target multiple types of bacteria.

Application: Therapeutic applications of phage to treat bacterial infection.

Advantages

- Improved efficacy through longer circulation.
- Additional antibacterial functions.
- Can be used independently or as an adjuvant to another antibacterial therapy.

Development Status: A range of phages have been synthesized and tested *in vivo.* A Phase 1 study of a phage targeting vancomycin-resistant *Enterococcus faecium* was completed by Exponential Biotherapies, Inc., with no adverse effects reported.

Inventors: Dr. Carl Merrill (NIMH), Dr. Sankar Adhya (NCI), *et al.*

Publications

1. C Merril *et al.* The prospect for bacteriophage therapy in Western medicine. Nat Rev Drug Discov. 2003 Jun;2(6):489–497.
2. B Biswas *et al.* Bacteriophage therapy rescues mice bacteremic from a clinical isolate of vancomycin-resistant Enterococcus faecium. Infect Immun. 2002 Jan;70(1):204–210.
3. C Merrill *et al.* Long-circulating bacteriophage as antibacterial agents. Proc Natl Acad Sci. USA 1996 Apr 16;93(8):3188–3192.

Patent Status

HHS Reference No. E–110–1993—U.S. Patent No. 5,688,601 issued 19 Jun 1997; U.S. Patent No. 7,332,307 issued 19 Feb 2008.

HHS Reference No. E–257–2000—U.S. Patent No. 7,163,818 issued 16 Jan 2007.

HHS Reference No. E–178–1996—Research Materials (patent protection is

not being pursued for this technology): ''Deletion of Lysogeny Genes and Toxin Genes from Bacteriophage Used in the Epidemiologic Control of Bacterial Illness.''

HHS Reference No. E–179–1996—Research Materials (patent protection is not being pursued for this technology): ''Therapeutics Use of Phage Expressing Toxin-Binding and/or Cytokine-Binding Proteins and Elimination of Genes Associate with Lysogeny.''

HHS Reference No. E–196–1997—Research Materials (patent protection is not being pursued for this technology): ''Antibacterial Therapy with Bacteriophage Genotypically Modified to Delay Inactivation by the Host Defense System.''

HHS Reference Nos. E–089–1998 and E–257–2003—Research Materials (patent protection is not being pursued for this technology): ''Two Enterocin-Producing Strains of Bacteria and Their Enterocins, Both of Which Are Lethal to Vancomycin-Resistant *Enterococcus faecium.''*

HHS Reference No. E–012–1999—Research Materials (patent protection is not being pursued for this technology): ''Long Circulating Phage Vectors.''

Licensing Status: Technologies are available for licensing, either individually or as a package.

Licensing Contact: Bruce Goldstein, J.D., M.S.; 301–435–5470; *goldsteb@mail.nih.gov.*

Collaborative Research Opportunity: The NCI Laboratory of Molecular Biology is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact John D. Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Dated: September 1, 2009.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E9–21787 Filed 9–9–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0392]

Medical Devices: Neurological Devices; Electroconvulsive Therapy Device; Establishing a Public Docket

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the opening of a public docket to receive information and comments regarding the current classification process related to electroconvulsive therapy devices (ECT). The current classification process for this device pertains to the ''Order for Certain Class III Devices; Submission of Safety and Effectiveness,'' published in the **Federal Register** of April 9, 2009 (74 FR 16214). Under the Order, FDA required manufacturers of certain Class III devices, including ECT, to submit a summary of, and citation to, any information known or otherwise available to them respecting such devices, including adverse safety or effectiveness information which has not been submitted under the Federal Food, Drug, and Cosmetic Act (the act). For each device subject to the Order, FDA is reviewing the submitted information to determine whether FDA should maintain the device as class III and require the submission of a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP), or whether FDA should reclassify the device into class II or class I. FDA is now inviting interested persons to submit comments that relate to the safety and effectiveness of ECT.

DATES: Submit written or electronic comments and information by January 8, 2010.

ADDRESSES: Submit written comments and information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments and information to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Victor Krauthamer, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., W066–1106, Silver Spring, MD 20993, 301–796–2474.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of April 9, 2009 (74 FR 16214), FDA published an ''Order for Certain Class III Devices; Submission of Safety and Effectiveness Information'' (''515(i) Order''). Under this Order, as mandated by section 515(i) of the act (21 U.S.C. 360e(i)), FDA required manufacturers of certain class III devices that were in commercial distribution before May 28, 1976, and devices found to be substantially equivalent to them that were marketed on or after that date, including ECT, to submit to FDA by August 7, 2009, a summary of, and citation to, any information known, or otherwise available to them respecting those devices including, adverse safety or effectiveness data that had not been submitted under section 519 of the act (21 U.S.C. 360i). In addition, manufacturers were encouraged by FDA to submit a summary of the information previously sent to FDA under section 519 of the act. Currently, the agency is in the process of reviewing the information that has been submitted by the manufacturers subject to the 515(i) Order.

Based upon the review of this submitted information, FDA is considering whether to issue a proposed rule requiring the device to remain in class III, followed by the issuance of a regulation requiring submission of a PMA or PDP, or to revise the classification of the devices into class II, requiring the designation of special controls, or into class I, requiring only general controls. In determining whether to revise the classification of a device, or to require a device to remain in class III, FDA will apply the criteria set forth in section 513(a) of the act. If FDA decides to reclassify the device, FDA must determine that general controls alone (class I) or general controls plus special controls (class II) would provide reasonable assurance of the safety and effectiveness of the device. FDA's proposed classification of ECT devices will be subject to notice and comment rulemaking to allow for additional public comment.

FDA has received a significant number of inquiries from members of the public and the health care community in response to this order to ECT manufacturers. In recognition of this significant public interest, FDA is opening this docket to permit individuals other than manufacturers to submit information related to the safety and effectiveness of ECT. If individuals wish to report an adverse event associated with the use of an ECT device, please use the MedWatch Online Voluntary Reporting Form available at *https://www.accessdata.fda.gov/scripts/medwatch/medwatch-online.htm*. FDA will review information submitted through the MedWatch program prior to making any changes to the classification of ECT devices.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic

comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 24, 2009.

Catherine M. Cook,

Associate Director for Regulations and Policy.

[FR Doc. E9–21807 Filed 9–9–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; GO Grants-2.

Date: September 15, 2009.

Time: 2 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Marita R. Hopmann, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6100 Building, Room 5B01, Bethesda, MD 20892, (301) 435–6911, *hopmannm@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 1, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–21771 Filed 9–9–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Developmental Biology Subcommittee.

Date: October 5–6, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Washington, 1515 Rhode Island Ave, NW., Washington, DC 20005.

Contact Person: Norman Chang, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health And Human Development, NIH, 6100 Executive Blvd., Room 5b01, Bethesda, MD 20892, (301) 496–1485, *changn@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 1, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–21776 Filed 9–9–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Initial Review Group; Genome Research Review Committee.

Date: November 5–6, 2009.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ken D. Nakamura, PhD, Scientific Review Officer, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301 402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: September 1, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–21773 Filed 9–9–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material,

and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Aneurysm Trial.
Date: October 1, 2009.
Time: 6 p.m. to 7 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Alicja L. Markowska, PhD, DSC, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Gateway Building, Suite 2C212, Bethesda, MD 20892, 301–496–9666, *markowska@nia.nih.gov*.

Name of Committee: National Institute on Aging Special Emphasis Panel; Osteoporosis Trial.
Date: October 2, 2009.
Time: 12 p.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Metro Center, Bethesda, MD 20814.
Contact Person: Alicja L. Markowska, PhD, DSC, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Gateway Building, Suite 2C212, Bethesda, MD 20892, 301–496–9666, *markowska@nia.nih.gov*.

Name of Committee: National Institute on Aging Special Emphasis Panel; Genetic Modification of Aged and Diseased Muscle.
Date: October 19, 2009.
Time: 1 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institute on Aging, Gateway Building, 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call)
Contact Person: Elaine Lewis, PhD, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, Gateway Building, Suite 2C212, MSC–9205, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7707, *elainelewis@nia.nih.gov*.

Name of Committee: National Institute on Aging Special Emphasis Panel; Molecular Cause of Maturing Deterioration.
Date: November 3, 2009.
Time: 2 p.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Gateway Building, 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call)
Contact Person: Bita Nakhai, PhD, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701, *nakhaib@nia.nih.gov*.

Name of Committee: National Institute on Aging Special Emphasis Panel; Principle of Stem Cell Maturation.
Date: November 4, 2009.
Time: 12 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Gateway Building, 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call)
Contact Person: Bita Nakhai, PhD, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701, *nakhaib@nia.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 1, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–21789 Filed 9–9–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Hematology and Pathology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Hematology and Pathology Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 22 and 23, 2009, from 8 a.m. to 5 p.m.

Location: Hilton Washington DC North/Gaithersburg, Salons A, B, and C, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Louise E. Magruder, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–6175, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512515. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On October 22 and 23, 2009, the committee will discuss and make recommendations on public health issues related to the use of digital whole slide imaging systems to replace conventional light microscopy for diagnostic surgical pathology. In the scope of this meeting, digital pathology is defined as converting what can be observed by conventional light microscopy on histologic glass slides into digital whole slide images via digital scanners; viewing these images via a computer monitor to render pathologic diagnosis of the lesion of interest; and digitally archiving and retrieving these images. The committee will not be discussing computer-assisted image analysis or remote real-time microscopy.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available on the FDA Internet under the appropriate date at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.com*. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 15, 2009. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. each day. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 1, 2009. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will

notify interested persons regarding their request to speak by October 8, 2009.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, 301–796–5966, at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 4, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–21810 Filed 9–9–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Amendment—Public Meeting of the AHRQ National Advisory Council for Healthcare Research and Quality Subcommittee On Quality Measures for Children's Healthcare in Medicaid and Children's Health Insurance Programs

With this correction notice, the Agency for Healthcare Research and Quality (AHRQ) informs public of an Amendment made to the notice subject mentioned above which was published on August 20, 2009, Vol. 74, No. 160, pages 42079–42080, The amendment is to add at the end of section **SUPPLEMENTARY INFORMATION**, the following: ''As previously noted, the meeting is open to the public and can also be joined via Webcast. The link to online registration for Webcast is *http://www.ConnectLive.com/events/AHRQ2009.*''

Dated: September 3, 2009.

Carolyn M. Clancy,

Director.

[FR Doc. E9–21690 Filed 9–9–09; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Ethics Subcommittee, Advisory Committee to the Director, Centers for Disease Control and Prevention (CDC)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention announces the following Subcommittee meeting:

Time and Date: 10:30 a.m.–12:30 p.m., September 24, 2009.

Place: The teleconference call will originate at the Centers for Disease Control and Prevention in Atlanta, Georgia. Please see ''Supplementary Information'' for details on accessing the teleconference.

Status: Open to the public, teleconference access limited only by availability of telephone ports. The public is welcome to participate during the public comment period which is tentatively scheduled from 12:15 p.m.–12:25 p.m.

Purpose: The Ethics Subcommittee will provide counsel to the ACD, CDC, regarding a broad range of public health ethics questions and issues arising from programs, scientists and practitioners.

Matters To Be Discussed: The teleconference agenda will include ethical guidance for ventilator distribution during a pandemic, update on CDC's public health ethics activities, and follow-up on outstanding activities/reports.

Agenda items are subject to change as priorities dictate.

Supplementary Information: This conference call is scheduled to begin at 10:30 a.m. To participate in the teleconference, please dial 1/866/919–3560 and enter conference code 4168828. You will then be automatically entered into the call.

Contact Person for More Information: Drue Barrett, PhD, Designated Federal Officer, Ethics Subcommittee, CDC, 1600 Clifton Road, NE., M/S D–50, Atlanta, Georgia 30333. Telephone (404/639–4690. E-mail: *dbarrett@cdc.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: September 1, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–21920 Filed 9–9–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Clinical Resources.

Date: September 28, 2009.

Time: 10 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Wendy F. Davidson, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIH/NIAID/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–402–8399, *davidsonw@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 1, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–21791 Filed 9–9–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Initial Review Group, Behavior and Social Science of Aging Review Committee.
Date: October 1–2, 2009.
Time: 4 p.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Jeannette L Johnson, PhD, Scientific Review Officer, National Institutes on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C–212, Bethesda, MD 20892. 301–402–7705. *johnsonj9@nia.nih.gov.*

Name of Committee: National Institute on Aging Initial Review Group, Biological Aging Review Committee.
Date: October 1–2, 2009.
Time: 6 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Bita Nakhai, PhD, Scientific Review Administrator, Scientific Review Office, National Institute On Aging, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814. 301–402–7701. *nakhaib@nia.nih.gov.*

Name of Committee: National Institute on Aging Initial Review Group. Clinical Aging Review Committee.
Date: October 1–2, 2009.
Time: 7 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Alicja L. Markowska, PhD, DSC, National Institute On Aging, National Institutes Of Health, Gateway Building 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892. 301–496–9666. *markowsa@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 1, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–21790 Filed 9–9–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; R01 Hearing Clinical Trial.
Date: September 22, 2009.
Time: 11 a.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).
Contact Person: Christine A. Livingston, PhD, Scientific Review Officer, Division of Extramural Activities, National Institutes of Health/NIDCD, 6120 Executive Blvd.—MSC 7180, Bethesda, MD 20892. (301) 496–8683. *livingsc@mail.nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; Clinical Trials.
Date: September 23, 2009.
Time: 4:15 p.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).
Contact Person: Christine A. Livingston, PhD, Scientific Review Officer, Division of Extramural Activities, National Institutes of Health/NIDCD, 6120 Executive Blvd.—MSC 7180, Bethesda, MD 20892. (301) 496–8683. *livingsc@mail.nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; NIDCD Research Core Center.
Date: September 25, 2009.
Time: 12 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).
Contact Person: Susan Sullivan, PhD, Scientific Review Officer, National Institute of Deafness and Other Communication Disorders. 6120 Executive Blvd Ste., 400C, Rockville, MD 20852. 301–496–8683. *sullivas@mail.nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, R03 VSL.
Date: October 1, 2009.
Time: 11 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).
Contact Person: Shiguang Yang, DVM, PhD, Scientific Review Officer, Division of Extramural Activities, NIDCD, NIH, 6120 Executive Blvd., Bethesda, MD 20892. 301–496–8683.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; R03 Chemical Senses.
Date: October 2, 2009.
Time: 11 a.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).
Contact Person: Susan Sullivan, PhD, Scientific Review Officer, National Institute of Deafness and Other Communication Disorders. 6120 Executive Blvd Ste., 400C, Rockville, MD 20852. 301–496–8683. *sullivas@mail.nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; R03 Hearing and Balance.
Date: October 5, 2009.
Time: 11 a.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).
Contact Person: Shiguang Yang, DVM, PhD, Scientific Review Officer, Division of Extramural Activities, NIDCD, NIH, 6120 Executive Blvd., Bethesda, MD 20892. 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: August 28, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–21788 Filed 9–9–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Notice is hereby given of a Scientific Workshop convened by the Interagency Autism Coordinating Committee (IACC).

The purpose of the IACC Scientific Workshop is to discuss the annual update of the IACC Strategic Plan for Autism Spectrum Disorders Research. The meeting will be open to the public and will be accessible by Web cast and conference call.

Name of Committee: Interagency Autism Coordinating Committee (IACC).

Type of meeting: IACC Scientific Workshop.

Date: September 30—October 1, 2009.

Time: 9 a.m. to 5:30p.m. Eastern Time—September 30, 2009.

9 a.m. to 5 p.m. Eastern Time—October 1, 2009.

Agenda: The workshop will cover the six questions in the strategic plan, focusing on noted research gaps, new opportunities for advancing research and knowledge about autism spectrum disorders (ASD), and the prioritization of short-term and long-term objectives in the plan. The format of the meeting will include presentations by invited panelists (clinicians, researchers and people with ASD or family members of people with ASD), as well as discussions by panelists, the public and members of the IACC.

Place: Bethesda North Marriott, 5701 Marinelli Road, Bethesda, MD 20852.

Webcast Live: http://videocast.nih.gov/.

Conference Call Access:

Dial: 888–455–2920.

Access code: 4173827.

Cost: The meeting is free and open to the public.

Registration: http://www.acclaroresearch.com/oarc/9–30–09_workshop/

Pre-registration is strongly recommended to expedite check-in. Seating in the meeting room is limited to room capacity and on a first come, first served basis. An overflow room with limited seating and access to the videocast will be provided.

Access: Metro accessible—Red Line—White Flint Metro Station.

Onsite parking available—$4.00 hourly, $12.00 daily.

More Information and Updates: http://iacc.hhs.gov/events/.

Contact Person: Ms. Lina Perez, Office of Autism Research Coordination, National Institute of Mental Health, NIH, 6001 Executive Boulevard, Room 8200, Bethesda, MD 20892–9669, Phone: 301–443–6040, *E-mail: IACCPublicInquiries@mail.nih.gov.*

Please Note:

Pre-registration is strongly recommended. Seating will be limited to the room capacity and seats will be on a first come, first served basis, with expedited check-in for those who are pre-registered. As a part of security procedures, attendees should be prepared to present a photo ID at the meeting registration desk during the check-in process.

The meeting will be open to the public through a conference call phone number and webcast live on the Internet. Individuals who participate in person or by using these electronic services and who need special assistance, such as captioning of the conference call or other reasonable accommodations, should submit a request at least 7 days prior to the meeting.

Members of the public who participate using the conference call phone number will be able to listen to the meeting but will not be heard.

To access the webcast live on the Internet the following computer capabilities are required:

(A) Internet Explorer 5.0 or later, Netscape Navigator 6.0 or later or Mozilla Firefox 1.0 or later;

(B) Windows® 2000, XP Home, XP Pro, 2003 Server or Vista;

(C) Stable 56k, cable modem, ISDN, DSL or better Internet connection;

(D) Minimum of Pentium 400 with 256 MB of RAM (Recommended);

(E) Java Virtual Machine enabled (Recommended).

Information about the IACC is available on the Web site: *http://www.iacc.hhs.gov.*

The schedule for the meeting is subject to change.

Dated: August 31, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–21784 Filed 9–9–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Special Topics in Bioengineering.

Date: September 11, 2009.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: James J. Li, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7849, Bethesda, MD 20892, 301–435–2417, *lijames@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Review of Grand Opportunity Applications.

Date: September 14, 2009.

Time: 9 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Patricia Greenwel, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, 301–435–1169, *greenwep@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; GO Grant Review.

Date: September 14, 2009.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Edwin C. Clayton, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5095C, MSC 7844, Bethesda, MD 20892, (301) 402–1304, *claytone@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Basic Mechanisms of Cancer Therapeutics Study Section.

Date: September 17–18, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Catamaran Resort Hotel and Spa, 3999 Mission Boulevard, San Diego, CA 92109.

Contact Person: Lambratu Rahman, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, 301–451–3493, *rahmanl@csr.nih.gov.*

Name of Committee: Vascular and Hematology Integrated Review Group; Hypertension and Microcirculation Study Section.

Date: September 21–22, 2009.

Time: 7 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency O'Hare, 9300 Bryn Mawr Avenue, Rosemont, IL 60018.

Contact Person: Ai-Ping Zou, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–435–1777, *zouai@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Integrative Nutrition and Metabolic Processes Study Section.

Date: September 21, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Allerton Hotel, 701 North Michigan Avenue, Chicago, IL 60611.

Contact Person: Sooja K. Kim, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6182, MSC 7892, Bethesda, MD 20892, (301) 435–1780, *kims@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Nutrition ARRA CR.

Date: September 21, 2009.

Time: 5 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Allerton Hotel, 701 North Michigan Avenue, Chicago, IL 60611.

Contact Person: Sooja K. Kim, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6182, MSC 7892, Bethesda, MD 20892, (301) 435–1780, *kims@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 31, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–21780 Filed 9–9–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Deferral of Duty on Large Yachts Imported for Sale

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing information collection: 1651–0080.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Deferral of Duty on Large Yachts Imported for Sale. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (74 FR 23875) on May 21, 2009, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before October 13, 2009.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104–13). Your comments should address one of the following four points:

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

(2) Evaluate the accuracy of the agency's/component'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 collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Deferral of Duty on Large Yachts Imported for Sale.

OMB Number: 1651–0080.

Form Number: None.

Abstract: Section 2406(a) of the Miscellaneous Trade and Technical Corrections Act of 1999 provides that an otherwise dutiable ''large yacht'' may be imported without the payment of duty if the yacht is imported with the intention to offer for sale at a boat show in the U.S.

Current Actions: There are no changes to the information collection. This submission is being made to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business and non-profit institutions.

Estimated Number of Respondents: 100.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 100.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177, at 202–325–0265.

Dated: September 3, 2009.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E9–21742 Filed 9–9–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2009–0001]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; revision of a currently approved information collection; OMB No. 1660–0087; No Forms.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before October 13, 2009.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: PrepCAST (formerly NIMSCAST).

Type of information collection: Revision of a currently approved information collection.

OMB Number: 1660–0087.

Form Titles and Numbers: No forms.

Abstract: The PrepCAST is a standardized data collection and assessment process that effectively assesses prevention, protection, response, and recovery capabilities at the regional, State, local, and Tribal levels. In the National Incident Management System collection tool, data will be collected on the respondent's ability to meet the established NIMS Implementation Objectives. The State Preparedness Report collection tool will address questions about current capabilities that have not already been answered through other assessments and reports, focusing on level of performance of individual activities for the 37 capabilities set forth in the Target Capabilities List (TCL) 2.0. FEMA collects this data to guide policy and resource allocation decisions.

Affected Public: State, Local and Tribal Government.

Estimated Number of Respondents: 3,982.

Frequency of Response: Once.

Estimated Average Hour Burden per Respondent: 6.10 hours.

Estimated Total Annual Burden Hours: 24,278 hours.

Estimated Cost: There is no annual reporting and recordkeeping cost associated with this collection.

Larry Gray,

Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E9–21753 Filed 9–9–09; 8:45 am]

BILLING CODE 9111–46–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2009–0001]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; revision of a currently approved information collection; OMB No. 1660–0081; FEMA Form 146–0 (Replaces FEMA Form 81–108), National Flood Insurance Program—Mapping Needs Update Support System (MNUSS) Data Worksheet.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this Notice seeks comments concerning the use of the Mapping Needs Update Support System Data Worksheet to collect data on flood hazard mapping needs enabling FEMA to be more responsive to ongoing changes affecting flood hazard areas that occur in communities participating in the NFIP. These changes include, but are not limited to, new corporate limit boundaries, changes in the road network, and changes in flood hazard areas, which affect communities' flood risks.

DATES: Comments must be submitted on or before November 9, 2009.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under docket ID FEMA–2009–0001. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Office of Chief Counsel, Regulation and Policy Team, DHS/FEMA, 500 C Street, SW., Room 835, WASH, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

(4) *E-mail.* Submit comments to *FEMA–POLICY@dhs.gov.* Include docket ID FEMA–2009–0001 in the subject line.

All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the Privacy and Use Notice link on the Administration Navigation Bar of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Beth Norton, Mitigation Division, Department of Homeland Security/FEMA, at (202) 646–2716 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or *e-mail address: FEMA-Information-Collections@dhs.gov.*

SUPPLEMENTARY INFORMATION: Public Law 103–325, The Riegle Community Development and Regulatory

Improvement Act of 1994, Title V—National Flood Insurance Reform, section 575, Updating of Flood Maps (also known as section 575 of the National Flood Insurance Reform Act (NFIRA) of 1994), mandates that at least once every five years, the Federal Emergency Management Agency (FEMA) will assess the need to revised and update all floodplain areas and flood risk zones identified, delineated, or established under section 1360 of the National Flood Insurance Act of 1968.

Collection of Information

Title: National Flood Insurance Program (NFIP) Mapping Needs Update Support System (MNUSS) Data Worksheet.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0081.

Form Titles and Numbers: FEMA Form 146–0 (Replaces FEMA Form 81–108), National Flood Insurance Program—Mapping Needs Update Support System (MNUSS) Data Worksheet.

Abstract: FEMA established the Mapping Needs Assessment process and the MNUSS database in order to effectively identify and document data regarding community flood hazard mapping needs. MNUSS is designed to store mapping needs at the community level. In order to facilitate the identification and collection of communities' current flood hazard mapping needs for input into MNUSS, FEMA developed the MNUSS Data Worksheet. This provides a method to notify FEMA of any revisions or updates required to flood maps. The information is also used to assist in the prioritization of the flood hazard mapping needs of all mapped communities participating in the NFIP.

Affected Public: State, Local and Tribal Governments.

Estimated Total Annual Burden Hours: 1,150 Hours.

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/form number	Number of respondents	Number of responses per respondent	Total number of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate*	Total annual respondent cost
State, Local or Tribal Government.	FEMA Form 146–0/MNUSS Data Worksheet.	460	1	460	2.5	1,150	$47.75	$54,913
Total		460				1,150		54,913

***Note:** The ''Avg. Hourly Wage Rate'' for each respondent includes a 1.4 multiplier to reflect a fully-loaded wage rate.

Estimated Cost: There is no annual operation or maintenance cost associated with this collection.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Larry Gray,

Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E9–21751 Filed 9–9–09; 8:45 am]

BILLING CODE 9111–52–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2008–0010]

National Fire Academy Board of Visitors

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Committee Management; Notice of Open Federal Advisory Committee meeting.

SUMMARY: The National Fire Academy Board of Visitors will meet on October 2–3, 2009.

DATES: The meeting will take place Friday, October 2, 2009, from 9 a.m. to 5 p.m., e.s.t.; and Saturday, October 3, 2009, from 9 a.m. to 5 p.m., e.s.t. Comments must be submitted by September 30, 2009.

ADDRESSES: Members of the public who wish to obtain information for the public meeting or who plan to participate in the meeting should contact Teressa Kaas as listed in the **FOR FURTHER INFORMATION CONTACT** section by September 30, 2009. Members of the public may participate by coming to the National Emergency Training Center, Building H, Room 300, Emmitsburg, Maryland. Written material as well as requests to have written material distributed to each member of the committee prior to the meeting should reach Teressa Kaas as listed in the **FOR FURTHER INFORMATION CONTACT** section by September 30, 2009. Comments must be identified by docket ID FEMA–2008–0010 and may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: FEMA–RULES@dhs.gov.* Include the docket ID in the subject line of the message.
- *Fax:* 703–483–2999.
- *Mail:* Teressa Kaas, 16825 South Seton Avenue, Emmitsburg, Maryland 21727.

Instructions: All submissions received must include the docket ID for this action. Comments received will be posted without alteration at *http://www.regulations.gov*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the National Fire Academy Board of Visitors, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Teressa Kaas, 16825 South Seton Avenue, Emmitsburg, Maryland 21727, telephone (301) 447–1117, fax (301) 447–1173, and e-mail *teressa.kaas@dhs.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). The National Fire Academy Board of Visitors will be

holding a meeting for purposes of reviewing National Fire Academy Program activities, including the status of campus maintenance and capital improvements, the budget update, the Professional Development Committee Report, the Emergency Medical Services Committee Report, the annual Ethics briefing, National Fire Programs update, the Academy update, and Board discussions and new items. This meeting is open to the public.

The Chairperson of the National Fire Academy Board of Visitors shall conduct the meeting in a way that will, in her judgment, facilitate the orderly conduct of business. During its meeting, the committee welcomes public comment; however, comments will be permitted only during the public comment period. The Chairperson will make every effort to hear the views of all interested parties. Please note that the meeting may end early if all business is completed.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Teressa Kaas as soon as possible.

Dated: August 31, 2009.

Glenn A. Gaines,

Deputy Assistant Administrator, U.S. Fire Administration, Federal Emergency Management Agency.

[FR Doc. E9–21752 Filed 9–9–09; 8:45 am]

BILLING CODE 9111–45–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Blackstone River Valley National Heritage Corridor Commission; Notice of Meeting

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that a meeting of the John H. Chafee Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, September 17, 2009.

The Commission was established pursuant to Public Law 99–647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene on September 17, 2009 at 9 a.m. at the Jesse M. Smith Memorial Library located at 100 Tinkham Lane, Harrisville, RI for the following reasons:

1. Approval of Minutes.
2. Chairman's Report.
3. Executive Director's Report.
4. Financial Budget.
5. Public Input.

It is anticipated that about thirty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: Jan H. Reitsma, Executive Director, John H. Chafee, Blackstone River Valley National Heritage Corridor Commission, One Depot Square, Woonsocket, RI 02895, Tel.: (401) 762–0250.

Further information concerning this meeting may be obtained from Jan H. Reitsma, Executive Director of the Commission at the aforementioned address.

Jan H. Reitsma,

Executive Director, BRVNHCC.

[FR Doc. E9–18936 Filed 9–9–09; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0027

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to seek renewed authority to collect information for 30 CFR Part 740 which relates to surface coal mining and reclamation operations on Federal lands. This collection request has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by October 13, 2009, in order to be assured of consideration.

ADDRESSES: Comments may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Department of the Interior Desk Officer, via e-mail at *OfRADocket@omb.eop.gov,* or by facsimile to (202) 395–5806. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 202–SIB, Washington, DC 20240, or electronically to *jtrelease@osmre.gov.* Please reference 1029–0027 in your correspondence.

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request contact John A. Trelease at (202) 208–2783, or electronically at *jtrelease@osmre.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted a request to OMB to renew its approval of the collections of information contained in 30 CFR Part 740, Surface Coal Mining and Reclamation Operations on Federal Lands. OSM is requesting a 3-year term of approval for this information collection activity.

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 this collection of information is 1029–0027.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on this collection of information was published on May 18, 2009 (74 FR 23201). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: 30 CFR Part 740—General requirements for surface coal mining and reclamation operations on Federal lands.

OMB Control Number: 1029–0027.

Summary: Section 523 of the Surface Mining Control and Reclamation Act of 1977 requires that a Federal lands program be established to govern surface coal mining and reclamation operations on Federal lands. The information requested is needed to assist the regulatory authority to determine the eligibility of an applicant to conduct surface coal mining operations on Federal lands.

Frequency of Collection: Once.

Description of Respondents: Applicants for surface coal mine permits on Federal lands and State regulatory authorities.

Total Annual Responses: 18.

Total Annual Burden Hours for Applicants: 1,285.

Total Annual Burden Hours for State Regulatory Authorities: 400.

Total Annual Burden Hours for All Respondents: 1,685.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the places listed under Addresses. Please refer to control number 1029–0027 in all correspondence. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: September 1, 2009.

John R. Craynon,

Chief, Division of Regulatory Support.

[FR Doc. E9–21684 Filed 9–9–09; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Meeting for the Denali National Park and Preserve Aircraft Overflights Advisory Council Within the Alaska Region

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting for the Denali National Park and Preserve Aircraft Overflights Advisory Council within the Alaska Region.

SUMMARY: The National Park Service (NPS) announces a meeting of the Denali National Park and Preserve Aircraft Overflights Advisory Council. The purpose of this meeting is to discuss mitigation of impacts from aircraft overflights at Denali National Park and Preserve. This meeting is open to the public and will have time allocated for public testimony. The public is welcomed to present written or oral comments. The meeting will be recorded and a summary will be available upon request from the Superintendent for public inspection approximately six weeks after each meeting. The Aircraft Overflights Advisory Council is authorized to operate in accordance with the provisions of the Federal Advisory Committee Act.

DATES: The Denali National Park and Preserve Aircraft Overflights Advisory Council meeting will be held on Friday, October 2nd from 9 a.m. to 5 p.m., Alaska Standard Time. The meeting may end early if all business is completed.

Location: Talkeetna Alaskan Lodge, Mile 13.5 Talkeetna Spur Road, Talkeetna, Alaska 99676.

FOR FURTHER INFORMATION CONTACT: Miriam Valentine, Denali Planning. E-mail: *Miriam_Valentine@nps.gov.* Telephone: (907) 733–9102 at Denali National Park, Talkeetna Ranger Station, P.O. Box 588, Talkeetna, AK 99676. For accessibility requirements please call Miriam Valentine (907) 733–9102.

SUPPLEMENTARY INFORMATION: Meeting location and dates may need to be changed based on weather or local circumstances. If the meeting dates and location are changed, notice of the new meeting will be announced on local radio stations and published in local newspapers. The agenda for the meeting will include the following, subject to minor adjustments:

1. Call to order.
2. Roll Call and Confirmation of Quorum.
3. Chair's Welcome and Introductions.
4. Review and Approve Agenda.
5. Member Reports.
6. Agency and Public Comments.
7. Superintendent and NPS Staff Reports.
8. Agency and Public Comments.
9. Other New Business.
10. Agency and Public Comments.
11. Set time and place of next Advisory Council meeting.
12. Adjournment.

Victor Knox,

Acting Regional Director, Alaska.

[FR Doc. E9–21631 Filed 9–9–09; 8:45 am]

BILLING CODE 4310–PF–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–09–025]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: September 11, 2009 at 11 a.m.

PLACE: Room 101, 500 E Street, SW.,Washington, DC 20436, *Telephone:* (202) 205–2000.

STATUS: Open to the public.

Matters To Be Considered

1. Agenda for future meetings: None.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–468 and 731–TA–1166–1167 (Preliminary) (Certain Magnesia Carbon Bricks from China and Mexico)—briefing and vote. (The Commission is currently scheduled to transmit its determinations to the Secretary of Commerce on or before September 14, 2009; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before September 21, 2009.)
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting. Earlier announcement of this meeting was not possible.

Issued: September 4, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–21881 Filed 9–8–09; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0033]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Report of Mail Order Transaction

ACTION: 60-Day Notice of Information Collection Under Review.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with

the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until November 9, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Mark W. Caverly, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152, Telephone (202) 307–7297.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of Information Collection 1117–0033

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Report of Mail Order Transaction.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:*

Form Number: none; Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: Not-for-Profit Institutions; State, Local or Tribal Government.

Abstract: The Comprehensive Methamphetamine Control Act of 1996 (Pub. L. 104–237) (MCA) amended the Controlled Substances Act to require that each regulated person who engages in a transaction with a non-regulated person which involves ephedrine, pseudoephedrine, or phenylpropanolamine (including drug products containing these chemicals) and uses or attempts to use the Postal Service or any private or commercial carrier shall, on a monthly basis, submit a report of each such transaction conducted during the previous month to the Attorney General.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that there are 16 total respondents for this information collection; 11 for paper form at 1 hour for each response; and five (5) via electronic mail at 15 minutes per form. The total annual burden is 147 hours (132 hours for paper forms and 15 hours for electronic forms).

(6) *An estimate of the total public burden (in hours) associated with the collection:* It is estimated that there are 147 annual burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: September 3, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E9–21778 Filed 9–9–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0029]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Annual Reporting Requirement for Manufacturers of Listed Chemicals

ACTION: 60-;Day notice of information collection under review.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until November 9, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Mark W. Caverly, Chief, Liaison and Policy Section, Drug Enforcement Administration, Office of Diversion Control, 8701 Morrissette Drive, Springfield, VA 22152.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Annual Reporting Requirement for Manufacturers of Listed Chemicals.

(3) *Agency form number, if any and the applicable component of the Department sponsoring the collection: Form number:* None. Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: None.

Abstract: This information collection permits the Drug Enforcement Administration to monitor the volume and availability of domestically manufactured listed chemicals. These listed chemicals may be subject to diversion for the illicit production of controlled substances. This information collection is required by law.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that there are one hundred (100) total respondents for this information collection. One hundred (100) persons respond annually at 4 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* It is estimated that there are 400 annual burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: September 3, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E9–21781 Filed 9–9–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

September 3, 2009.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *DOL_PRA_PUBLIC@dol.gov*.

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Department of Labor—Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* 202–395–7316/*Fax:* 202–395–5806 (these are not toll-free numbers), *E-mail: OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (*see* below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.

Type of Review: Extension with change of a currently approved collection.

Title of Collection: Consumer Price Index (CPI) Housing Survey (CADC).

OMB Control Number: 1220–0163.

Affected Public: Individuals or households.

Total Estimated Number of Respondents: 126,895.

Total Estimated Annual Burden Hours: 12,394.

Total Estimated Annual Costs Burden: $0.

Description: The Consumer Price Index (CPI) is a measure of the average change over time in the prices paid by consumers for a market basket of goods and services. Each month, BLS data collectors visit or call thousands of retail stores, service establishments, rental units, and doctors, offices all over the United States to obtain information on the prices of the thousands of items used to track and measure price changes in the CPI. The CPI Housing Survey is the nation's primary source of information on residential rent change. For additional information, see related notice published at Vol. 74 FR 28726 on June 17, 2009.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E9–21715 Filed 9–9–09; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Division of Longshore and Harbor Workers' Compensation; Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a 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 Division of Longshore and Harbor Workers' Compensation is soliciting comments concerning its proposal to the Office of Management and Budget (OMB) approval of the Information Collection: Report of Issuance of Policy (LS–570). 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 November 9, 2009.

ADDRESSES: Mr. Steven D. Lawrence, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0292, fax (202) 693–1451, e-mail *Lawrence.Steven@dol.gov*. Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION: I. Background: The form LS–570 is completed by the insurance carrier and forwarded to the Department of Labor for review. The Longshore and Harbor Workers' Compensation staff review the completed LS–570 to identify those operators who have secured insurance for payment of Longshore benefits as required by 20 CFR 703.116. This

feedback will help DOL improve the quality and delivery of compliance assistance tools and services. This generic clearance allows Longshore to gather information from both Federal and non-Federal users.

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:* The Department of Labor is seeking a three-year approval for this new generic information collection.

Type of Review: New collection.

Title: Report of Issuance of Policy (LS–570).

Agency: Division of Longshore and Harbor Workers' Compensation.

OMB Number: 1215–0NEW.

Affected Public: Private Sector Businesses or other for-profits.

Total Respondents: 358.

Total Annual Responses: 100,000.

Estimated Total Burden Hours: 8,333.

Estimated Time per Response: 5 minutes.

Frequency: Annually.

Total Burden Cost (capital/startup): $752.

Total Burden Cost (operating/maintenance): $752.

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: September 3, 2009.

Steven D. Lawrence,

Acting Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning.

[FR Doc. E9–21707 Filed 9–9–09; 8:45 am]

BILLING CODE 4510–CF–P

DEPARTMENT OF LABOR

Office of the Secretary

Bureau of International Labor Affairs; Notice of Publication of the Department of Labor's List of Goods From Countries Produced by Child Labor or Forced Labor

AGENCY: Bureau of International Labor Affairs, Department of Labor.

ACTION: Announcement of public availability of initial list of goods and report of implementation.

SUMMARY: This notice announces the publication of an initial list of goods from countries that the Bureau of International Labor Affairs (''ILAB'') has reason to believe are produced by child labor or forced labor in violation of international standards (''List''). ILAB is required to develop and make available to the public the List pursuant to the Trafficking Victims Protection Reauthorization Act of 2005 (''TVPRA'').

FOR FURTHER INFORMATION CONTACT: Director, Office of Child Labor, Forced Labor, and Human Trafficking, Bureau of International Labor Affairs, U.S. Department of Labor at (202) 693–4843 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: ILAB's Office of Child Labor, Forced Labor, and Human Trafficking (OCFT) carries out the mandates of the TVPRA. For complete information on OCFT's TVPRA activities, please visit the Web site listed below. Previous **Federal Register** notices issued on this subject include: *Notice of Proposed Procedural Guidelines for the Development and Maintenance of the List of Goods From Countries Pursuant to the Trafficking Victims Protection Reauthorization Act of 2005* (72 FR 55808, Oct. 1, 2007); *Notice of Procedural Guidelines for the Development and Maintenance of the List of Goods from Countries Produced by Child Labor or Forced Labor; Request for Information* (72 FR 73375, Dec. 27, 2007); and *Notice of Public Hearing to Collect Information to Assist in the Development of the List of Goods From Countries Produced by Child Labor or Forced Labor* (73 FR 21985, Apr. 23, 2008).

The Secretary of Labor, acting through the Bureau of International Labor Affairs, is mandated by the TVPRA to ''carry out additional activities to monitor and combat forced labor and child labor in foreign countries.'' Section 105(b)(2) of the TVPRA of 2005, 22 U.S.C. 7112(b)(2), listed these activities as:

(A) Monitor the use of forced labor and child labor in violation of international standards;

(B) Provide information regarding trafficking in persons for the purpose of forced labor to the Office to Monitor and Combat Trafficking of the Department of State for inclusion in [the] trafficking in persons report required by section 110(b) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7107(b));

(C) Develop and make available to the public a list of goods from countries that the Bureau of International Labor Affairs has reason to believe are produced by forced labor or child labor in violation of international standards;

(D) Work with persons who are involved in the production of goods on the list described in subparagraph (C) to create a standard set of practices that will reduce the likelihood that such persons will produce goods using the labor described in such subparagraph; and

(E) Consult with other departments and agencies of the United States Government to reduce forced and child labor internationally and ensure that products made by forced labor and child labor in violation of international standards are not imported into the United States.

On December 23, 2008, the Trafficking Victims Protection Reauthorization Act of 2008, 22 U.S.C. 7101 came into force, setting a deadline of January 15, 2010 by which ILAB must produce an initial List and a report of ILAB's implementation of its TVPRA mandates.

ILAB announces the publication of the initial List in a new report, *The Department of Labor's List of Goods Produced by Child Labor or Forced Labor.* The full report, including the List, implementation update, Frequently Asked Questions and a discussion of the List's context, scope, methodology, and limitations, is available at *http://www.dol.gov/ilab/programs/ocft/tvpra.htm.*

Signed at Washington, DC, this 1st day of September 2009.

Sandra Polaski,

Deputy Undersecretary for International Affairs.

[FR Doc. E9–21486 Filed 9–9–09; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2009–0016]

Process Safety Management of Highly Hazardous Chemicals (PSM) Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits public comments concerning its request for an extension of the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Standard on Process Safety Management of Highly Hazardous Chemicals (PSM) (29 CFR 1910.119).

DATES: Comments must be submitted (postmarked, sent, or received) by November 9, 2009.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2009–0016, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number (OSHA–2009–0016) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov*. For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The collections of information in the PSM Standard are necessary for implementing the requirements of the Standard. The information is used by employers to assure that processes using highly hazardous chemicals with the potential for a catastrophic release are operated as safely as possible. The employer must thoroughly consider all facets of a process, as well as the involvement of workers in that process. Employers analyze processes so that they can identify and control problems that could lead to a major release, fire, or explosion.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Standard on Process Safety Management of Highly Hazardous Chemicals (PSM) (29 CFR 1910.119). OSHA is proposing to decrease the existing burden hour estimate for the collection of information requirements specified in the PSM Standard from 47,852,750 hours to 3,632,487 hours (a total reduction of 44,220,263 hours). In determining the burden hours associated with this ICR, OSHA relied on information in the Environmental Protection Agency's (EPA) Risk Management Program (RMP) database to estimate the number of establishments and processes that must comply with the paperwork requirements for the PSM Standard. The RMP showed a reduction in establishments and processes; due mainly to efforts of affected employers to find substitute substances for the PSM chemicals and to reduce inventories of chemicals and flammables, but also because the original estimates by the Agency of the average number of processes per establishment proved to be much higher than can be consistent with, or supported by, data in the RMP database today. In addition, after the PSM rule was promulgated and paperwork packages were updated every three years, OSHA had increased the estimated number of affected establishments proportionately with

increases reported in the number of establishments in an industry over time, without regard to employers reacting to the PSM Standard.

For example, if the number of establishments in an industry increased from 10,000 to 12,000 between 1994 and 2006, OSHA increased the estimated number of PSM-affected establishments in that industry by 20 percent.

Type of Review: Extension of a currently approved collection.

Title: Process Safety Management of Highly Hazardous Chemicals (29 CFR 1910.119).

OMB Number: 1218–0200.

Affected Public: Business or other for-profits; not-for-profit organizations; Federal Government; State, local or Tribal Government.

Number of Respondents: 7,562.

Frequency: On occasion.

Average Time per Response: Varies from three minutes to generate and maintain training certification records to 2,454.4 hours to establish and implement a management-of-change program.

Estimated Total Burden Hours: 3,632,487.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2009–0016). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

Jordan Barab, Acting Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2007 (72 FR 31160).

Signed at Washington, DC, this 31st day of August 2009.

Jordan Barab,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E9–21743 Filed 9–9–09; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of Humanities Panels will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Michael P. McDonald, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* October 1, 2009.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for History of Science and Industry in Preservation and Access Humanities Collection and Reference Resources, submitted to the Division of Preservation and Access at the July 15, 2009 deadline.

2. *Date:* October 8, 2009.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for United States History and Culture I in Preservation and Access Humanities Collection and Reference Resources, submitted to the Division of Preservation and Access at the July 15, 2009 deadline.

3. *Date:* October 14, 2009.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Literature in Preservation and Access Humanities Collection and Reference Resources, submitted to the Division of Preservation and Access at the July 15, 2009 deadline.

4. *Date:* October 20, 2009.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Archaeology and Anthropology in Preservation and Access Humanities Collection and Reference Resources, submitted to the Division of Preservation and Access at the July 15, 2009 deadline.

5. *Date:* October 22, 2009
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for United States History and Culture II in Preservation and Access Humanities Collection and Reference Resources, submitted to the Division of Preservation and Access at the July 15, 2009 deadline.

6. *Date:* October 26, 2009
Time: 9 a.m. to 5 p.m.
Room: 421.
Program: This meeting will review applications for Anthropology in America's Historical and Cultural Organizations Grants Program, submitted to the Division of Public Programs at the August 26, 2009 deadline.

7. *Date:* October 27, 2009.
Time: 9 a.m. to 5 p.m.
Room: 421.
Program: This meeting will review applications for U.S. History in America's Media Makers Grants Program, submitted to the Division of Public Programs at the August 26, 2009 deadline.

8. *Date:* October 27, 2009.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for United States History and Culture III in Preservation and Access Humanities Collection and Reference Resources, submitted to the Division of Preservation and Access at the July 15, 2009 deadline.

9. *Date:* October 28, 2009.
Time: 9 a.m. to 5 p.m.
Room: 421.
Program: This meeting will review applications for World Cultures in America's Media Makers Grants Program, submitted to the Division of Public Programs at the August 26, 2009 deadline.

10. *Date:* October 29, 2009.
Time: 9 a.m. to 5 p.m.
Room: 421.
Program: This meeting will review applications for American and Cultural Studies in America's Historical and Cultural Organizations Grants Program, submitted to the Division of Public Programs at the August 26, 2009 deadline.

11. *Date:* October 29, 2009.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for World Studies I in Preservation and Access Humanities Collection and Reference Resources, submitted to the Division of Preservation and Access at the July 15, 2009 deadline.

12. *Date:* October 30, 2009.
Time: 9 a.m. to 5 p.m.
Room: 421.
Program: This meeting, which will be by teleconference, will review applications for Projects in Libraries and Community Centers in America's Historical and Cultural Organizations Grants Program, submitted to the Division of Public Programs at the August 26, 2009 deadline.

Michael P. McDonald,
Advisory Committee, Management Officer.
[FR Doc. E9–21900 Filed 9–9–09; 8:45 am]
BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 13, 2009. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

Permit Application No. 2010–011

1. *Applicant:* Daniel P. Costa, Department of Ecology and Evolutionary Biology, University of California Santa Cruz, Long Marine Lab, 100 Shaffer Road, Santa Cruz, CA 95060.

Activity for Which Permit Is Requested

Take and Enter Antarctic Specially Protected Areas. The applicant plans to enter Cape Crozier (ASPA 124), Beaufort Island (ASPA 105), New College Valley, Caughley Beach, Cape Bird (ASPA 116), Cape Royds (ASPA 121), Northwest White Island (ASPA 137), Botany Bay (ASPA 154), Cape Evans (ASPA 155), Backdoor Bay, Cape Royds (ASPA 157), Terra Nova Bay (ASPA 161), and Edmonson Point, Wood Bay (ASPA 165) to locate seals. Up to 40 Weddell, Crabeater, Ross, Leopard and Elephant seal pups will be captured annually and will be instrumented with Sea Mammal Research Units (SMRU) Conductivity-Temperature-Depth Satellite Relay Data Logger (CTD–SRDL) tags to monitor overwinter dive behaviors and oceanography. The tags will be applied with epoxy. In addition, the seals will be flipper tagged, dye marked, blood, tissue and whisker samples collected, weighed, length and girth measured, and body condition determined by morphometric measurements.

Location

Cape Crozier (ASPA 124), Beaufort Island (ASPA 105), New College Valley, Caughley Beach, Cape Bird (ASPA 116), Cape Royds (ASPA 121), Northwest White Island (ASPA 137), Botany Bay (ASPA 154), Cape Evans (ASPA 155), Backdoor Bay, Cape Royds (ASPA 157), Terra Nova Bay (ASPA 161), and Edmonson Point, Wood Bay (ASPA 165).

Dates

January 1, 2010 to December 31, 2012.

Nadene G. Kennedy,
Permit Officer, Office of Polar Programs.
[FR Doc. E9–21795 Filed 9–9–09; 8:45 am]
BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic

Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 13, 2009. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

1. *Applicant*, Permit Application No. 2010–010, Christopher A. Linder, 6548 31st Ave., NE., Seattle, WA 98115.

Activity for Which Permit Is Requested

Enter Antarctic Specially Protected Areas. The applicant plans to enter Cape Crozier (ASPA 124) and New College Valley, Caughley Beach, Cape Bird (ASPA 116) to take still photographs, video and audio recordings to document the natural history of the South Polar Skuas nesting in these two locations near penguin rookeries.

Location

Cape Crozier (ASPA 124) and New College Valley, Caughley Beach, Cape Bird (ASPA 116).

Dates

December 1, 2009 to January 31, 2010.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. E9–21728 Filed 9–9–09; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–34325; NRC–2009–0392]

Notice of Environmental Assessment Related to the Issuance of a License Amendment to Master Materials License 03–23853–01va, for Unrestricted Release of Two Buildings at Veterans Affairs Facility in Iowa City, IA

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

FOR FURTHER INFORMATION CONTACT: Katie Streit, Health Physicist, Materials Control, ISFSI, and Decommissioning Branch, Division of Nuclear Materials Safety, Region III, U.S. Nuclear Regulatory Commission, 2443 Warrenville Road, Lisle, Illinois 60532; Telephone: (630) 829–9621; fax number: (630) 515–1259; or by e-mail at *Katherine.Streit@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend a materials permit held under Master Byproduct Materials License No. 03–23853–01VA. The permit is held by the Department of Veterans Affairs (the Licensee), for its Veteran Affairs (VA) Medical Center located in Iowa City, Iowa. Issuance of the amendment would authorize release of Buildings 3 and 28 (the Facilities) for unrestricted use. The Licensee will continue its operation of other facilities under this permit and its master materials license. The Licensee requested this action in a letter dated March 19, 2009 (ML090910183). The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10, Code of Federal Regulations (CFR), Part 51 (10 CFR Part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The amendment will be issued to the Licensee following the publication of this FONSI and EA in the **Federal Register**.

II. Environmental Assessment

Identification of Proposed Action

The proposed action would approve the Licensee's March 19, 2009, materials permit amendment request, resulting in release of the Facilities for unrestricted use. License No. 03–23853–01VA was issued on March 17, 2003, pursuant to 10 CFR Parts 30 and 35, and has been amended periodically since that time. This master license authorizes the Licensee to use byproduct materials at several Licensee facilities around the country, as authorized on a site-specific basis by permits issued by the Licensee's National Radiation Safety Committee. Under the license, the permits authorize the use of by-product materials for various medical and veterinary purposes, and for portable gauges.

Under the master materials license permit, buildings 3 and 28 were used as two research labs located at the VA Medical Center in Iowa City, IA. Building 3 is a two-story building containing 28301 gross square feet of space. Building 28 is a one-story building containing 6099 gross square feet of space. Radioactive materials were used for non-medical research starting in 1980 for Building 3 and in 1987 for Building 28. Both buildings contained research laboratories, office space, and other mechanical support areas. Building 3 additionally contained laboratory ventilation exhaust fans, chemical diffusers, and storage space. The licensee ceased licensed activities at the Facilities in the spring of 2007 and conducted a final status survey and decontamination of the facilities in August 2007.

Based on the licensee's historical knowledge of the site and the conditions of Buildings 3 and 28, the licensee determined that only routine decontamination activities, in accordance with their NRC approved, operating radiation safety procedures, were required. The licensee was not required to submit a decommissioning plan the NRC because worker cleanup activities and procedures are consistent with those approved for routine operations. The licensee conducted surveys of Buildings 3 and 28 and provided information to the NRC to demonstrate that Buildings 3 and 28 meet the criteria in Subpart E of 10 CFR Part 20 for unrestricted release.

Need for the Proposed Action

The licensee has ceased conducting licensed activities at the facilities, and

seeks the unrestricted use of Buildings 3 and 28.

Environmental Impacts of the Proposed Actions

The historical review of the licensed research activities conducted in Buildings 3 and 28 shows that the following radionuclides with half-lives greater than 120 days were used: Hydrogen-3, Carbon-14, Sodium-22, Calcium-45, Cobalt-57, Cadmium-109, Gadolinium-151 and Gadolinium-153. Prior to performing the final status survey, the Licensee conducted decontamination activities, as necessary, in the areas of Buildings 3 and 28 affected by these radionuclides.

The licensee conducted a final status survey during August 2007 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML090910316, ML090910669, ML090910721, ML090910727). The final status survey report was attached to the Licensee's amendment request dated March 19, 2009. The licensee elected to demonstrate compliance with the radiological criteria for unrestricted use as specified in 10 CFR 20.1402 by setting the Derived Concentration Guideline Limits (DCGLs) to the surface contamination levels in unrestricted areas as described in NUREG–1556, ''Consolidated Guidance About Material Licenses'' Volume 9, Appendix R, Table R.3. The licensee used the surface contamination levels in unrestricted areas to satisfy the NRC requirement in Subpart E of 10 CFR Part 20 for unrestricted use. The licensee's final status survey results were below the DCGLs and are in compliance with the As Low As Reasonably Achievable (ALARA) requirement of 10 CFR 20.1402. The NRC thus finds that the licensee's final status survey results are acceptable.

Based on its review, the staff has determined that the affected environment and any environmental impacts associated with the proposed action are bounded by the impacts evaluated by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities'' (NUREG–1496) Volumes 1–3 (ML042310492, ML042320379, and ML042330385). The staff finds there were no significant environmental impacts from the use of radioactive material within Buildings 3 and 28. The NRC staff reviewed the docket file records and the final status survey report to identify any non-radiological hazards that may have impacted the environment surrounding the buildings. No such hazards or impacts to the environment were identified. The NRC has identified no other radiological or non-radiological activities in the area that could result in cumulative environmental impacts.

The NRC staff finds that the proposed release of Buildings 3 and 28 for unrestricted use is in compliance with 10 CFR 20.1402. Based on its review, the staff considered the impact of the residual radioactivity from Buildings 3 and 28 and concluded that the proposed action will not have a significant effect on the quality of the environment.

Environmental Impacts of the Alternatives to the Proposed Action

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff considered is the no-action alternative, under which the staff would leave things as they are by simply denying the amendment request. This no-action alternative is not feasible because it conflicts with 10 CFR 30.36(d) requiring that decommissioning of byproduct material facilities be completed and approved by the NRC after licensed activities cease. The NRC's analysis of the licensee's final status survey data confirmed that Buildings 3 and 28 meet the requirements of 10 CFR 20.1402 for unrestricted use. Additionally, denying the amendment request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are therefore similar, and the no-action alternative is accordingly not further considered.

Conclusion

The NRC staff has concluded that the proposed action is consistent with the NRC's unrestricted use criteria specified in 10 CFR 20.1402. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

Agencies and Persons Consulted

On July 27, 2009, the NRC provided a draft of this EA to the State of Iowa, Iowa Department of Public Health, Bureau of Radiological Health. The State responded during phone conversation on August 10, 2009, and had no comment or questions regarding the EA.

The NRC staff has determined that the proposed action is of a procedural nature and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's 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 Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* The documents related to this action are listed below, along with their ADAMS accession numbers.

1. National Health Physics Program Request for Decommissioning for Unrestricted Release of Buildings 3 & 28 for Demolition, dated March 19, 2009 (ADAMS Accession No. ML090910183).
2. Radiological Assessment of the Department of Veterans Affairs Medical Center Deconstruct Buildings 3 and 28, Iowa City, IA, Volume 1, dated August 26, 2008 (ADAMS Accession No. ML090910316).
3. Radiological Assessment of the Department of Veterans Affairs Medical Center Deconstruct Buildings 3 and 28, Iowa City, IA, Volume 2, dated August 26, 2008 (ADAMS Accession No. ML090910669).
4. Radiological Assessment of the Department of Veterans Affairs Medical Center Deconstruct Buildings 3 and 28, Iowa City, IA, Volume 3, dated August 26, 2008 (ADAMS Accession No. ML090910721).
5. Radiological Assessment of the Department of Veterans Affairs Medical Center Deconstruct Buildings 3 and 28, Iowa City, IA, Volume 4, dated August 26, 2008 (ADAMS Accession No. ML090910727).

6. Title 10 Code of Federal Regulations, Part 20, Subpart E, ''Radiological Criteria for License Termination.''

7. Title 10 Code of Federal Regulations, Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Function.''

8. NUREG–1556, ''Consolidated Guidance about Material Licenses,'' Volume 9.

9. NUREG–1757, ''Consolidated Decommissioning Guidance.''

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 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Lisle, Illinois, this 24th day of August 2009.

For the Nuclear Regulatory Commission.

Christine A. Lipa,

Branch Chief, Materials Control, ISFSI, and Decommissioning Branch, Division of Nuclear Materials Safety, Region III.

[FR Doc. E9–21854 Filed 9–9–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–157; NRC–2009–0382]

Notice of Opportunity To Request a Hearing for License Renewal Application From the University of Texas at Austin and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) and Safeguards Information (SGI) for Contention Preparation

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of license renewal application and opportunity to request a hearing.

DATES: A request for a hearing must be filed by November 9, 2009.

FOR FURTHER INFORMATION CONTACT: Rafael L. Rodriguez, Project Manager, Fuel Manufacturing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop EBB–2–C40M, Washington, DC 20555–0001, Telephone: (301) 492–3111; Fax number: (301) 492–3363; e-mail: *Rafael.Rodriguez@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) has received, by letter dated December 13, 2007, an application from the University of Texas at Austin (UT or licensee) requesting renewal of its Special Nuclear Materials License No. SNM–180. License No. SNM–180 authorizes the licensee to receive title to, own, acquire, receive, possess, use, and transfer plutonium and uranium enriched up to 20% wt. The licensee will use the licensed material to supplement its training and instruction programs in the field of nuclear engineering. The licensed material will be used in the UT Nuclear Engineering Teaching Laboratory located at the University's J.J. Pickle Research Campus (formerly known as the Balcones Research Center).

An administrative review, documented in a letter to UT dated February 26, 2008, found the application acceptable to begin a formal technical review. If the NRC approves the application, SNM–180 will be renewed for a period of 10 years. However, before approving the proposed renewal, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment or Environmental Impact Statement.

II. Opportunity To Request a Hearing

The NRC hereby provides notice that this is a proceeding on an application to renew License No. SNM–180 for the University of Texas at Austin. Any person whose interest may be affected by this proceeding and who desires to participate as a party, must file a request for a hearing and a specification of the contentions which the person seeks to have litigated in the hearing, in accordance with the NRC E-Filing rule, which the NRC promulgated on August 28, 2007 (72 FR 49139). All documents filed in NRC adjudicatory proceedings, including documents filed by interested governmental entities participating under 10 CFR 2.315(c) and any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, must be filed in accordance with the E-Filing rule. The E-Filing rule requires participants to submit and serve documents over the Internet or, in some cases, to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *Hearing.Docket@nrc.gov,* or by calling (301) 415–1677, to request: (1) A digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m., Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID

certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory e-filing system may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC Meta-System Help Desk, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays. The Meta-System Help Desk can be contacted by telephone at 1–866–672–7640 or by e-mail at *MSHD.Resource@nrc.gov.*

Participants who believe that they have a good cause for not submitting documents electronically must, in accordance with 10 CFR 2.302(g), file a motion with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include social security numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

The formal requirements for documents contained in 10 CFR 2.304(c)–(e) must be met. If the NRC grants an electronic document exemption in accordance with 10 CFR 2.302(g)(3)), then the requirements for paper documents, set forth in 10 CFR 2.304(b) must be met.

In accordance with 10 CFR 2.309(b), a request for a hearing must be filed by November 9, 2009.

In addition to meeting other applicable requirements of 10 CFR 2.309, a request for a hearing must state:

1. The name, address, and telephone number of the requester;
2. The nature of the requester's right under the Act to be made a party to the proceeding;
3. The nature and extent of the requester's property, financial or other interest in the proceeding;
4. The possible effect of any decision or order that may be issued in the proceeding on the requester's interest; and
5. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.309(b).

In accordance with 10 CFR 2.309(f)(1), a request for hearing or petition for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

1. Provide a specific statement of the issue of law or fact to be raised or controverted;
2. Provide a brief explanation of the basis for the contention;
3. Demonstrate that the issue raised in the contention is within the scope of the proceeding;
4. Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action that is involved in the proceeding;
5. Provide a concise statement of the alleged facts or expert opinions which support the requester's/petitioner's position on the issue and on which the requester/petitioner intends to rely to support its position on the issue; and
6. Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.

In addition, in accordance with 10 CFR 2.309(f)(2), contentions must be based on documents or other information available at the time the petition is to be filed, such as the application or other supporting document filed by an applicant or licensee, or otherwise available to the petitioner. The requester/petitioner may amend those contentions or file new contentions if there are data or conclusions in the NRC documents that differ significantly from the data or conclusions in the applicant's documents. Otherwise, contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer.

Requesters/petitioners should, when possible, consult with each other in preparing contentions and combine similar subject matter concerns into a joint contention, for which one of the co-sponsoring requesters/petitioners is designated the lead representative. Further, in accordance with 10 CFR 2.309(f)(3), any requester/petitioner that wishes to adopt a contention proposed by another requester/petitioner must do so, in accordance with the E–Filing rule, within ten days of the date the contention is filed, and designate a representative who shall have the authority to act for the requester/petitioner.

In accordance with 10 CFR 2.309(g), a request for hearing and/or petition for leave to intervene may also address the selection of the hearing procedures, taking into account the provisions of 10 CFR 2.310.

III. Further Information

Documents related to this action, including the application for renewal and other supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agency wide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are:

1. *ML080240243:* Non-Sensitive License Renewal Application for SNM–180 (License No. SNM–180; Docket No. 70–157).
2. *ML080420575:* Acceptance of the University of Texas-Austin's License Renewal Application and Notice of Timely Renewal Status (TAC L32659).
3. *ML092030534:* Response to Request for Additional Information in Support of License Renewal Application for SNM–180.
4. *ML092030533:* Revised Non-Sensitive License Renewal Application for SNM–180 (License No. SNM–180; Docket No. 70–157).

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 1–800–397–4209, 301–415–4737 or by e-mail to *PDR.Resource@nrc.gov.*

These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) and Safeguards Information (SGI) for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing sensitive unclassified information (including Sensitive Unclassified Non-Safeguards Information (SUNSI) and Safeguards Information (SGI)). Requirements for access to SGI are primarily set forth in 10 CFR Parts 2 and 73. The intent of this Order is to make those requirements more specific to this proceeding; however, nothing in this Order is intended to conflict with the SGI regulations.

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party as defined in 10 CFR 2.4 who believes access to SUNSI or SGI is necessary for a response to the notice may request access to SUNSI or SGI. A ''potential party'' is any person who intends or may intend to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI or SGI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requester shall submit a letter requesting permission to access SUNSI and/or SGI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCMailCenter.Resource@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice of license renewal application and opportunity to request a hearing;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.1);

(3) If the request is for SUNSI, the identity of the individual or entity requesting access to SUNSI and the requester's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention;

(4) If the request is for SGI, the identity of each individual who would have access to SGI if the request is granted, including the identity of any expert, consultant, or assistant who will aid the requester in evaluating the SGI. In addition, the request must contain the following information:

(a) A statement that explains each individual's ''need to know'' the SGI, as required by 10 CFR 73.2 and 10 CFR 73.22(b)(1). Consistent with the definition of ''need to know'' as stated in 10 CFR 73.2, the statement must explain:

(i) Specifically why the requestor believes that the information is necessary to enable the requestor to proffer and/or adjudicate a specific contention in this proceeding;[2] and

(ii) The technical competence (demonstrable knowledge, skill, training or education) of the requester to effectively utilize the requested SGI to provide the basis and specificity for a proffered contention. The technical competence of a potential party or its counsel may be shown by reliance on a qualified expert, consultant, or assistant who satisfies these criteria.

(b) A completed Form SF–85, ''Questionnaire for Non-Sensitive Positions'' for each individual who would have access to SGI. The completed Form SF–85 will be used by the Office of Administration to conduct the background check required for access to SGI, as required by 10 CFR Part 2, Subpart G, and 10 CFR 73.22(b)(2), to determine the requestor's trustworthiness and reliability. For security reasons, Form SF–85 can only be submitted electronically through the electronic questionnaire for investigations processing (e-QIP) Web site, a secure Web site that is owned and operated by the Office of Personnel Management. To obtain online access to the form, the requester should contact the NRC's Office of Administration at 301–492–3524.[3]

(c) A completed Form FD–258 (fingerprint card), signed in original ink, and submitted in accordance with 10 CFR 73.57(d). Copies of Form FD–258 may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–001, by calling (301) 415–7232 or (301) 492–7311, or by e-mail to Forms.Resource@nrc.gov. The fingerprint card will be used to satisfy the requirements of 10 CFR Part 2, 10 CFR 73.22(b)(1), and Section 149 of the Atomic Energy Act of 1954, as amended, which mandates that all persons with access to SGI must be fingerprinted for an FBI identification and criminal history records check;

(d) A check or money order payable in the amount of $ 200.00[4] to the U.S. Nuclear Regulatory Commission for each individual for whom the request for access has been submitted, and

(e) If the requester or any individual who will have access to SGI believes they belong to one or more of the categories of individuals that are exempt from the criminal history records check and background check requirements, as stated in 10 CFR 73.59, the requestor should also provide a statement specifically stating which exemption the requestor is invoking, and explaining the requestor's basis for believing that the exemption is applicable. While processing the request, the Office of Administration, Personnel Security Branch, will make a final determination whether the stated exemption applies.

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI and/or SGI under these procedures should be submitted as described in this paragraph.

[2] Broad SGI requests under these procedures are unlikely to meet the standard for need to know; furthermore, staff redaction of information from requested documents before their release may be appropriate to comport with this requirement. These procedures do not authorize unrestricted disclosure or less scrutiny of a requester's need to know than ordinarily would be applied in connection with an already-admitted contention or non-adjudicatory access to SGI.

[3] The requester will be asked to provide his or her full name, social security number, date and place of birth, telephone number, and e-mail address. After providing this information, the requester usually should be able to obtain access to the online form within one business day.

[4] This fee is subject to change pursuant to the Office of Personnel Management's adjustable billing rates.

Alternatively, the requestor may contact the Office of Administration for an evaluation of their exemption status prior to submitting their request. Persons who are exempt from the background check are not required to complete the SF–85 or Form FD–258, however, all other requirements for access to SGI, including the need to know, are still applicable.

Note: Copies of documents and materials required by paragraphs C.4)(b), (c), and (d) of this Order must be sent to the following address: Office of Administration, U.S. Nuclear Regulatory Commission, Personnel Security Branch, Mail Stop TWB–05–B32M, Washington, DC 20555–0012.

These documents and materials should not be included with the request letter to the Office of the Secretary, but the request letter should state that the forms and fees have been submitted as required above.

D. To avoid delays in processing requests for access to SGI, the requestor should review all submitted materials for completeness and accuracy (including legibility) before submitting them to the NRC. The NRC will return incomplete packages to the sender without processing.

E. Based on an evaluation of the information submitted under paragraphs C.3) or C.4) above, as applicable, the NRC staff will determine within 10 days of receipt of the written access request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI or need to know the SGI requested.

F. For requests for access to SUNSI, if the NRC staff determines that the requestor satisfies both (E.1) and (E.2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but not be limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order [5] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

G. For requests for access to SGI, if the NRC staff determines that the requestor has satisfied both (E.1) and (E.2) above, the Office of Administration will then determine, based upon completion of the background check, whether the proposed recipient is trustworthy and reliable, as required for access to SGI by 10 CFR 73.22(b). If the Office of Administration determines that the individual or individuals are trustworthy and reliable, the NRC will promptly notify the requestor in writing. The notification will provide the names of approved individuals as well as the conditions under which the SGI will be provided. Those conditions may include, but not be limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order [6] by each individual who will be granted access to SGI.

H. *Release and Storage of SGI.* Prior to providing SGI to the requestor, the NRC staff will conduct (as necessary) an inspection to confirm that the recipient's information protection system is sufficient to satisfy the requirements of 10 CFR 73.22. Alternatively, recipients may opt to view SGI at an approved SGI storage location rather than establish their own SGI protection program to meet SGI protection requirements.

I. *Filing of Contentions.* Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI or SGI must be filed by the requestor no later than 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.

J. Review of Denials of Access

(1) If the request for access to SUNSI or SGI is denied by the NRC staff either after a determination on standing and need to know, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) Before the Office of Administration makes an adverse determination regarding the proposed recipient(s) trustworthiness and reliability for access to SGI, the Office of Administration, in accordance with 10 CFR 2.705(c)(3)(iii), must provide the proposed recipient(s) any records that were considered in the trustworthiness and reliability determination, including those required to be provided under 10 CFR 73.57(e)(1), so that the proposed recipient is provided an opportunity to correct or explain information.

(3) The requester may challenge the NRC staff's adverse determination with respect to access to SUNSI by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

(4) The requester may challenge the NRC staff's or Office of Administration's adverse determination with respect to access to SGI by filing a request for review in accordance with 10 CFR 2.705(c)(3)(iv). Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311.

K. *Review of Grants of Access.* A party other than the requester may challenge an NRC staff determination granting access to SUNSI or SGI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[7]

L. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI or SGI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners

[5] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[6] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SGI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 180 days of the deadline for the receipt of the written access request.

[7] As of October 15, 2007, the NRC's final ''E–Filing Rule'' became effective. See Use of Electronic Submissions in Agency Hearings (72 FR 49139; August 28, 2007). Requesters should note that the filing requirements of that rule apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI/SGI requests submitted to the NRC staff under these procedures.

who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 3rd day of September, 2009.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION (SUNSI) AND SAFEGUARDS INFORMATION (SGI) IN THIS PROCEEDING

Day	Event/activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) and/or Safeguards Information (SGI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding; demonstrating that access should be granted (*e.g.,* showing technical competence for access to SGI); and, for SGI, including application fee for fingerprint/background check.
20	Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows (1) need for SUNSI or (2) need to know for SGI. (For SUNSI, NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents). If NRC staff makes the finding of need to know for SGI and likelihood of standing, NRC staff begins background check (including fingerprinting for a criminal history records check), information processing (preparation of redactions or review of redacted documents), and readiness inspections.
25	If NRC staff finds no "need," no "need to know," or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI and/or SGI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
190	(Receipt +180) If NRC staff finds standing, need to know for SGI, and trustworthiness and reliability, deadline for NRC staff to file motion for Protective Order and draft Non-disclosure Affidavit (or to make a determination that the proposed recipient of SGI is not trustworthy or reliable). Note: Before the Office of Administration makes an adverse determination regarding access to SGI, the proposed recipient must be provided an opportunity to correct or explain information.
205	Deadline for petitioner to seek reversal of a final adverse NRC staff determination either before the presiding officer or another designated officer.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI and/or SGI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI and/or SGI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI and/or SGI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. E9–21893 Filed 9–9–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0296]

Exelon Corporation and NRG South Texas LP; Notice of Withdrawal of Application for Indirect Transfer of Control of Facility Operating Licenses South Texas Project, Units 1 and 2

The U.S. Nuclear Regulatory Commission (the Commission, NRC) has granted the request of Exelon Corporation (the applicant, Exelon) to withdraw its January 29, 2009, application, as supplemented by letter dated March 18, 2009, for the proposed indirect transfer of control of the following Facility Operating Licenses:

NRG South Texas LP (NRG South Texas) Units:

South Texas Project (STP), Units 1 and 2, Facility Operating License Nos. NPF–76 and NPF–80.

Exelon Generation Company, LLC (Exelon Generation Company) Units:

Braidwood Station, Units 1 and 2, Facility Operating License Nos. NPF–72 and NPF–77;

Byron Station, Units 1 and 2, Facility Operating License Nos. NPF–37 and NPF–66;
Clinton Power Station, Facility Operating License No. NPF–62;
Dresden Nuclear Power Station, Units 1, 2 and 3, Facility Operating License No. DPR–2 and Renewed Facility Operating License Nos. DPR–19 and DPR–25;
LaSalle County Station, Units 1 and 2, Facility Operating License Nos. NPF–11 and NPF–18;
Limerick Generating Station, Units 1 and 2, Facility Operating License Nos. NPF–39 and NPF–85;
Oyster Creek Generating Station, Facility Operating License No. DPR–16;
Peach Bottom Atomic Power Station, Units 1, 2 and 3, Facility Operating License No. DPR–12 and Renewed Facility Operating License Nos. DPR–44 and DPR–56;
Quad Cities Nuclear Power Station, Units 1 and 2, Renewed Facility Operating License Nos. DPR–29 and DPR–30;
Salem Generating Station, Units 1 and 2, Facility Operating License Nos. DPR–70 and DPR–75;
Three Mile Island Nuclear Station, Unit 1, Facility Operating License No. DPR–50; and
Zion Nuclear Power Station, Units 1 and 2, Facility Operating License Nos. DPR–39 and DPR–48.

The application sought NRC's consent to the indirect transfer of control of the NRC licenses for NRG South Texas' 44 percent ownership interest in STP, Units 1 and 2, and to the extent required, the Exelon Generation Company facilities' licenses as described in Exelon's January 29, 2009, application and supplemental letter dated March 18, 2009. As described in the application, the indirect transfer of STP would have occurred in connection with Exelon's plan to acquire control of NRG South Texas' parent, NRG Energy, Inc. (NRG), through a tender offer. A Notice of Hearing has not been issued subject to the application. This action relates to application for indirect transfer of control of licenses of STP, Units 1 and 2. The action related to Exelon's application for indirect transfer of Exelon Generation Company's units listed above is addressed in a separate action.

The Commission had previously issued Notice of Consideration of Approval of Application regarding proposed merger of NRG Energy, Inc. and Exelon Corporation published in the **Federal Register** on July 9, 2009 (74 FR 32967). However, by letter dated July 30, 2009, the applicant withdrew its application.

For further details with respect to this action, see the application dated January 29, 2009, as supplemented by letter dated March 18, 2009, the licensee's letter dated July 30, 2009, which withdrew the application, and the Commission's separate action for Exelon Generation Company's units, which is being published in the **Federal Register** in parallel with this action.

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr.resource@nrc.gov*.

Dated at Rockville, Maryland, this 1st day of September 2009.

For the Nuclear Regulatory Commission.

Mohan C. Thadani,

Senior Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–21857 Filed 9–9–09; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

Dealer Floor Plan Pilot Initiative

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice of re-opening of comment period.

SUMMARY: On July 6, 2009, SBA published a notice in the **Federal Register** creating a new pilot loan initiative called the Dealer Floor Plan Pilot Initiative. This pilot initiative gives SBA the ability to offer 7(a) guaranties to participating lenders on floor plan lines of credit when structured under SBA requirements from July 1, 2009 through September 30, 2010. The Agency provided for a 30-day comment period when it published the Notice. This comment period closed August 5, 2009. SBA is re-opening the comment period for an additional 45 days.

DATES: Comments must be received on or before October 26, 2009.

ADDRESSES: You may submit comments, identified by SBA docket number SBA–2009–0009, by any of the following methods:

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

Mail: Dealer Floor Plan Pilot Initiative Comments—Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW., Suite 8300, Washington, DC 20416.

Hand Delivery/Courier: Grady Hedgespeth, Director, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW., Suite 8300, Washington, DC 20416.

SBA will post all comments on *http://www.regulations.gov*. If you wish to submit confidential business information (CBI) as defined in the User Notice at *http://www.regulations.gov*, please submit the information to Grady Hedgespeth, Director, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW., Suite 8300, Washington, DC 20416, or send an e-mail to *dealerfloorplancomments@sba.gov*. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Sloan Coleman, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW., Suite 8300, Washington, DC 20416; (202) 205–7737; *w.coleman@sba.gov*.

SUPPLEMENTARY INFORMATION: On July 6, 2009, SBA published a notice in the **Federal Register** announcing the creation of the Dealer Floor Plan Pilot Initiative. (74 FR 32006) The announcement of this pilot initiative generated a significant level of interest among those small businesses and lenders that traditionally utilize floor plan financing. Given the scope of the proposal and the nature of the issues raised by the comments received to date, SBA believes that affected parties need more time to review the proposal and prepare their comments. As a result, SBA is re-opening the comment period for an additional 45 days.

Questions on the Dealer Floor Plan Pilot Initiative may be directed to the Lender Relations Specialist in the local SBA district office.

The local SBA district office may be found at *http://www.sba.gov/localresources/index.html*.

Authority: 15 U.S.C. 636(a)(25) and 13 CFR 120.3.

Walter C. Intlekofer,

Acting Director, Office of Financial Assistance.

[FR Doc. E9–21891 Filed 9–9–09; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Super Nova Resources, Inc.; Order of Suspension of Trading

September 8, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Super Nova Resources, Inc. because questions have arisen regarding the trading in the company's stock, and the accuracy and adequacy of publicly available information concerning, among other things, the company's business operations.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT, on September 8, 2009, through 11:59 p.m. EDT, on September 21, 2009.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–21924 Filed 9–8–09; 11:15 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60618; File No. SR–NYSE–2009–82]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Amending Certain Provisions of Exchange Rule 1600 To Align the Rule With the Technology and Functionality of the NYBX Facility in Relation to an NYBX Order's Ability To Interact With Non-Displayed Contra Side Liquidity in the NYSE Display Book® and To Clarify the Processing of NYBX Orders That Have An Optional, User-Defined Minimum Triggering Volume

September 3, 2009.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 12, 2009, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange has designated the proposed rule change ''non-controversial'' and eligible for immediate effectiveness pursuant to Section 19(b)(3)(A)(iii) of the Act [4] and Rule 19b–4(f)(6) thereunder.[5] On September 1, 2009, the Exchange filed Amendment No. 1.[6] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain provisions of Exchange Rule 1600 (New York Block Exchange℠) (''NYBX℠'' or the ''facility'') to align the Rule with the technology and functionality of the NYBX facility in relation to an NYBX order's ability to interact with non-displayed contra side liquidity in the NYSE Display Book® (''Display Book'' or ''DBK'') and to clarify the processing of NYBX orders that have an optional, user-defined Minimum Triggering Volume (''MTV''). The proposed amendment also includes clarifying language, additional definitions of terms found in Regulation NMS [7] and adds technical changes to correct the numbering of certain subsections. This Amendment No. 1 of SR–NYSE–2009–82 replaces the previous filing in its entirety. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The NYBX is an electronic facility of the Exchange that provides continuous execution of all NYBX orders in NYSE-listed securities with the aggregate of all orders in the NYBX facility and displayed and non-displayed orders in the DBK. Orders entered into the NYBX facility are non-displayed orders. NYBX orders may be subject to certain conditions that can affect their ability to be executed. One type of condition is a minimum size desired for execution, known as the MTV. Executions on the NYBX will not trade through a protected quotation of an automated trading center.

The Exchange seeks to amend Exchange Rule 1600 to clarify the functionality of the NYBX facility in relation to an NYBX order's ability to execute with aggregated non-displayed contra side liquidity in the DBK. An automated market data feed into the NYBX facility enables the facility to read non-displayed liquidity in the DBK (''hidden data feed'') and triggers the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(f)(6).

[6] Amendment No. 1 added clarifying language to the proposed rule text and made corresponding changes to the proposal.

[7] The terms ''protected quotations'' and ''trade through'' have the same meaning as defined in Rule 600 of Regulation NMS. These terms have been added to the definition section of Rule 1600 in the proposed amendment (see proposed subsections (b)(2)(F) and (b)(2)(I)). The proposed rule change does not impact the facility's consideration of all protected quotations of automated trading centers.

routing of NYBX orders to the DBK whenever the MTV can be met by the aggregate of displayed and non-displayed contra side liquidity as described in subsection (c)(3)(B)(ii)(I) of Rule 1600 (''MTV Calculations''). It is important to note that unless the NYBX order's MTV can be met, an NYBX order will not attempt to execute with available contra side liquidity.

In addition to the non-displayed liquidity of reserve orders [8] entered on the NYSE, the non-displayed liquidity in the DBK includes the Designated Market Maker's (''DMM'') Capital Commitment Schedule (''CCS'').[9] CCS is a liquidity schedule established at various price points at which the DMM is willing to interact with incoming contra side orders and possibly provide price improvement to orders in the DBK, including NYBX orders that are routed to the DBK. DMMs commit this predetermined CCS interest through a DMM algorithm.

Because the hidden data feed cannot read the CCS interest in the DMMs' algorithms, CCS interest is not considered in the MTV calculation. Nevertheless, when the MTV is otherwise met, CCS interest may attempt to execute with NYBX orders when they enter the DBK at any price point. CCS interest may attempt to execute with an NYBX order each time the order, whether the originating order or a residual order, is routed from the NYBX facility to the DBK. The interaction of NYBX orders with DBK contra side liquidity and available contra side CCS interest is discussed more fully below (*see also* Example Nos. 1A and 4).

To enable an NYBX order to execute with non-displayed liquidity in the DBK, the NYBX facility has been configured to automatically over-size NYBX orders that are routed from the facility to the DBK, thereby allowing such orders to attempt to execute with available contra side displayed and non-displayed liquidity in the DBK and with available contra side CCS interest. ''Over-sizing'' is an automated function whereby the NYBX facility sends the entire NYBX order to the DBK. This occurs when the MTV is met and the DBK has available contra side liquidity and there is no better priced contra side liquidity in the NYBX facility.

The amendment will also clarify that an unrestricted MTV calculation, as described in subsection (c)(3)(B)(ii)(I) of Rule 1600 (''MTV Calculations''), will not include the available contra side liquidity in automated trading centers unless the execution of the NYBX order may potentially trade through a protected quotation in the NYBX facility or in the DBK. Therefore, even if a customer designated an NYBX order with an unrestricted MTV, the facility will not consider available contra side liquidity in other automated trading centers when calculating the MTV unless the execution of that order may potentially trade through a protected quotation.

NYBX Compliance With Regulation NMS

NYBX orders will not trade through a Protected Bid or Protected Offer except as allowed by Rule 611 of Regulation NMS. If the execution of an NYBX order may potentially trade through an automated trading center, the NYBX facility will immediately send routing instructions to the NYSE Routing Broker [10] (''Routing Broker'') and the Routing Broker will immediately route the applicable volume (*e.g.,* the price and size of the displayed quotation) to the automated trading center to attempt to execute with applicable protected quotations. If the order is larger than the amount routed to the automated trading center, the portion of the NYBX order that was not routed to the automated trading center is sent to the DBK to attempt to execute with displayed and non-displayed contra side liquidity in the DBK and with available contra side CCS interest. The routing of orders from the NYBX facility to automated trading centers, via the Routing Broker, occurs almost simultaneously with the sending of orders to the DBK or executions of orders in the NYBX facility.

Also, when there is a potential trade through of a protected quotation and the applicable portion of an NYBX order is routed to the automated trading center in compliance with Regulation NMS, the NYBX facility will not provide price improvement, as a delay in routing may cause an inadvertent trade through of protected quotations should the quotations change in the meantime.

NYBX Order Execution Sequence

NYBX orders will first attempt to execute against all available contra side liquidity in the DBK (displayed and non-displayed) and with any available contra side CCS interest at a price that is equal to or better than the limit price of the NYBX order. The NYBX order will be oversized and routed to the DBK at a price equal to: (a) The best price of contra side liquidity available in the NYBX Facility, or (b) the best price of contra side liquidity available in the DBK, whichever price is superior, and attempt to execute in the DBK until the order is exhausted or until the available contra side liquidity in the DBK is exhausted.

However, when the NYBX facility has available contra side liquidity at a price at or within the NBBO and at a price that is better than all displayed and non-displayed liquidity in the DBK, or when there is no displayed or non-displayed contra side liquidity in the DBK, the order will attempt to execute in the NYBX facility at such price until the order is exhausted or until the available contra side liquidity in the facility is exhausted or until the order is cancelled or until the order reaches a price point that is available in the DBK.

As described in more detail above, the execution of NYBX orders will comply with Regulation NMS.

In each of the aforementioned trading situations, if the order at a particular price point is not exhausted in the DBK, the residual order will be sent back to the NYBX facility where it will attempt to execute with available contra side liquidity in the DBK, the NYBX facility, and the protected quotations of other automated trading centers, in the same sequence described above, until the order is exhausted or until the available contra side liquidity is exhausted or until the order is cancelled.

Examples: The following examples will demonstrate how NYBX orders are processed.

NYBX Snapshot

NYBX: (Sell Orders)

500 shares @ $19.99.
500 shares @ $20.00.
500 shares @ $20.01.
500 shares @ $20.04.

PHLX: (Sell Orders)

400 shares @ $20.00 (NBBO).

DBK: (Sell Orders)

Displayed:
600 shares @ $20.00.
300 shares @ $20.01.
300 shares @ $20.05.
Non-Displayed: (Sell orders)
500 shares @ $19.99.
500 Shares @ $20.00.

Example No. 1: A buy limit order of 2,500 shares at $20.00, with an unrestricted MTV of 2,500 shares, enters the NYBX facility. The MTV of 2,500 shares is met by the aggregate of orders in the NYBX facility and the DBK at $19.99 (500 + 500) and @ $20.00 (500 + 600 + 500) adding up to 2,600 shares. Orders

[8] *See* NYSE Rule 13 for a definition of ''reserve orders.''

[9] *See* Securities Exchange Act Release No. 58845 (October 24, 2008) 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46) (''The New Market Model''). Specifically, see NYSE Rule 1000(d)(i).

[10] *See* NYSE Rule 17(c) (''Operation of Routing Broker''). As per Rule 17(c), the NYBX facility will use the Routing Broker to send NYBX orders to the DBK and to automated trading centers pursuant to Regulation NMS when attempting to execute such orders.

in PHLX were not necessary to meet the MTV.

The NYBX facility routes and executes the order in the following sequence:

—Route 2,500 shares to DBK @ $19.99, execute 500 shares leaving 2,000 shares.
—Execute 500 shares in NYBX @ $19.99 leaving 1,500 shares.
—Route 1,500 shares to DBK @ $20.00, execute 1,100 shares leaving 400 shares.
—Execute 400 shares in NYBX @ $20.00 thereby exhausting the order.

As the example shows, orders will first attempt to execute with contra side liquidity in the DBK when the price is equal to or better than the price in the NYBX. When the NYBX facility has available contra side liquidity at a price within the NBBO and at a price that is better than all liquidity in the DBK, or when there is no available contra side liquidity in the DBK, the order will attempt to execute in the NYBX facility at that price.

Example No. 1A: Using the same scenario in Example No. 1 above, a buy limit order of 2,500 shares @ $20.00, with an unrestricted MTV of 2,500 shares, enters the NYBX facility. The NYBX facility routes and executes the order in the following sequence:

—Route 2,500 shares to DBK @ $19.99, execute 500 shares leaving 2,000 shares.
—Upon presentation of the order in the DBK, the DMM Capital Commitment Schedule algorithm (''CCS'') determines to execute 1,000 additional shares @ $19.99 leaving 1,000 shares.
—Execute 500 shares in NYBX @ $19.99 leaving 500 shares.
—Route 500 shares to DBK @ $20.00, execute 500 shares in DBK thereby exhausting the order.

As the example shows, when NYBX orders are routed to the DBK, such NYBX orders will have an opportunity to attempt to execute with CCS interest. If a residual NYBX order remains after partial execution in the DBK at a particular price point, the residual order will be sent back to the NYBX facility for further execution in the NYBX facility, the DBK or with protected quotations of automated trading centers. Thus, if the DBK acquires additional contra side liquidity, displayed or non-displayed, that is eligible for execution against the NYBX order, the NYBX facility will route the residual order to the DBK. This NYBX residual order, for all intents and purposes, appears as a new order to the DBK, and such NYBX order will have another opportunity to attempt to execute with available contra side liquidity in the DBK and with available contra side CCS interest. Therefore, each time an NYBX order, original or residual, is routed to the DBK at a particular price point, such order will have an opportunity to attempt to execute with displayed and non-displayed contra side liquidity in the DBK and with available contra side CCS interest.

Example No. 2: A buy limit order for 3,000 shares @ $20.00, with an unrestricted MTV of 3,000 shares, enters the NYBX. The MTV is not met because the aggregate of available contra side liquidity in the DBK and in the NYBX only adds up to 2,600 shares (1,000 @ $19.99 and 1,600 at $20.00). Because there will be no trade through at the PHLX in this example, the 400 PHLX shares will not be counted in the MTV calculation. Therefore, the MTV is not met and because the MTV is not met, there will be no execution of the NYBX order.

Example No. 3: A buy limit order for 3,500 shares @ $20.01, with an unrestricted MTV of 3,500 shares, enters the NYBX facility. In this example, the MTV is met by the aggregate liquidity at $19.99, $20.00 and $20.01 on the DBK, the NYBX and the PHLX (1000 + 2000 + 800 = 3,800). The NYBX routes and executes the order in the following sequence:

—Route 400 shares to PHLX @ $20.00, execute 400 shares leaving 3,100 shares.
—Route 3,100 shares to DBK @ $19.99, execute 500 shares leaving 2,600 shares.
—Execute 500 shares in NYBX @ $19.99 leaving 2,100 shares.
—Route 2,100 shares to DBK @ $20.00, execute 1,100 shares leaving 1,000 shares.
—Execute 500 shares in NYBX @ $20.00 leaving 500 shares.
—Route 500 shares to DBK @ $20.01, execute 300 shares leaving 200 shares.
—Execute 200 shares in NYBX @ $20.01 thereby exhausting the order.

The liquidity in the PHLX is included in the MTV calculation because, as the example demonstrates, the execution of the order may potentially trade through the protected quotations. The NYBX facility is programmed to route the applicable volume to automated trading centers whenever one or more successive price points of NYBX and DBK contra side liquidity, included in the MTV calculation, are inferior to prices of protected quotations in the automated trading center(s), thereby avoiding a potential trade through of any protected quotations. The NYBX snapshot of the entire market enables the NYBX facility to determine if there is a potential trade through of a protected quotation, and if so, the facility immediately routes the applicable shares to the automated trading center(s) in compliance with Regulation NMS. This is done even if the price of the shares routed to the automated trading center(s) is inferior to other successive price points in the NYBX facility and in the DBK. As discussed above, the facility will not wait for price improvement opportunities when routing out shares in compliance with Regulation NMS as any routing delay may cause an inadvertent trade through of protected quotations.

In Example No. 3 the NYBX routed 400 shares to the PHLX at $20.00 to comply with Regulation NMS. This routing to PHLX occurred almost simultaneously with the routing of 3,100 shares to DBK at $19.99, executing 500 shares and leaving 2,600 shares. As the order sequencing in Example No. 3 demonstrates, the remaining 2,600 shares then executes with all better priced contra side liquidity in the DBK and the NYBX facility. This example also demonstrates how the NYBX facility attempts to execute available contra side liquidity at each successive price point in the DBK and in the NYBX facility (*i.e.,* ''walking the book'').

Example No. 3A: In the same example as Example No. 3 above, if the MTV calculation was ''restricted'' to include only the available contra side liquidity in the DBK and the NYBX and not contra side liquidity in the PHLX (1000 + 1600 + 800 = 3,400), the MTV would not be met and the order would not be executed.

Example No. 4: A buy limit order of 4,500 shares @ $20.05, with no MTV, enters the NYBX facility. The NYBX routes and executes the order in the following sequence:

—Route 400 shares to PHLX @ $20.00, execute 400 shares leaving 4,100 shares.
—Route 4,100 shares to DBK @ $19.99, execute 500 shares leaving 3,600 shares.
—Execute 500 shares in NYBX @ $19.99 leaving 3,100 shares.
—Route 3,100 shares to DBK @ $20.00, execute 1,100 shares leaving 2,000 shares.
—Execute 500 shares in NYBX @ $20.00 leaving 1,500 shares.
—Route 1,500 shares to DBK @ $20.01, execute 300 shares leaving 1,200 shares.
—Execute 500 shares in NYBX @ $20.01 leaving 700 shares.
—Route 700 shares to DBK @ $20.04, execute 0 leaving 700 shares.
—Execute 500 shares in NYBX @ $20.04 leaving 200 shares.
—Route 200 shares to DBK @ $20.05, execute 200 shares thereby exhausting the order.

As explained earlier in Example No. 3, when there is a potential trade through of a protected quotation, the facility immediately routes the applicable volume to the automated trading center(s) in compliance with Regulation NMS. In Example No. 4 the NYBX routed 400 shares to the PHLX at $20.00 to comply with Regulation NMS. This routing to PHLX occurred almost simultaneously with the routing of 4,100 shares to DBK at $19.99, executing 500 shares and leaving 3,600 shares. The facility does not provide price improvement to the shares that are routed to the automated trading center(s) as latency and interaction with hidden CCS interest could compromise the facility's ability to comply with Regulation NMS.

As Example No. 4 demonstrates, provided the MTV of the order is met, the NYBX facility is programmed to route orders to the DBK and attempt to execute with available contra side liquidity in the DBK even if an order's limit price is not matched in the DBK's displayed or non-displayed contra side liquidity. Also, provided the MTV is met, the NYBX facility will route orders to the DBK and attempt to execute with better priced available contra side liquidity in the DBK, which will include an opportunity to execute with CCS interest. This occurs in Example No. 4 when the NYBX facility routes 700 shares at $20.04 to the DBK even though the DBK does not have contra side liquidity priced at $20.04, but has such liquidity priced at $20.05. When the facility routes 700 shares at $20.04 to the DBK, the order has an opportunity to execute with CCS interest, but no shares are executed at that price. Then the 700 shares are sent back to the NYBX facility to attempt to execute against the 500 shares in the NYBX at $20.04. The 700 shares then execute against the 500 shares at $20.04 leaving 200 shares. Because the DBK has 300 shares of contra side liquidity at $20.05, the NYBX facility then sends the residual order consisting of 200 shares at $20.05 back to the DBK where it executes against the 300 shares at $20.05 thereby exhausting the NYBX order and leaving 100 shares at $20.05 in the DBK. As the example also demonstrates, the NYBX facility is programmed to attempt to execute orders at each successive price point available in the NYBX facility and in the DBK.

The proposed amendment adds definitions of terms in subsection (b)(2) (Definitions), which are defined in Regulation NMS and corrects the numbering of provisions in subsection (h) (Limitations on the Use of the New York Block Exchange).

The proposed amendment also clarifies the manner in which the NYBX orders are processed and how such orders interact with the DBK, including interaction with available contra side CCS interest. Additionally, the proposed amendment clarifies that the MTV calculation does not include the protected quotations in the automated trading centers unless the execution of the NYBX order may potentially trade through a protected quotation.

2. Statutory Basis

The basis under the Act [11] for this proposed rule change is the requirement under Section 6(b)(5) [12] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed amendment aligns the Rule with the technology and functionality of the NYBX facility in relation to an NYBX order's ability to attempt to execute with contra side liquidity in the DBK and with the DMM's CCS interest. The amendment also clarifies that the unrestricted MTV calculation will not include the available contra side liquidity in the automated trading centers unless the execution of the NYBX order may otherwise trade through a protected quotation in the NYBX facility or in the DBK. Additionally, the amendment clarifies how NYBX orders are processed and at what price point orders are routed from the NYBX facility to the DBK and attempt to execute in the DBK. The proposed amendment adds definitions of terms in subsection (b)(2) (Definitions), which are defined in Regulation NMS. Therefore, the Exchange believes that because the proposed amendment will clarify how the NYBX facility operates, investors and the public interest will be best served as the amendment will provide transparency of the facility's functionality for all users.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b-4(f)(6) thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6) [15] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[16] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes the waiver of this period will allow it to align Rule 1600 with the technology and functionality of the NYBX facility as it currently operates, providing greater transparency and certainty to market participants. The Exchange also asserts that waiving the operative delay will enable its customers to better manage their order flow and make strategic trading decisions.

The Commission has determined that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest because such waiver will allow the Exchange to promptly conform its rules to manner in which the NYBX Facility currently operates.[17] Therefore, the Commission designates the proposal as 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.[18]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

[11] 15 U.S.C. 78a *et seq.*

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. NYSE has satisfied this requirement.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] 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).

[18] 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 September 1, 2009, the date on which NYSE submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2009–82 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2009–82. 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 Section, 100 F Street, NE., Washington, DC 20549–1090. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *http://www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2009–82 and should be submitted on or before October 1, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–21711 Filed 9–9–09; 8:45 am]

BILLING CODE 8010–01–P

[19] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 6758]

Agency Information Collection Activities; Proposals, Submissions, and Approvals

Title: 60-Day Notice of Proposed Information Collection: DS–2028, Overseas Schools Grant Status Report OMB 1405–0033.

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Overseas Schools Grant Status Report.
- *OMB Control Number:* OMB 1405–0033.
- *Type of Request:* Extension.
- *Originating Office:* Office of Overseas Schools, A/OPR/OS.
- *Form Number:* DS–2028.
- *Respondents:* Overseas schools grantees.
- *Estimated Number of Respondents:* 196.
- *Estimated Number of Responses:* 196.
- *Average Hours per Response:* 15 minutes.
- *Total Estimated Burden:* 49 hours.
- *Frequency:* Annually.
- *Obligation to Respond:* Required to obtain or retain a benefit.

DATE(S): The Department will accept comments from the public up to 60 days from September 10, 2009.

ADDRESSES: Keith Miller, Department of State, Office of Overseas Schools, A/OPR/OS, Room H328, SA–1, Washington, DC 20522–0132, who is reachable on 202–261–8200.

You may submit comments by any of the following methods:

- *E-mail: millerkd2@state.gov.*
- *Mail (paper, disk, or CD–ROM submissions):* Office of Overseas Schools, U.S. Department of State, 2201 C St., NW., Washington, DC 20522–0132.
- *Fax:* 202–261–8224.
- *Hand Delivery or Courier:* 2401 E St., NW., Room H328, Washington, DC 20037.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Keith Miller, Department of State, Office of Overseas Schools, A/OPR/OS, Room H328, SA–1, Washington, DC 20522–0132, who is reachable on 202–261–8200 or at *millerkd2@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection:

The Office of Overseas Schools of the Department of State (A/OPR/OS) is responsible for determining that adequate educational opportunities exist at Foreign Service Posts for dependents of U.S. Government personnel stationed abroad, and for assisting American-sponsored overseas schools to demonstrate U.S. educational philosophy and practice. The information gathered provides the technical and professional staff of A/OPR/OS the means by which obligations, expenditures and reimbursements of the grant funds are monitored to ensure the grantee complies with the terms of the grant.

Methodology: Information is collected via electronic and paper submission.

Dated: August 28, 2009.

Peggy Philbin,

Executive Director, Bureau of Administration, Department of State.

[FR Doc. E9–21837 Filed 9–9–09; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending August 29, 2009

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2003–16690.

Date Filed: August 28, 2009.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 18, 2009.

Description: Application of Arrow Air, Inc. requesting renewal of its certificate of public convenience and necessity for scheduled all-cargo foreign air transportation of property and mail between the terminal point Miami, Florida on the one hand and the co-terminal points Manaus, Rio de Janeiro and Sao Paulo, Brazil on the other hand. Arrow also requests renewal of its designation and allocation of five (5) weekly frequencies.

Docket Number: DOT–OST–2009–0205.

Date Filed: August 28, 2009.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 18, 2009.

Description: Joint Application of Republic Airways Holdings, Inc. (''RJET'') and Frontier Airlines, Inc. (''Frontier'') requesting disclaimer of jurisdiction or, in the alternative, approval of the de facto transfer of international route authorities held by Frontier that will result from RJET's acquisition of Frontier's corporate parent, Frontier Airlines Holdings, Inc.

Docket Number: DOT–OST–2009–0208.

Date Filed: August 28, 2009.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 18, 2009.

Description: Application of KaiserAir, Inc. requesting a certificate of public convenience and necessity authorizing it to conduct interstate charter air transportation of persons, property and mail with large aircraft.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E9–21803 Filed 9–9–09; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Departmental Office of Civil Rights; Privacy Act of 1974; System of Records Notice (SORN)

AGENCY: Department of Transportation (DOT).

ACTION: Notice to establish a system of records.

SUMMARY: DOT intends to establish a system of records under the Privacy Act of 1974 to facilitate the provision of reasonable accommodations to individuals with disabilities by establishing procedures, timeframes and forms for supervisors/decision makers to use in processing requests from employees and applicants for employment, called the On-line Accommodation Tracking System (OATS). The system enhances compliance with Executive Order 13164, Equal Employment Opportunity Commission (EEOC) guidance, and DOT Order 1011.1 ''Procedures for Processing Reasonable Accommodation Requests by DOT Job Applicants and Employees with Disabilities.'' DOT is required to collect information on accommodation requests and report annually whether requested accommodations were provided or denied within the allowable time frame established by agency procedures (a maximum of 25 business days for DOT).

The system was created to capture the required information. The system will assist supervisors/decision makers in ensuring that a decision to grant or deny is made timely and if granted, that the accommodation is provided within the time frame allowed, and will allow timeliness to be monitored by a designated OATS Administrator in each DOT organization.

The system of records is more thoroughly detailed below and in a Privacy Impact Assessment (PIA) that DOT will post on the DOT Privacy Web site at *www.dot.gov/privacy.*

DATES: Comments are due October 20, 2009.

ADDRESSES: Send comments to: Christy Compton, Disability Program Manager, Departmental Office of Civil Rights, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590; or *christy.compton@dot.gov*.

FOR FURTHER INFORMATION CONTACT: For privacy issues please contact: Habib Azarsina, Departmental Privacy Officer, Office of the Chief Information Officer, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC, 202–366–1965; or *habib.arzarsina@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. The Privacy Act

The Privacy Act (5 USC 552a) governs the means by which the United States Government collects, maintains, and uses Personally Identifiable Information (PII) in a system of records. A ''system of records'' is a group of any records under the control of a Federal agency from which information about individuals is retrieved by name or other personal identifier.

The Privacy Act requires each agency to publish in the **Federal Register** a notice in accordance with the System of Record Notice (SORN) which requires identifying and describing each system of records the agency maintains, including the purposes for which the agency uses PII in the system, the routine uses for which the agency discloses such information outside the agency, and how individuals can exercise their rights under the Privacy Act (*e.g.,* to determine if the system contains information about them).

II. Privacy Impact Assessment

DOT has prepared a PIA to coincide with this SORN. It will be posted on the DOT Privacy Web site at *http://www.dot.gov/privacy.*

In accordance with 5 U.S.C. 552a(r), a report on the establishment of this new system of records has been sent to Congress and to the Office of Management and Budget.

SYSTEM NUMBER:

DOT/ALL 20

SYSTEM NAME:

On-line Accommodation Tracking System (OATS)

SECURITY CLASSIFICATION:

Sensitive, unclassified.

SYSTEM LOCATION:

Servers: The Servers hosting OATS are maintained in a secure government facility in Frederick, MD, which is staffed 24 hours a day, 7 days a week.

Portals: Supervisors, modal OATS administrators, and the Departmental Office of Civil Rights' system manager

may access the system via desktop computers that are in the secure DOT computer network.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and applicants who request reasonable accommodation for a disability.

CATEGORIES OF RECORDS IN THE SYSTEM:

Once a request for accommodation is received by a supervisor/decision maker, the supervisor/decision maker enters the request, including the date it is received, the name of the individual making the request, the type of request made, and other relevant information into OATS.

PII in the system consists of: employee's or applicant's name, functional limitation caused by the disability, reasonable accommodation (RA) requested, explanation of how RA would assist the applicant in the application process or the employee in performing his/her job or receiving the benefits and privileges of employment, dates when the required interactive discussions were held, notes from discussion regarding the request, action by deciding official, whether medical documentation was sought, justification for requesting medical documentation, any sources of technical assistance that were consulted, and if the request was denied, the reason for denial (but not medical documentation, which will be kept in a separate file).

Non-PII in the system includes: The employee's or applicant's occupational series and grade or pay equivalent, operating administration, division or office, position title, office location and address and office telephone number; and the deciding official's name, title and office telephone number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Rehabilitation Act of 1973, as amended, 29 U.S.C. 791; Executive Order 13164.

PURPOSE(S):

The purpose for which the system collects information is to implement government-wide requirements and uniform DOT procedures to track and monitor reasonable accommodation requests. The system makes data available to DOT personnel involved in processing and monitoring reasonable accommodation requests. The system of records will serve as the agency's record of the administrative events pertaining to the approval or disapproval of each requested accommodation and will provide aggregate data on the number and type of requests and timelines for approving or disapproving the requests.

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

These records, and the information in these records, may be disclosed outside of DOT as follows:

(1) To a congressional office from the record of an individual in response to an Inquiry from the congressional office made at the request of the individual.

(2) To an authorized appeal grievance examiner, formal complaints examiner, administrative judge, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee.

(3) To another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative hearing.

Other possible routine uses of the information, applicable to all DOT systems, are published in the **Federal Register** at 65 FR 19476 (April 11, 2000), under ''Prefatory Statement of General Routine Uses'' (available at *http://www.dot.gov/privacy/privacyactnotices/*).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

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

STORAGE:

Data files are maintained on servers in a secure government facility located in Frederick, MD 21703, staffed twenty-four hours per day, seven days a week.

RETRIEVABILITY:

Records are retrieved by the date of the reasonable accommodation request, the name of the deciding official, the name of the employee or employment applicant's name, record number, and operating administration or office.

SAFEGUARDS:

Designated, approved Federal employees have access to this system according to job roles and responsibilities for use in their respective jobs. These employees are fully aware of the need to keep the information confidential and already have duties in the area of reasonable accommodation. Each supervisor can see only the records that s/he entered.

All IT support staff and contractors are briefed on IT security requirements and associated responsibilities.

Access to the system is controlled by user credentials maintained in a secure database.

All personally identifiable information maintained in the system is encrypted via availability, economics, and solutions technology. The system uses Secure Socket Layer to ensure secure data transmission over the internet. Access to records in OATS is limited to specific DOT personnel. Electronic access to PII is limited according to job function. DOT controls access privileges according to a documented roles matrix, with each individual receiving the minimum necessary access to PII and permissions. In addition, access to PII requires access to a secure site with complex password requirements. Password and account procedures comply with the following basic guidelines:

- Account holders are required to possess a valid DOT email address to use the system.
- All reasonable accommodation requests are protected through a Secure Socket Layer connection.
- Data fields containing the First Name, Last Name, Phone Number, and Email address of the requestor are encrypted in the database.
- Minimum length of passwords is eight characters.
- Passwords must be a combination of letters and numbers.

RETENTION AND DISPOSAL:

Records related to specific individuals are to be maintained for the duration of employment. Aggregate data used to track the agency's performance are to be maintained for five years.

SYSTEM MANAGER AND ADDRESS:

Christy Compton, Disability Program Manager, Departmental Office of Civil Rights, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590.

NOTIFICATION PROCEDURE:

Individuals or business entities wishing to know if their records appear in this system should direct their requests to the System Manager identified above.

RECORD ACCESS PROCEDURE:

Individuals seeking access to information about them in this system should follow the same procedure as indicated under ''Notification Procedure.''

CONTESTING RECORDS PROCEDURE:

Individuals seeking to contest the content of information about them in this system should follow the same

procedure as indicated under ''Notification Procedure.''

RECORD SOURCE CATEGORIES:

Information relating to the accommodation process will be supplied by the individual requesting accommodation(s), the individual's supervisor, and occasionally the modal OATS Administrator.

EXEMPTIONS CLAIMED FOR THIS SYSTEM:

None.

Dated: September 3, 2009.

Habib Azarsina,

Departmental Privacy Officer.

[FR Doc. E9–21804 Filed 9–9–09; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[DOT–0ST–2009–0191]

Notice of Rights and Protections Available Under the Federal Antidiscrimination and Whistleblower Protection Laws

AGENCY: Office of the Secretary, DOT.

ACTION: No FEAR Act notice.

SUMMARY: This Notice implements Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 concerning the annual obligation of Federal agencies to notify all employees, former employees, and applicants for Federal employment of the rights and protections available to them under the Federal Antidiscrimination Laws and Whistleblower Protection Laws.

FOR FURTHER INFORMATION CONTACT: Caffin Gordon, Associate Director of Policy and Quality Control Division, S–35, Departmental Office of Civil Rights, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, 202–366–4648 or (TTY) 202–366–8538.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may retrieve this document online through the Federal Document Management System (FDMS) at: *www.regulations.gov.* The FDMS is available 24 hours each day, 365 days each year. Electronic retrieval help and guidelines are available under the help section of the Web site. An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's web page at: *http://www.access.gpo.gov/nara.*

No Fear Act Notice

On May 15, 2002, Congress enacted the ''Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002,'' Public Law 107–174, which is now known as the No FEAR Act. One purpose of the Act is to ''require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws.'' In support of this purpose, Congress found that ''agencies cannot be run effectively if those agencies practice or tolerate discrimination.'' The Act also requires this agency to provide this notice to Federal employees, former Federal employees and applicants for Federal employment to inform you of the rights and protections available to you under Federal antidiscrimination, whistleblower protection and retaliation laws.

Antidiscrimination Laws

A Federal agency cannot discriminate against an employee or applicant with respect to the terms, conditions or privileges of employment on the basis of race, color, religion, sex, national origin, age, disability, marital status or political affiliation. Discrimination on these bases is prohibited by one or more of the following statutes: 5 U.S.C. 2302(b)(1), 29 U.S.C. 206(d), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 791 and 42 U.S.C. 2000e–16.

If you believe that you have been the victim of unlawful discrimination on the basis of race, color, religion, sex, national origin or disability, you must contact an Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action, or, in the case of a personnel action, within 45 calendar days of the effective date of the action, before you can file a formal complaint of discrimination with your agency. *See, e.g.,* 29 CFR 1614.105. If you believe that you have been the victim of unlawful discrimination on the basis of age, you must either contact an EEO counselor as noted above or give notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 days of the alleged discriminatory action. If you are alleging discrimination based on marital status or political affiliation, you may file a written complaint with the U.S. Office of Special Counsel (OSC) (see contact information below). In the alternative (or in some cases, in addition), you may pursue a discrimination complaint by filing a grievance through your agency's administrative or negotiated grievance procedures, if such procedures apply and are available.

Whistleblower Protection Laws

A Federal employee with authority to take, direct others to take, recommend or approve any personnel action must not use that authority to take or fail to take, or threaten to take or fail to take, a personnel action against an employee or applicant because of disclosure of information by that individual that is reasonably believed to evidence violations of law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, unless disclosure of such information is specifically prohibited by law and such information is specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs. Retaliation against an employee or applicant for making a protected disclosure is prohibited by 5 U.S.C. 2302(b)(8). If you believe that you have been the victim of whistleblower retaliation, you may file a written complaint (Form OSC–11) with the U.S. Office of Special Counsel at 1730 M Street NW., Suite 218, Washington, DC 20036–4505 or online through the OSC Web site—*www.osc.gov*.

Retaliation for Engaging in Protected Activity

A Federal agency cannot retaliate against an employee or applicant because that individual exercises his or her rights under any of the Federal antidiscrimination or whistleblower protections laws listed above. If you believe that you are the victim of retaliation for engaging in protected activity, you must follow, as appropriate, the procedures described in the Antidiscrimination Laws and Whistleblower Protection Laws sections or, if applicable, the administrative or negotiated grievance procedures in order to pursue any legal remedy.

Disciplinary Actions

Under the existing laws, each agency retains the right, where appropriate, to discipline a Federal employee who has engaged in discriminatory or retaliatory conduct, up to and including removal. If OSC has initiated an investigation under 5 U.S.C. 1214, however, according to 5 U.S.C. 1214(f), agencies must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation. Nothing in the No FEAR Act alters existing laws or permits an agency to take unfounded

disciplinary action against a Federal employee or to violate the procedural rights of a Federal employee who has been accused of discrimination.

Additional Information

For further information regarding the No FEAR Act regulations, refer to 5 CFR Part 724, as well as the appropriate offices within your agency (e.g., EEO/civil rights office, human resources office or legal office). Additional information regarding Federal antidiscrimination, whistleblower protection and retaliation laws can be found at the EEOC Web site—*http://www.eeoc.gov* and the OSC Web site—*http://www.osc.gov*.

Existing Rights Unchanged

Pursuant to section 205 of the No FEAR Act, neither the Act nor this notice creates, expands or reduces any rights otherwise available to any employee, former employee or applicant under the laws of the United States, including the provisions of law specified in 5 U.S.C. 2302(d).

Mary N. Whigham Jones,

Acting Director, Departmental Office of Civil Rights, United States Department of Transportation.

[FR Doc. E9–21805 Filed 9–9–09; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 1, 2009. No comments were received.

DATES: Comments must be submitted on or before October 13, 2009.

FOR FURTHER INFORMATION CONTACT: Robert Brown, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–2277; or e-mail: *robert.brown@dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Automated Mutual-Assistance Vessel Rescue System (AMVER).

OMB Control Number: 2133–0025.

Type of Request: Extension of currently approved collection.

Affected Public: U.S.-flag and U.S. citizen-owned vessels that are required to respond under current statute and regulation.

Form(s): None.

Abstract: This collection of information is used to gather information regarding the location of U.S.-flag vessels and certain other U.S. citizen-owned vessels for the purpose of search and rescue in the saving of lives at sea and for the marshalling of ships for national defense and safety purposes. This collection consists of vessels that transmit their positions through various electronic means.

Annual Estimated Burden Hours: 2,050 hours.

Addresses: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

Comments Are Invited On: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Authority: 49 CFR 1.66.

Issued in Washington, DC on August 31, 2009.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. E9–21816 Filed 9–9–09; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2009 0082]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request the Office of Management and Budget (OMB) approval for a new information collection to assess the educational outcome of U.S. Merchant Marine Academy alumni.

DATES: Comments should be submitted on or before November 9, 2009.

FOR FURTHER INFORMATION CONTACT: Dr. Shashi Kumar, U.S. Merchant Marine Academy, Kings Point, NY 11024. *Telephone:* 516–726–5833; *Fax:* 516–773–5539, or *E–Mail: kumars@usmma.edu.*

Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: United States Merchant Marine Academy Alumni Survey.

Type of Request: New collection.

OMB Control Number: 2133–NEW.

Form Numbers: KP2–66–DK1, KP2–67–DK2, KP2–68–DK3, KP2–69–ENG1, KP2–70–ENG2, KP2–71–ENG3.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: The United States Merchant Marine Academy is an accredited federal service academy that confers BS and MS degrees. The Academy is expected to assess its educational outcomes and report those findings to its Regional Accreditation authority in order to maintain the institution's degree granting status. Periodic survey of alumni cohorts and analysis of the data gathered is a routine higher education assessment practice in the United States.

Need and Use of the Information: The information gathered will be analyzed and used for program management and improvement.

Description of Respondents: Respondents are graduates of the U.S. Merchant Marine Academy.

Annual Responses: 500 responses.

Annual Burden: 250 hours.

Comments: Comments should refer to the docket number that appears at the

top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://www.regulations.gov/search/index.jsp*. Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://www.regulations.gov/search/index.jsp*.

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://www.regulations.gov/search/index.jsp*.

Authority: 49 CFR 1.66.

Dated: September 1, 2009.

By Order of the Maritime Administrator.

Christine Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. E9–21817 Filed 9–9–09; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Approval of the Record of Decision for Proposed Development at the Port Columbus International Airport, Columbus, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Approval of the Record of Decision (ROD).

SUMMARY: The FAA is announcing approval of the Record of Decision on the Final Environmental Impact Statement, Section 303c Evaluation, and Section 106 Evaluation for proposed development at the Port Columbus International Airport, Columbus, Ohio.

FOR FURTHER INFORMATION CONTACT: Ms. Katherine S. Delaney, FAA, Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, MI 48174, telephone (734) 229–2900; fax: (734) 229–2950.

SUPPLEMENTAL INFORMATION: The ROD approves the proposed development at Port Columbus International Airport including: construction of a replacement runway 10,113 feet long, located 702 feet south of the existing Runway 10R/28L; development of new terminal facilities, including a new terminal apron in the midfield area, with access from the south airfield; construction of additional taxiways to support the replacement runway; necessary NAVAIDs; proposed aviation-related development (noise berm); associated roadway relocations and construction (internal loop roadway modifications, relocated airport perimeter road); parking improvements (including both surface lots and parking garage); property acquisition and relocation of residences and businesses; construction and implementation of ancillary facilities to support the proposed development (expansion of the central utility plant, aircraft fueling system, airside/landside drainage improvements, expansion of the glycol collection and treatment system, and relocation of the utility corridors); development of air traffic operational procedures for the replacement runway; and implementation of the proposed Part 150 noise abatement actions.

The ROD indicates the project is consistent with existing environmental policies and objectives as set forth in the National Environmental Policy Act (NEPA) of 1969, as amended, and will not significantly affect the quality of the environment.

In reaching this decision, the FAA has given careful consideration to: (a) The role of CMH in the national air transportation system, (b) aviation safety, (c) preferences of the airport owner, and (d) anticipated environmental impact.

Discussions of these factors are documented in the Draft Environmental Impact Statement, the Final Environmental Impact Statement (FEIS), Section 303c Evaluation, and the Section 106 Evaluation for the project. The notice of availability of the FEIS appeared in the **Federal Register** on March 20, 2009 (Volume 74, Number 53 Pages 11986–11987), and the comment period ran through April 20, 2009. The FAA's determinations on the project are outlined in the ROD, which was approved on August 19, 2009.

Issued in Romulus, Michigan, on August 24, 2009.

Matthew J. Thys,

Manager, Detroit Airports District Office, FAA, Great Lakes Region.

[FR Doc. E9–21897 Filed 9–9–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Office of Commercial Space Transportation; Notice of Availability of the Final Programmatic Environmental Impact Statement for Streamlining the Processing of Experimental Permit Applications

AGENCY: Federal Aviation Administration (FAA), Department of Transportation.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), Council on Environmental Quality NEPA implementing regulations (40 CFR Parts 1500–1508), and FAA Order 1050.1E, Change 1, the FAA is announcing the availability of the *Final Programmatic Environmental Impact Statement for Streamlining the Processing of Experimental Permit Applications* (PEIS). The FAA Office of Commercial Space Transportation is the lead Federal agency for the development of the PEIS. The National Aeronautics and Space Administration and the U.S. Air Force are cooperating agencies.

Under the Proposed Action evaluated in the PEIS, the FAA would issue experimental permits for the launch and reentry of reusable suborbital rockets from both FAA-licensed and non-licensed launch sites using the PEIS as the basis for determining the potential environmental consequences of issuing experimental permits. Under the No Action Alternative, the FAA would continue issuing experimental permits for the launch and reentry of reusable suborbital rockets using its present method of analyzing environmental consequences case by case, without tiering from a programmatic document.

The PEIS examines the potential environmental impacts of issuing an experimental permit for the operation of reusable suborbital rockets anywhere in the U.S. and abroad, and the potential site-specific impacts of permitted launches from seven FAA-licensed commercial launch sites: California Spaceport, California; Mojave Air and Space Port, California; Kodiak Launch Complex, Alaska; Mid-Atlantic Regional Spaceport, Virginia; Space Florida

Launch Complex-46 at Cape Canaveral Air Force Station, Florida; Oklahoma Spaceport, Oklahoma; Spaceport America, New Mexico; and one Federal range, the Shuttle Landing Facility at John F. Kennedy Space Center, Florida.

Subsequent environmental analyses that fall under the scope of the PEIS could tier from this document and incorporate the findings of the PEIS by reference, allowing an applicant and the FAA to focus on the relevant and unique impacts of an experimental permit application. Tiering and incorporation by reference would streamline the development of subsequent environmental analyses in accordance with NEPA and FAA Order 1050.1E.

The PEIS will not authorize the launch or reentry of reusable suborbital rockets from launch sites. Individual launch operators would be required to coordinate with site operators to gain access to a site. In addition, the launch operators would be required to apply to the FAA for an experimental permit, which would require an individual safety and environmental review.

The FAA submitted the Final PEIS to the U.S. Environmental Protection Agency (EPA), and the EPA will post a separate notification in the **Federal Register** announcing the availability of the Final PEIS. The FAA will issue a Record of Decision no sooner than 30 days following the EPA notice in the **Federal Register**. The Record of Decision will also be published in the **Federal Register**.

The FAA has posted the Final PEIS on the FAA Web site at *http://ast.faa.gov.* A paper copy and a CD version of the Final PEIS may be viewed at the following locations:

Alaska

Chiniak Public Library, Mile 41, Chiniak, AK 99615.

Kodiak Library, 319 Lower Mill Bay Road, Kodiak, AK 99615.

California

Kern County Library, 9507 California City Blvd., California City, CA 93505.

Lompoc Library, 3755 Constellation Rd., Lompoc, CA 93436.

Lompoc Public Library, 501 E. North Ave., Lompoc, CA 93436.

Mojave Public Library, 16916–½ Highway 14, Mojave, CA 93501.

Florida

Merritt Island Public Library, 1195 North Courtenay Parkway, Merritt Island, FL 32953.

Titusville Public Library, 2121 S. Hopkins Ave., Titusville, FL 32780.

New Mexico

Truth or Consequences Library, 325 Library Lane, Truth or Consequences, NM 87901.

Hatch Public Library, 503 E. Hall St., Hatch, NM 87937.

Oklahoma

Clinton Public Library, 721 Frisco Ave., Clinton, OK 73601.

Elk City Carnegie Library, 221 West Broadway, Elk City, OK 73644.

Virginia

Island Library, 4077 Main St., Chincoteague, VA 23336.

Eastern Shore Public Library, 23610 Front St., Accomac, VA 23301.

Additional Information: Under the Proposed Action, the FAA would issue experimental permits for the launch and reentry of reusable suborbital rockets from both FAA-licensed and non-licensed launch sites using the PEIS as the basis for determining the potential environmental consequences of issuing experimental permits. An experimental permit would implement the appropriate safety requirements as defined in 14 CFR Part 437. A permit would be valid for 1 year and would authorize an unlimited number of launches and reentries of a particular reusable suborbital rocket design from a specified site(s). A permittee could renew the permit by submitting a written application to the FAA for renewal at least 60 days before the permit expired.

Based on the FAA's review of past activities and consultations with various organizations in the commercial space industry, the FAA projected that a maximum of 1,000 launch and reentry events could occur annually at any one location from 2009 to 2014. The FAA used this estimate to develop an upper bound to assess the potential impacts of the Experimental Permit Program. In some cases, the maximum number of events analyzed in the PEIS for specific sites are fewer than 1,000 if the site cannot support all of the flight profiles identified in the PEIS. The estimates used in the PEIS are extremely conservative and the actual number of launches per year would likely be lower.

The PEIS considers activities associated with the launch and reentry of reusable suborbital rockets, including pre-flight activities, flight profile (takeoff, flight, and landing), and post-flight activities (vehicle safing). The general suborbital rocket designs addressed in the PEIS include vehicles resembling conventional aircraft—30 to 140 feet long with unfueled weight of up to 9,921 pounds; vehicles resembling conventional rockets—6 to 33 feet long with unfueled weight of up to 5,500 pounds; and vehicles that hover—up to 20 feet in length or diameter with unfueled weight of up to 4,400 pounds. To assess potential impacts of the Experimental Permit Program, the PEIS also considers the approximate proportions of general reusable suborbital rocket flight profiles, as follows: (1) Horizontal takeoff (rocket or jet powered), flight, and horizontal landing (glide or jet powered); (2) vertical takeoff (rocket powered), flight, and vertical landing (rocket powered or parachute); and (3) rocket powered hovering flights (vertical takeoff and landing).

The PEIS analyzes the potential environmental effects of permitted launches on the impact categories described in FAA Order 1050.1E, Change 1. The PEIS does not analyze environmental consequences specific to construction because the Proposed Action and No Action Alternative do not involve construction activities. The PEIS also addresses potential cumulative impacts of the Proposed Action.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Czelusniak, FAA Environmental Specialist, FAA Experimental Permits PEIS, c/o ICF International, 9300 Lee Highway, Fairfax, VA 22031; e-mail *PEIS-Experimental-Permits@icfi.com;* or fax (703) 934–3951.

Issued in Washington, DC, on September 1, 2009.

Michael McElligott,

Manager, Space Systems Development Division.

[FR Doc. E9–21765 Filed 9–9–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2008–0060]

Environmental Impact Statements; Availability

AGENCY: Maritime Administration, U.S. Department of Transportation.

ACTION: Notice of Availability of Final Programmatic Environmental Assessment and Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Maritime Administration, of the U.S. Department of Transportation (U.S. DOT) has made available to interested parties the Final Programmatic Environmental Assessment (PEA) and

the Finding of No Significant Impact (FONSI) for the Removal of Non-Retention Vessels from National Defense Reserve Fleet Sites for Disposal. The PEA and FONSI have been prepared pursuant to the National Environmental Policy Act (NEPA) (U.S.C. 4231 *et seq.*) in accordance with the Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508).

The purpose of the PEA is to evaluate the potential environmental impacts from and alternatives to the Removal of Non-Retention Vessels from National Defense Reserve Fleet Sites for Disposal proposed by the Maritime Administration. The Maritime Administration is charged with disposing of obsolete ''non-retention'' U.S. government-owned merchant type vessels of 1,500 gross tons or more per Section 203 of the Federal Property and Administrative Service Act of 1949, as amended (40 U.S.C. 548 (2008)). Non-retention vessels are vessels that have been determined by the Maritime Administration to be of insufficient value for commercial or military operation by the Federal Government to merit further preservation. 46 U.S.C. 57102 (2008). The Maritime Administration's non-retention ships are located at three fleet anchorages: James River, Virginia, Beaumont, Texas, and Suisun Bay, California.

The Maritime Administration is proposing to tow obsolete vessels from these three fleet anchorages either to one of seven Maritime Administration-qualified or provisionally qualified recycling facilities across the United States or others that may be qualified in the future, or to various locations (to be determined on a case by case basis) to be used as artificial reefs, or sold for reuse as limited by applicable law, or to be donated for use as memorials and museums, or to be used by the U.S. Navy in at-sea training exercises referred to as Sinking Exercises, or SINKEX, during which the Navy fires live munitions at the vessel to give trainees a better sense of the capabilities of Navy weaponry. Following the use of live fire, vessels are allowed to sink to the sea bottom.

The PEA studies potential environmental effects associated with the removal and disposal of non-retention vessels. The PEA considers potential effects to the natural and manmade environments including: Air quality, water quality, vessel traffic, cultural & historic resources, wetlands, benthic communities, fish resources, threatened & endangered species, socioeconomic resources, human health & safety, and other topics associated with the proposed action.

The Maritime Administration assessed the potential environmental consequences of the Proposed Action and the No Action alternative, and found no significant impact to the human and natural environments from implementation of the proposed action. The Maritime Administration announced the availability of the draft of this Final Programmatic Environmental Assessment July 2, 2008 and made it available to the public for comment. Responses to comments can be found online at *http://www.regulations.gov* at Docket ID MARAD–2008–0060.

FOR FURTHER INFORMATION CONTACT: Carolyn E. Junemann, 1200 New Jersey Ave., SE., Washington, DC 20590; phone: (202) 366–1920; fax: (202) 5904; or e-mail: *Carolyn.junemann@dot.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individuals during business hours. The FIRS is available twenty-four hours a day, seven days a week, to leave a message or question with the above individuals. You will receive a reply during normal business hours.

A copy of the Final Programmatic EA and Finding of No Significant Impact can be obtained or viewed online at *http://www.regulations.gov.* The files are in a portable document format (pdf); in order to review or print the document, users need to obtain a free copy of Acrobat Reader. The Acrobat Reader can be obtained from *http://www.adobe.com/prodindex/acrobat/readstep.html.*

Copies of the Final PEA and FONSI will also be available during normal business hours at the following locations: Beaumont Public Library, 801 Pearl St., Beaumont, TX 77701; Surry Public Library, 11640 Rolfe Hwy., Surry, VA 23882; Virgil I. Grissom Public Library, 366 DeShazor Dr., Newport News, VA 23608; and, Benicia Public Library, 150 E. L St., Benicia, CA 94510.

SUPPLEMENTARY INFORMATION: The mission of the Maritime Administration is to strengthen the U.S. maritime transportation system, including infrastructure, industry, and labor, to meet the economic and security needs of the United States, and to promote the development and maintenance of an adequate, well-balanced U.S. merchant marine, sufficient to carry the nation's domestic waterborne commerce and a substantial portion of its waterborne foreign commerce, and capable of service as a naval and military auxiliary in time of war or national emergency. The Maritime Administration also seeks to ensure that the United States maintains adequate shipbuilding and repair services, efficient ports, effective intermodal water and land transportation systems, and reserve shipping capacity for use in time of national emergency.

The Maritime Administration is charged with disposing of obsolete ''non-retention'' U.S. government-owned merchant type vessels of 1,500 gross tons or more per Section 203 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 548 (2008)). Non-retention vessels are vessels that have been determined by the Maritime Administration to be of insufficient value for commercial or military operation by the Federal Government to merit further preservation by the Federal Government. 46 U.S.C. 57102 (2008). The Maritime Administration's non-retention ships are located at fleet anchorages in the James River, Virginia, Beaumont, Texas, and Suisun Bay, California.

The majority of non-retention NDRF vessels are systematically being recycled. However, some vessels have been loaned to other Government agencies, sold for reuse in accordance with applicable law, used as artificial reefs, used as museums, and used for military and civilian training. All of the vessels to be removed are obsolete non-retention vessels that Congress has directed the Maritime Administration to dispose of under the Merchant Marine Act of 1936, as amended.

The Maritime Administration continues to consider domestic dismantling (recycling) as the predominant means of vessel disposal, but continually evaluates alternative means of disposal such as artificial reefing, sale for reuse, deep-water sinking through the Navy's SINKEX Program, and donations to historic organizations when possible.

Domestic recyclers of obsolete NDRF vessels are required to follow all Federal, State, and local laws and regulations governing worker safety and environmental protection. Specific authority to pay for recycling provided in the Department of Defense Appropriations Act for Fiscal Year 2001 (Pub. L. 106–259 section 8136), was enacted on August 9, 2000 and included a budget for the accelerated recycling of those vessels in the ''worst condition.'' All other alternatives for disposal are required to be in accordance with Federal, State, and local laws and regulations.

Selection of recycling facilities was included in the 2000 Congressional amendments to section 6(c)(1) of the National Maritime Heritage Act (NMHA), which directed the Maritime Administration to dispose of all obsolete vessels ''in the manner that provides the best value to the Government'' (Pub. L. 106–398, section 3502(a)). In addition, it provided subsection (b) Selection of Scrapping Facilities, which stated that:

The Secretary of Transportation may recycle obsolete vessels pursuant to Section 6(c)(1) of the NMHA of 1994 [16 United States Code (U.S.C.) 5405(c)(1)] through qualified dismantlement facilities, using the most expeditious recycling methodology and location practicable. Dismantlement facilities shall be selected under that section on a best value basis consistent with the Federal Acquisition Regulation (FAR), as in effect on the date of the enactment of this Act * * * taking into consideration, among other things, the ability of facilities to dismantle vessels: (1) At least cost to the Government, (2) in a timely manner, (3) giving consideration to worker safety and the environment, and (4) in a manner that minimizes the geographic distance that a vessel must be towed when towing a vessel poses a serious threat to the environment (Pub. L. 106–398, section 3502(b), 114 Stat. 1654a–490 (2000)).

An electronic version of this document and all documents entered into this docket are available at *http://www.regulations.gov* at Docket ID MARAD–2008–0060.

Dated: September 2, 2009.

By Order of the Maritime Administrator.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. E9–21814 Filed 9–9–09; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Upper Cumberland Regional Airport, Sparta, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comment.

SUMMARY: The Federal Aviation Administration is requesting public comment on the release of land at the Upper Cumberland Regional Airport, Sparta, TN.

This property, approximately 3.48 acres, will change to a non-aeronautical use. This action is taken under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

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

ADDRESSES: Documents are available for review at the Tennessee Department of Transportation, Division of Aeronautics, 424 Knapp Blvd, Bldg 4219, Nashville, TN 37217 and the FAA Airports District Office, 2862 Business Park Drive, Building G, Memphis, TN 38118. Written comments on the Sponsor's request must be delivered or mailed to: Mr. Phillip J. Braden, Manager, Memphis Airports District Office, 2862 Business Park Drive, Building G, Memphis, TN 38118. In addition, a copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bob Woods, Director, TDOT, Division of Aeronautics, P.O. Box 17326, Nashville, TN 37217.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Thompson, Program Manager, Federal Aviation Administration, Memphis Airports District Office, 2862 Business Park Drive, Building G, Memphis, TN 38118. The application may be reviewed in person at this same location, by appointment.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the request to release property at the Upper Cumberland Regional Airport, Sparta, TN. Under the provisions of AIR 21(49 U.S.C. 47107(h)(2)).

On August 21, 2009, the FAA determined that the request to release property at Upper Cumberland Regional Airport, submitted by the airport board, meets the procedural requirements of the Federal Aviation Administration. The FAA may approve the request, in whole or in part, no later than October 13, 2009.

The following is a brief overview of the request:

The Upper Cumberland Regional Airport Board, owner of the Upper Cumberland Regional Airport, is proposing the release of approximately 3.48 acres of airport property to the County of White, Tennessee so the property can be used to accommodate the construction of an Industrial Park access road along the eastern airport property line.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon appointment and request, inspect the request, notice and other documents germane to the request in person at the Tennessee Department of Transportation, Division of Aeronautics.

Issued in Memphis, TN on August 24, 2009.

Tommy L. Dupree,

Acting Manager, Memphis Airports District Office, Southern Region.

[FR Doc. E9–21704 Filed 9–9–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2007–28444 (PDA–32(R))]

Maine Department of Environmental Protection Requirements on Transportation of Cathode Ray Tubes

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

ACTION: Notice of administrative determination of preemption.

Local Laws Affected: Title 06–096, Maine Code of Regulations (MCR) Chapters 850, 851, 853 & 857 (For convenience, provisions in Title 06–096 MCR are referred to herein simply by the Chapter and section number, e.g., ''MCR 850 section 3(A)'').

Applicable Federal Requirements: Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, and the Hazardous Materials Regulations (HMR), 49 CFR parts 171–180. Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 *et seq.*, and 40 CFR Chapter I, subchapter I (Solid Wastes).

Modes Affected: Highway.

SUMMARY: Federal hazardous material transportation law does not preempt MDEP's regulations on classification of used cathode ray tubes (''CRTs'') as ''universal waste'' and broken CRTs and glass removed from CRTs (''CRT glass'') as a State ''hazardous waste'' and the marking, labeling, shipping documentation, and transporter requirements, because these requirements do not apply or pertain to materials regulated under Federal hazardous materials transportation law and the HMR or otherwise constitute an obstacle to accomplishing and carrying out Federal hazardous materials transportation law and the regulations issued under that law.

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of Chief Counsel, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001 (Tel. No. 202–366–4400).

SUPPLEMENTARY INFORMATION:

I Background

A. Application

In this determination, PHMSA considers whether the Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, preempts the following requirements of the Maine Department of Environmental Protection (''MDEP'') relating to CRTs and broken CRTs and CRT glass destined for reuse, repair, or recycling (as those requirements are presently applied):[1]

(1) ''Whole, intact, and unbroken'' CRTs are classified as ''universal waste'' in MCR 850 section 3(A)(13)(b)(i)[2] and, for transportation of intact CRTs:

(a) The generator must prepare and a transporter must carry one of the following documents: (i) A ''hazardous waste manifest''; (ii) the ''Maine Recyclable Material Uniform Bill of Lading''; or (iii) ''a log system of tracking'' shipments to a central accumulation facility within Maine from an instate small universal waste generator, or to a consolidation facility within Maine from an instate small universal waste generator or central accumulation facility. MCR 857 sections 4–8 & 13 (as amended effective June 12, 2008).

(b) The generator must mark and label each package with the words ''Waste Cathode Ray Tubes.'' MCR 850 section 3(A)(13)(e)(xxii)(e).

(c) The transporter must meet certain conditions (in order to be exempt from obtaining a license) including maintaining (i) at least $1,000,000 in liability insurance, and (ii) ''a plan for the cleanup of discharges'' in the possession of the vehicle operator. MCR 853 sections 10, 11(H) & (K).

(2) Broken CRTs and CRT glass are classified as a State ''hazardous waste,'' in MCR 850 section 3(A) and, for transportation of broken CRTs and CRT glass:

(a) The generator must prepare and the transporter must carry a ''hazardous waste manifest.'' MCR 857 sections 4–8.

(b) The generator must mark and label each transportation package ''in accordance with the applicable Federal Department of Transportation regulations on hazardous materials under 49 CFR Part 172'' and also mark ''each container of 110 gallons or less'' with the following:

State Hazardous Waste—State Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the Maine Department of Environmental Protection (1–800–482–0777).

Generator's Name & Address _____

_____

Manifest Document Number _____

MCR 851 § 8(A) (as amended effective June 12, 2008).

(c) The transporter must obtain a license from MDEP and meet additional conditions including maintaining (i) at least $500,000 in liability insurance, and (ii) ''a plan for the cleanup of discharges'' in the possession of the vehicle operator. MCR 853 sections 4(A)(1), 5(B)(9), 8(B) & (F).

In its application for an administrative preemption determination, the Electronic Industries Alliance (Alliance) contends that MDEP's classification, shipping paper, and marking or labeling requirements are not ''substantively the same as'' requirements in the HMR, and that both these requirements and the additional requirements on transporters ''cause confusion, interfere with the flow of trade, and otherwise serve as an obstacle to the purposes of the Federal hazmat law.''

On May 6, 2008, PHMSA published a notice in the **Federal Register** inviting interested persons to submit comments on the Alliance's application. 73 FR 25079. In response to this notice, comments were submitted by MDEP, environmental agencies of eight States (Connecticut, Illinois, Maryland, Massachusetts, New Hampshire, North Carolina, South Carolina, and Washington), the New Hampshire Attorney General, the Association of State and Territorial Solid Waste Management Officials (ASTSWMO), Ecomaine, the Electronics TakeBack Coalition, the Maine Pulp and Paper Association (MPPA), the Natural Resources Council of Maine, and the Utility Solid Waste Activities Group (USWAG). The Alliance and MDEP submitted rebuttal comments.

B. Federal Regulation of CRTs and CRT Glass

A CRT is ''a vacuum tube, composed primarily of glass, which is the visual or video display component of an electronic device.'' 40 CFR 260.10. Examples are televisions, computer monitors, medical, automotive, and oscilloscope devices. CRTs are built of a specialized glass that often contains lead. Under regulations of the U.S. Environmental Protection Agency (EPA), solid waste containing lead is considered toxic if ''the extract from a representative sample of the waste'' contains greater than 5 mg lead per liter, ''using the Toxicity Characteristic Leaching Procedure, test Method 1311 in 'Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,' EPA Publication SW–846.'' 40 CFR 261.24.

In general, black and white monitors (or ''monochrome CRTs'') do not have sufficient lead to meet the toxicity characteristic for a hazardous waste under EPA's regulations, but the more significant quantities of lead used to make color cathode ray tubes exceed the ''toxicity characteristic regulatory level of 5 milligrams per liter that is used to classify lead-containing wastes as hazardous (40 CFR 261.24(b)).'' EPA Notice of Proposed Rulemaking (NPRM), ''Modification of the Hazardous Waste Program; Cathode Ray Tubes,'' 67 FR 40508, 40510 (June 12, 2002). A note to MCR 850 section 3(A)(13)(a)(ii) states that, according to information in a 1996 Tufts University masters thesis, ''CRTs are believed to represent 75% of the lead in the solid waste stream. Lead, which is used to shield harmful radiation in the CRT, comprises more than 10 percent of a CRT's mass.''

Until recently, some used CRTs were potentially subject to regulation as EPA hazardous wastes unless covered by the exclusions for household waste and conditionally exempt small quantity generators (a person who generates less than 100 kg of non ''acute'' hazardous waste in a calendar month). *See* 40 CFR 261.4(b)(1), 261.5, as discussed at 67 FR at 40511 and in EPA's final rule, 71 FR 42928, 42929 (July 28, 2006). Accordingly, used CRTs not covered by the exclusions for household waste and conditionally exempt small quantity generators might be subject to regulation in transportation as a hazardous material because they were a hazardous waste ''subject to the Hazardous Waste Manifest Requirements of the U.S. Environmental Protection Agency specified in 40 CFR part 262.'' *See* 49

[1] In June 2008, MDEP added or revised ''notes'' to its regulations and revised guidance materials to advise that (1) it had revised its Recyclable Material Uniform Bill of Lading form to delete the word ''Hazardous'' from the title of the form; (2) the shipping document should clearly indicate whether the ''particular material is regulated by DOT'' and suggested describing CRTs as ''Non-DOT regulated material (CRT) for recycle as universal waste''; and (3) the marking specified in 40 CFR 262.32 (''HAZARDOUS WASTE—Federal Law Prohibits Improper Disposal'') did not apply to ''State-only hazardous wastes [that] are not DOT regulated hazardous materials.'' *See* the Notes to MCR 851 sections 8(A)(4), 853 section 11(Q), and 857 sections 4, 6.

[2] According to MDEP, ''CRTs are primarily treated as universal waste'' and ''nearly all CRTs leave the State as universal waste'' under the guidance set forth in MDEP's Universal Waste Handbook that ''[i]ncidental breakage of ten (10) or fewer * * * CRTs may still be handled as universal waste.''

CFR 171.8 (definitions of ''hazardous material'' and ''hazardous waste'').

However, in its July 28, 2006 final rule, which became effective January 29, 2007, EPA addressed the ''mounting volumes of outdated computer and electronics equipment'' and the concern that there has been ''a barrier to CRT recycling created by some existing hazardous waste management regulations.'' 71 FR at 42931. First, EPA explained in the preamble to that final rule that its hazardous waste management regulations, including the Uniform Hazardous Waste Manifest requirements in 40 CFR part 262, do not apply to unused CRTs, because ''EPA does not regulate unused chemical products that are reclaimed,'' and that the existing exemptions from Federal hazardous waste management requirements for household waste and small quantity generators remained applicable. 71 FR at 42929.

Second, EPA adopted a ''conditional exclusion'' from its waste management regulations for the following categories of CRTs and CRT glass because they are not ''solid wastes'': [3]

(a) Used intact CRTs sent for recycling (40 CFR 261.4(a)(22)(i));

(b) Broken CRTs sent for recycling that are transported in a container (including a vehicle) constructed, filled, and closed to minimize releases of CRT glass to the environment and labeled ''Do not mix with other glass materials'' and one of the following: ''Used cathode ray tube(s)-contains leaded glass'' or ''Leaded glass from televisions or computers'' (40 CFR 261.4(a)(22)(iii), 261.39(a)(1)–(4)). *See* 71 FR at 42929, 42948.

(c) CRT glass destined for recycling at a CRT glass manufacturer or a lead smelter after processing (40 CFR 261.4(a)(22)(iv), 261.39(c)). *See* 71 FR at 42829, 42948.

Accordingly, since January 29, 2007, used CRTs, broken CRTs, and CRT glass that are not subject to EPA's hazardous waste management regulations, including the Uniform Hazardous Waste Manifest requirements in 40 CFR part 262, are not hazardous materials for purposes of the HMR. As the Alliance notes, these items are not hazardous substances, marine pollutants, elevated temperature materials, designated as hazardous in the Hazardous Materials Table (49 CFR 172.101), or materials that meet ''the defining criteria for hazard classes'' in the HMR. *See* 49 CFR 171.8 (definition of a ''hazardous material'').[4] The primary risk during transportation of used CRTs appears to be ''the risk of injury to personnel [from] breakage of the items,'' according to an exchange of emails among MDEP staff, provided with MPPA's comments.

C. Related Proceedings

The Alliance participated in EPA's CRT rulemaking. In its comments on the June 12, 2002 NPRM (which have been placed in the public docket of this preemption determination), the Alliance endorsed and proposed expanding ''the proposed conditional exclusions for'' used CRTs, broken CRTs, and CRT glass. Under the heading ''Transportation Issues,'' the Alliance stated that it:

> believes that the benefits of the proposed rules for * * * CRTs * * * can be enhanced significantly by noting that, once finalized, they will preempt more stringent state rules regarding transportation of these items. Although the RCRA regulatory scheme generally allows state programs to be more stringent than the federal program, EPA and the courts have long recognized that there is an exception in the case of transportation-related requirements (*e.g.,* manifesting, packaging, labeling, and transportation registration requirements), unless preemption is explicitly waived by the federal government. In the present case, preemption would be an important step forward in ensuring uniform nationwide rules that could facilitate development of a recycling infrastructure.

In the preamble to the July 28, 2006 final rule, EPA stated that ''authorized states'' which ''administer and enforce a hazardous waste program within the state in lieu of the federal program'' under 42 U.S.C. 6926 ''are not required to adopt federal regulations * * * that are considered less stringent than previous federal regulations.'' 71 FR at 42943. Accordingly, ''States currently regulating CRTs as hazardous waste, including under the universal waste rule, would not have to amend their programs, since their programs are more stringent than the federal requirements.'' *Id.* at 42944. EPA discussed scenarios ''when used CRTs or processed CRT glass [are] transported to and from states with different regulations governing these wastes'' and stated that, ''for the portion of the trip through * * * states that do not consider the waste to be excluded, the transporter must have a manifest, except as provided by the universal waste rules, and must move the waste in compliance with 40 CFR Part 263.'' *Id.* In a separate document in the public docket responding to comments, EPA stated that issues of preemption of state transportation requirements were outside the scope of the EPA rulemaking.

On October 25, 2006, the Alliance petitioned the United States Court of Appeals for the District of Columbia for review of EPA's July 28, 2006 final rule. *Electronic Industries Alliance* v. *U.S. Environmental Protection Agency,* Case No. 06–1359. In its Preliminary and Non-Binding Statement of Issues (which has been placed in the public docket), the Alliance stated that the issues to be raised in the judicial review proceeding include ''[w]hether EPA's determination on transport of CRTs and CRT glass within and between states was contrary to the Hazardous Materials Transportation Act ('HMTA') and its implementing regulations, which provide that federal requirements for transport of hazardous materials, including hazardous wastes, generally preempt state requirements that differ.'' On May 18, 2007, that Court granted the Alliance's motion to hold the petition for review in abeyance pending further order of the Court and directed the parties ''to file motions to govern future proceedings in this case within 30 days of the completion of the Department of Transportation's proceedings'' on the Alliance's application for a preemption determination.

II. Federal Preemption

PHMSA's May 6, 2008 notice discussed the express preemption provisions in 49 U.S.C. 5125 that are relevant to this proceeding. 73 FR at 25081–82. As amended by Section 1711(b) of the Homeland Security Act of 2002 (Pub. L. 107–296, 116 Stat. 2320), 49 U.S.C. 5125(a) provides that—in the absence of a waiver of preemption by DOT under § 5125(e) or specific authorization in another Federal law—a requirement of a State, political subdivision of a State, or Indian tribe is preempted if

> (1) complying with a requirement of the State, political subdivision, or tribe and a requirement of this chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security is not possible; or
>
> (2) the requirement of the State, political subdivision, or tribe, as applied or enforced, is an obstacle to accomplishing and carrying out this chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive

[3] This exclusion does not apply to CRT materials that are sent for disposal or that are speculatively accumulated. 40 CFR 261.1(c)(8). Additional notification and consent requirements apply when used, intact CRTs or broken CRTs are exported for reuse or recycling. 40 CFR 261.39(a)(5), 261.40, 261.41. *See* 71 FR at 42948–49.

[4] USWAG also states that the HMR do not classify the lead in CRTs as a hazardous material but notes that the HMR do ''classify several other forms of lead as hazardous materials including specific lead compounds (*e.g.,* lead azide, lead cyanide and lead nitrate), other lead compounds when soluble in water, and lead having a diameter less than 100 micrometers. *See* 49 CFR 172.101 Table & Appendix A, Table 1.''

issued by the Secretary of Homeland Security.

These two paragraphs set forth the ''dual compliance'' and ''obstacle'' criteria that PHMSA had applied in issuing inconsistency rulings (IRs) prior to 1990, under the original preemption provision in the Hazardous Materials Transportation Act (HMTA). Public Law 93–633 section 112(a), 88 Stat. 2161 (1975). The dual compliance and obstacle criteria are based on U.S. Supreme Court decisions on preemption. *Hines* v. *Davidowitz,* 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul,* 373 U.S. 132 (1963); *Ray* v. *Atlantic Richfield,* Inc., 435 U.S. 151 (1978).

In addition, subsection (b)(1) of 49 U.S.C. 5125, as slightly revised in 2005,[5] provides that a non-Federal requirement concerning any of the following subjects is preempted—unless authorized by another Federal law or DOT grants a waiver of preemption—when the non-Federal requirement is not ''substantively the same as'' a provision of Federal hazardous material transportation law, a regulation prescribed under that law, or a hazardous materials security regulation or directive issued by the Secretary of Homeland Security:

(A) the designation, description, and classification of hazardous material.

(B) the packing, repacking, handling, labeling, marking, and placarding of hazardous material.

(C) the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.

(D) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material.

(E) the designing, manufacturing, fabricating, inspecting, marking, maintaining, reconditioning, repairing, or testing of a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material.

To be ''substantively the same,'' the non-Federal requirement must conform ''in every significant respect to the Federal requirement. Editorial and other similar de minimis changes are permitted.'' 49 CFR 107.202(d).

The 2002 and 2005 amendments to the preemption provisions in 49 U.S.C. 5125 reaffirmed Congress's long-standing view that a single body of uniform Federal regulations promotes safety (including security) in the transportation of hazardous materials. More than thirty years ago, when it was considering the HMTA, the Senate Commerce Committee ''endorse[d] the principle of preemption in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation.'' S. Rep. No. 1102, 93rd Cong. 2nd Sess. 37 (1974). When Congress expanded the preemption provisions in 1990, it specifically found that:

(3) many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, permitting, routing, notification, and other regulatory requirements,

(4) because of the potential risks to life, property, and the environment posed by unintentional releases of hazardous materials, consistency in laws and regulations governing the transportation of hazardous materials is necessary and desirable,

(5) in order to achieve greater uniformity and to promote the public health, welfare, and safety at all levels, Federal standards for regulating the transportation of hazardous materials in intrastate, interstate, and foreign commerce are necessary and desirable.

Pub. L. 101–615 section 2, 104 Stat. 3244. A United States Court of Appeals has found that uniformity was the ''linchpin'' in the design of the Federal laws governing the transportation of hazardous materials. *Colorado Pub. Util. Comm'n* v. *Harmon,* 951 F.2d 1571, 1575 (10th Cir. 1991).

III. Preemption Determinations

Under 49 U.S.C. 5125(d)(1), any person (including a State, political subdivision of a State, or Indian tribe) directly affected by a requirement of a State, political subdivision or tribe may apply to the Secretary of Transportation for a determination whether the requirement is preempted. The Secretary of Transportation has delegated authority to PHMSA to make determinations of preemption, except for those that concern highway routing (which have been delegated to FMCSA). 49 CFR 1.53(b).

Section 5125(d)(1) requires notice of an application for a preemption determination to be published in the **Federal Register.** Following the receipt and consideration of written comments, PHMSA publishes its determination in the **Federal Register. See** 49 CFR 107.209. A short period of time is allowed for filing petitions for reconsideration. 49 CFR 107.211. A petition for judicial review of a final preemption determination must be filed in the United States Court of Appeals for the District of Columbia or in the Court of Appeals for the United States for the circuit in which the petitioner resides or has its principal place of business, within 60 days after the determination becomes final. 49 U.S.C. 5127(a).

Preemption determinations do not address issues of preemption arising under the Commerce Clause, the Fifth Amendment or other provisions of the Constitution, or statutes other than the Federal hazardous material transportation law unless it is necessary to do so in order to determine whether a requirement is authorized by another Federal law, or whether a fee is ''fair'' within the meaning of 49 U.S.C. 5125(f)(1). For purposes of determining whether there is preemption under Federal hazardous material transportation law, a State, local or Indian tribe requirement is not ''authorized'' by another Federal law merely because it is not preempted by another Federal statute. *Colorado Pub. Util. Comm'n* v. *Harmo*n, above, 951 F.2d at 1581 n.10.

In making preemption determinations under 49 U.S.C. 5125(d), PHMSA is guided by the principles and policies set forth in Executive Order No. 13132, entitled ''Federalism'' (64 FR 43255 (Aug. 10, 1999)), and the President's May 20, 2009 memorandum on ''Preemption'' (74 FR 24693 (May 22, 2009)). Section 4(a) of Executive Order 13132 authorizes preemption of State laws only when a statute contains an express preemption provision, there is other clear evidence that Congress intended to preempt State law, or the exercise of State authority directly conflicts with the exercise of Federal authority. The President's May 20, 2009 memorandum sets forth the policy ''that preemption of State law by executive departments and agencies should be undertaken only with full consideration of the legitimate prerogatives of the States and with a sufficient legal basis for preemption.'' Section 5125 contains express preemption provisions, which PHMSA has implemented through its regulations and which PHMSA applies in making administrative preemption determinations.

IV. Standing of the Alliance To Apply for a Preemption Determination

At the time of its May 8, 2007 application, the Alliance was ''a non-

[5] These revisions are contained in the Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005, which is Title VII of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Public Law 109–59, 119 Stat. 1891 (Aug. 10, 2005).

profit trade association consisting of both associations and individual companies in the electronics and 'high technology' industries.'' It stated that the activities of its ''member companies include[d] manufacturing, sale, and distribution of CRTs, use of CRTs, and collection and recycling of used CRTs and CRT glass,'' and that its Environmental Issues Council ''is specifically designed to address the electronics industry's environmental and related regulatory concerns and to actively work to reduce the environmental impacts of the electronic industry's products through their entire life cycle, from design, through use, to end of life.''

According to its comments, MDEP performed ''background research'' which indicates that the Alliance is now ''a very different organization than the one which existed at the time of [its] application.'' In response to MDEP's request ''for an explanation,'' the Alliance wrote PHMSA on May 19, 2008, to advise that it had ''undergone a realignment'' so that ''under the current structure, EIA's only direct members are the four constituent trade associations; through its representation of them, EIA continues to represent the interests of member companies of the associations on relevant issues, such as the Maine CRT transport rules.'' The Alliance also stated that its Environmental Issues Council had been dissolved, but asserted that it ''continues to be involved in environmental issues (e.g., those raised by the Maine rule requiring used CRTs to be transported as hazardous wastes), as necessary and appropriate to represent the four constituent trade associations and their members.''

MDEP argues that the Alliance's application should be dismissed on the grounds that (1) the Alliance failed to identify any specific members directly affected the MDEP requirements it challenges, and (2) following the Alliance's ''realignment,'' its only members are trade associations. The Alliance replies that MDEP ''does not actually dispute that EIA represents the interests of electronic companies that are directly affected by the Maine rules for CRT transport'' and the ''Maine 'takeback' program for CRTs [which] explicitly requires manufacturers to transport, and/or pay for transport of the CRTs they produced (when they reach the end of life) as well as a *pro rata* share of 'orphan' CRTs.''

To the extent that 49 U.S.C. 5125(d)(1) contains a ''standing'' requirement for applying for a preemption determination, PHMSA has interpreted that requirement broadly and found that an industry association may raise issues of preemption when the association's members are ''directly affected'' by a non-Federal requirement. PD–6(R), ''Michigan Marking Requirements for Vehicles Transporting Hazardous and Liquid Industrial Wastes,'' 59 FR 6186, 6189 (Feb. 9, 1994). PHMSA has also noted the ''all parties engaged in hazardous materials transportation or the regulation of that transportation will be served by [PHMSA] addressing [preemption] issues.'' PD–2(R), ''Illinois Environmental Protection Agency's Uniform Hazardous Waste Manifest,'' 58 FR 11176, 11181 (Feb. 23, 1993), quoting from IR–32, ''City of Montevallo, Alabama Ordinance on Hazardous Waste Transportation,'' 55 FR 36736, 36741 (Sept. 6, 1990). Accordingly, when an administrative proceeding has been initiated in response to a proper application, PHMSA has declined to terminate the proceeding because of a change in circumstances. In PD–25(R), ''Missouri Prohibition against Recontainerization of Hazardous Waste at a Transfer Facility,'' 66 FR 37089, 37090 (July 16, 2001), the applicant for a preemption determination purported to ''withdraw'' its application, but PHMSA stated that it

> believes that the value in deciding whether a non-Federal requirement is inconsistent with (or preempted by) Federal hazardous material transportation law ''goes beyond the resolution of an individual controversy. At a time when hazardous materials transportation is receiving a great deal of public attention, the forum provides [PHMSA] an opportunity to express its views on the proper role of State and local vis-a-vis Federal regulatory activity in this area.'' IR–2, Rhode Island Rules and Regulations Governing the Transportation of Liquefied Natural Gas, etc., decision on appeal, 45 FR 71881, 71882 (Oct. 30, 1980).

This same important purpose exists when State or local requirements apply to individual companies that are members of one or more associations that, in turn, belong to an overall association. In actual practice, an industry association is just as ''directly affected'' by a State or local requirement on its ''second-level'' members, and DOT has not hesitated to consider issues of preemption raised in those circumstances. See, most recently, PD–31(F), ''District of Columbia Requirements for Routing of Certain Hazardous Materials,'' 71 FR 18137 (April 10, 2006); and Docket No. FMCSA–2008–0204 [PDA–33(F)], ''City of Boston's Hazardous Materials Routing Designation,'' 73 FR 46349 (Aug. 8, 2008), 51335 (Sept. 2, 2008). For purposes of this administrative proceeding, PHMSA finds that the Alliance had ''standing'' to submit its May 8, 2007 application for a determination whether Federal hazardous material transportation law preempts the MDEP requirements on used CRT's and CRT glass, and it did not lose that standing because of its ''realignment'' following submission of its application.

V. Requirements on ''State-Only'' Waste

The ultimate question to be decided in this proceeding is the extent to which Federal hazardous material transportation law precludes a State from imposing transportation-related requirements on materials that are regulated as ''hazardous waste'' by a State, but not regulated as ''hazardous materials'' under the HMR. This requires consideration of the statutory and regulatory differences (and overlaps) between (a) *hazardous materials,* as defined in Federal hazardous material transportation law and designated in the HMR, because they pose ''risks to life, property and the environment * * * in transportation * * * in intrastate, interstate, and foreign commerce,'' 49 U.S.C. 5101, and (b) *hazardous wastes,* to which RCRA and EPA's regulations apply, which pose a ''present and future threat to human health and the environment'' when disposed. 42 U.S.C. 6902(b).

A. Application and Comments in Support of Preemption

In its application, the Alliance repeatedly emphasizes that CRTs and CRT glass destined for reuse or recycling are not ''hazardous materials'' for purposes of the HMR. From this predicate, it argues that State or local requirements that apply to more or different materials than covered by the HMR are preempted. It quotes from PD–18(R), ''Broward County, Florida's Requirements on the Transportation of Certain Hazardous Materials,'' 65 FR 81950, 81953–54 (Dec. 27, 2000), that ''non-Federal definitions and classifications that result in regulating the transportation * * * of more, fewer or different hazardous materials than the HMR * * * are preempted''; and IR–32, 55 FR at 36743, that a non-Federal ''definition of 'hazardous waste' that includes not only those materials regulated under the HMR but also other materials not regulated under the HMR * * * is inconsistent with the HMR, and, therefore, preempted.''

The Alliance argues that MDEP may not impose any requirement for shipping documentation with respect to materials that ''are not subject to any shipping paper requirements under the

HMR.'' It asserts that ''state requirements regarding shipping documents are preempted if they are not 'substantively the same' as the corresponding requirements in the HMR'' and that, ''under this standard, state shipping documents must 'conform[] in every significant respect to the Federal requirement. See 49 CFR 107.202(d).'' The Alliance points out that the MDEP requirements for a manifest, bill of lading, or log ''include a number of data elements that are not required in HMR shipping papers.'' It refers to prior determinations in which PHMSA has found that:

—''the shipping paper requirements of the HMR are exclusive and * * * any additional [state] shipping paper requirements are inconsistent under the [Federal hazmat law],'' IR–5, ''City of New York Administrative Code Governing Definition of Certain Hazardous Materials,'' 47 FR 51991, 51994 (Nov. 18, 1982);

—state requirements are preempted which ''instruct the preparer of the * * * Manifest to enter the total quantity of each hazardous waste * * * in a different manner than the HMR,'' PD–2(R), 58 FR at 11182;

—state requirements ''to use a hazardous waste manifest [for] materials that are not hazardous wastes'' are preempted, PD–23(RF), ''Morrisville, PA Requirements for Transportation of 'Dangerous Waste,' '' 66 FR 37260, 37265 (July 17, 2001); and

—a state may not require additional information to be included on the manifest, PD–29(R), ''Massachusetts Requirements on the Storage and Disposal of Infectious or Physically Dangerous Medical or Biological Waste,'' 69 FR 34715, 34719 (June 22, 2004).

In its responsive comments, the Alliance states that the alternative to use a bill of lading, log, or other form approved by MDEP for intact CRTs is ''nothing but an illusion,'' and MDEP is able to track shipments without requiring ''that certain information and shipping papers *accompany* CRT shipments, when there is no such requirement under federal law.'' It asserts that, with respect to broken CRTs and CRT glass, ''[t]he question at issue is not whether a state may allow state-regulated wastes to be included on a manifest [or] how such state-regulated wastes should be indicated on the manifest,'' but rather, ''whether MDEP has the authority to require use of a uniform hazardous waste manifest for non-HMR materials.'' The Alliance quotes from PHMSA's determination in PD–23(RF), that ''additional requirements by States (or localities) for the use of a specific form beyond what is required in Federal regulations create a 'substantial burden for both generator and transporters.' '' 66 FR at 37265.

The Alliance asserts that the MDEP marking and labeling requirements are preempted because ''the HMR does not impose any labeling/marking requirements on intact CRTs,'' or on broken CRTs and CRT glass ''assuming they are handled consistent with the requirements of EPA's conditional exclusions.'' And it states that MDEP may not call broken CRTs or CRT glass ''hazardous waste,'' or intact CRTs ''universal waste'' (a ''special subset of hazardous wastes eligible for management under reduced regulatory requirements''), because these ''materials do not meet the HMR definition of 'hazardous waste.' ''

The Alliance disputes MDEP's ''claim that its 'labeling and marking requirements primarily apply to the Maine generator, not to the transporter, and thus are not a transportation issue.'' It compares the MDEP marking and labeling requirements to the requirements for marking ''liquid industrial waste'' and ''hazardous waste'' that PHMSA found to be preempted in PD–6(R). It contends that the ''newly established label,'' which omits any reference to Federal law, ''still does not save the state marking/labeling requirements from preemption'' because these requirements ''are still substantively different than federal marking/labeling requirements.''

The Alliance further contends that all the MDEP requirements ''serve as an obstacle'' to accomplishing and carrying out the Federal hazardous materials transportation law and the HMR ''by creating substantial regulatory confusion'' and ''inhibit[ing] the free flow of commerce in CRTs for recycling.'' It states that ''shippers and carriers will undoubtedly be confused when broken CRTs and CRT glass are classified and regulated during transportation as 'hazardous wastes' by MDEP, but are not similarly classified or regulated by DOT.'' For example, it attributes confusion to MDEP's requirements that broken CRTs and CRT glass (1) must be ''shipped with a 'Uniform Hazardous Waste Manifest,' which * * * requires a 'Certification of receipt of hazardous materials' ''; (2) ''must be marked during transportation with the words 'HAZARDOUS WASTE' and a reference to federal law''; and (3) may not be offered ''to a transporter who is not licensed as a hazardous waste transporter.'' The Alliance states that ''the added burdens imposed by the Maine regulations'' are a factor that led one of its members to refuse to provide recycling ''services for used CRTs generated in Maine.''

The Alliance also states that differences between the MDEP requirements and those in different States illustrate the ''substantial confusion'' when shipments travel through more than one State. It also argues that a finding of preemption would not ''undermine'' the ability of States ''to regulate hazardous wastes that are not regulated by EPA, to streamline requirements for wastes that have not been designated as federal universal wastes, and to develop collection and recycling programs for CRTs and other electronic wastes.''

Two other industry associations, MPPA and USWAG, submitted comments in agreement with the Alliance's position that Federal hazardous material transportation law preempts the MDEP requirements on CRTs and CRT glass. MPPA states that ''its member mills regularly generate CRTs and arrange for reuse, recycling, or disposal of CRTs, using transporters, and * * * [u]nder some circumstances, MPPA members also transport used and unused CRTs.'' MPPA represents that, in regulating intact CRTs as ''universal waste,'' MDEP has gone

> beyond the federal Universal Waste rules and indeed beyond its own hazardous waste rules in several regards, including transportation requirements. * * * Among the requirements which are ''broader in scope'' than federal Universal Waste regulations are the DEP rules covering employee training, weekly inspections, storage and aisle space, shipment tracking documents, the Maine ''Uniform Hazardous Materials Bill of Lading,'' and Universal Waste transporter operating standards. Maine requires that all used, unused, or unwanted CRTS generated and shipped from Maine facilities ultimately be transported to a recycling facility, whether they are intact or broken. MPPA believes that the DEP attempted in some cases to address the overlap of the HMR and its new scheme, but the DEP adopted an overbroad approach that ultimately conflicts with and frustrates a uniform HMR transportation program.

MPPA attributes ''confusion that the regulated public faces when attempting to wrestle with the DEP's transportation requirements'' to the differences ''from the federal HMR regulations and EPA's regulations.'' It states that this results from Maine's failure to adopt ''the EPA's conditional exclusion for Universal Wastes,'' Maine's classification of broken CRTs and CRT glass as fully regulated State ''hazardous wastes,'' rather than universal wastes, and the ''alternate shipping paper'' requirements for intact CRTs. MPPA emphasizes that, ''to the extent that MPPA or its members

do not understand the requirements, that underscores the confusion generated by these different requirements.'' It attached to its comments an email exchange among MDEP staff during 2003 considering, but not deciding in the absence of any proposal ''submitted for review and approval,'' whether shrink wrapping CRTs for shipment would be acceptable, and states that ''some individuals and companies no longer transport Universal Waste due to an inability or unwillingness to meet the additional requirements adopted by the DEP.'' MPPA also states that it ''believes that the Maine Universal Waste rules, and the transportation rules in particular, provide a 'De Facto' scheme that regulates Universal Waste as it if were hazardous material under the HMR.''

MPPA states that its ''members are also subject to enforcement action by the DEP, which has a vigorous enforcement program including notices of violation and regular assessment of penalties for violations of the DEP hazardous waste regulations.'' While MPPA ''is not aware of enforcement actions taken against its members as transporters or shippers of CRTs,'' it refers to ''DEP enforcement action on [other] Universal Wastes,'' and states it has ''no doubt that DEP would enforce its Universal Waste rules on CRTs if it learned of violations.''

USWAG (an intervenor in the litigation pending in the Court of Appeals for review of EPA's July 28, 2006 final rule) states that ''preemption of Maine's CRT regulations [is] both necessary and critical to ensuring national uniformity in transportation safety.'' It asserts that a finding that State requirements are not preempted because they affect the transportation of ''materials that are not regulated by the HMR/HMTA (i.e., lead in CRTs and CRT glass)'' would ''ignore[] the HMTA statutory scheme whereby DOT is provided with the authority for designating 'hazardous materials.' '' USWAG further contends that

> If DOT's preemption authority is limited to those substances that it has determined pose unreasonable risks, it allows for the development of non-federal transportation standards for all other substances rather than a uniform national set of transportation safety regulations. DOT's conclusions on substances that it determines do not pose an unreasonable risk are rendered meaningless if states can expand this list on their own. Congress' intent will be frustrated if every state (and even every locality) may promulgate transportation standards for any substance in various amounts and forms provided the state's list does not explicitly overlap with DOT-regulated hazardous materials.

USWAG states that ''[a]ll of Maine's particular transportation requirements should be preempted because the state has used a classification system for the materials to be regulated that is inconsistent with the HMR.'' It also refers to PHMSA's prior findings of preemption in cases including:

—PD–23(RF), when a state had ''create[d] a scheme for designating and classifying hazardous material that is not substantively the same as in the HMR'' (66 FR at 38624);

—PD–6(R), where the ''liquid industrial waste'' marking was ''tantamount to the creation of an additional class of hazardous materials with its own marking requirements'' (59 FR at 6192); and

—IR–32, in which PHMSA referred to the statements in prior decisions ''that it considers the Federal rule in definition of hazard classes to be exclusive'' (55 FR at 36742).

B. Comments in Opposition to Preemption

MDEP agrees with the Alliance that, following EPA's CRT rulemaking, intact and broken CRTs destined for recycling are not a ''hazardous material.'' It emphasizes that it ''regulates CRTs and CRT glass as a state-only waste,'' and it does not attempt ''to regulate CRTs as federal hazardous material.'' It states that both ''DOT and EPA have agreed that States have the right to regulate state-only waste, and EIA's assertions to the contrary are baffling.'' MDEP quotes from *Massachusetts* v. *U.S. Department of Transportation,* 93 F.3d 890, 894 (D.C. Cir. 1996), that ''the regulation of how waste may be picked up or dropped off in a state must be thought an area of traditional state control.'' It also refers to PHMSA's 1996 letter (discussed in the May 6, 2008 **Federal Register** notice, 73 FR at 25083) that waste regulated by the State of Utah, which is not subject to the HMR, may be described on the manifest as ''Utah Regulated Only,'' ''non-RCRA waste,'' ''Utah only waste,'' or ''Utah Hazardous waste, liquid or solid, n.o.s.''

MDEP states that it has been authorized by EPA ''to implement the RCRA hazardous waste program,'' and that, in 2004,

> EPA determined that MDEP's inclusion of CRTs in the State's universal waste rule was different from, but equivalent to the Federal regulations. 69 FR at 64864. Both EPA and MDEP's universal waste rules established streamlined hazardous waste management regulations which were intended to encourage the recycling of certain widely generated wastes. * * * EPA's recent adoption of the final CRT rule in July 2006 changed the federal CRT requirements but reconfirmed MDEP authority, and even specifically addressed how interstate-transportation of state-only regulated materials through States adopting EPA's new conditional exclusion should be handled. 71 FR 42927, 42944. DOT preemption was clearly not contemplated by EPA.

MDEP also argues that its requirements for ''tracking of state-only hazardous waste, whether broken CRTs as hazardous waste or intact CRTs as universal waste, do not create a new classification of federal hazardous materials.'' In its rebuttal comments, it states that, ''to preclude any suggestion or misimpression that MDEP has ever attempted, or is presently attempting, to create a *de facto* DOT hazardous materials classification of this portion of its state-only hazardous waste program, MDEP has recently provided new clarifications and guidance in a number of its materials—e.g., its website, its regulations, and its forms.'' It emphasizes that, ''even prior to such guidance, transporters have understood that, in Maine, broken CRTs, similar to other state-only hazardous wastes, are part of the MDEP's state-only hazardous waste program, and may not be identified or treated as DOT hazardous materials unless they are defined as such by DOT.''

MDEP notes that it has excluded the word ''hazardous'' from the ''Maine Recyclable Material Uniform Bill of Lading'' form. It states that the alternative tracking documents allowed ''to be utilized for universal wastes * * * make even clearer than before that Maine is not attempting to regulate CRTs as federal hazardous materials.''

MDEP contends that its ''labeling and marking requirements apply to the Maine generator, not to the transporter, and thus are not a transportation issue'' because they concern ''non-transportation operations at fixed facilities.'' It also states that ''under both federal and MDEP universal waste rules the word 'waste' may be placed on a package and under both federal and MDEP rules this syntax does not mean that it is a DOT hazardous material.'' It asserts that its marking and labeling requirements do not create confusion because there is no indication that either intact or broken CRTs are federal hazardous materials, stating ''the MDEP approach to state-only universal waste is the antithesis of confusing; rather, in conformance with the practices nationwide for the movement of universal wastes, it carefully delineates a bright line between DOT hazardous materials and universal wastes, including state-only universal waste.''

MDEP argues that its requirements on transporters of intact or broken CRTs are

not obstacles to the goals of Federal hazardous material transportation law or the HMR because ''Maine has not in any way made a *de facto* classification of CRTs as federal hazardous material.'' It states that the Alliance's arguments about possible confusion, hypothetical noncompliance, and risks to transportation safety are ''unsubstantiated and fl[y] in the face of the reality of years of successful state and federal co-operation with state-only hazardous waste programs, including universal waste.''

MDEP states that the preemption determination cases cited by the Alliance and USWAG ''fall into four general fact patterns.'' The first is that in PD–7(R) in which PHMSA found that: ''Operator requirements for the transport of oils that are not hazardous materials are not subject to preemption by the HMTA.'' 59 FR at 28914. According to MDEP, ''operation of the MDEP program'' resembles the circumstances considered in PD–7(R), where an extensive analysis was not required in that determination (as USWAG argues), ''because Maryland's definitions of covered oils were, as here, sufficiently transparent to prevent anyone from incorrectly believing that the vegetable oils were DOT hazardous materials.''

MDEP distinguishes the second fact pattern of PD–6(R) on the ground that there is nothing in the MDEP marking or labeling requirements comparable to the Michigan requirement which was ''sufficiently similar to HMR markings that it appears to be a hazard warning, but that does not conform to HMR markings, [so that] the purposes of the HMR are undermined.''

MDEP states the third and fourth fact patterns involve ''cases where the challenged non-Federal requirements contained language that effectively blurred the definition of items on DOT's designated hazardous materials list'' with items regulated under the non-Federal requirements or ''a non-Federal requirement'' was applied to the same material ''in a different manner,'' including:

—the definitions of gases ''under pressure'' and gases and mixtures considered ''combustible'' or ''flammable,'' IR–5, 47 FR at 51993;

—''a system of classifying hazardous materials which is totally at variance with the system of hazard class definitions on which the Federal hazardous materials regulatory system is based,'' IR–6, ''City of Covington Ordinance Governing Transportation of Hazardous Materials,'' 48 FR 760, 763 (Jan. 6, 1983);

—the definition of ''radioactive materials,'' IR–12, ''St. Lawrence County, New York; Local Law Regulating the Transportation of Radioactive Materials,'' 49 FR 46632, 46651 (Nov. 27, 1984);

—State Police regulations which include ''materials listed in the SARA [Title III] table which are not listed in the HMR Table'' but omit some ''materials listed in the HMR Table but not in the SARA Table'' IR–29, ''State of Maine Statutes and Regulations on Transportation of Hazardous Materials,'' 55 FR 9304, 9308;

—a local definition of ''hazardous waste'' as including ''radioactive waste'' with a lower threshold of activity than subject to the HMR as a ''hazardous material,'' IR–32, 55 FR at 36742;

—the definitions of ''hazardous materials,'' ''combustible liquid,'' ''flammable liquid,'' ''biomedical waste,'' ''discarded hazardous materials,'' and ''sludge'' which were being ''used to regulate a material as a hazardous material,'' but ''were not 'substantively the same as' their counterparts in the HMR or did not have counterparts in the HMR,'' PD–18(R), 67 FR at 35195;

—the definitions of ''infectious waste,'' ''hospital waste,'' and ''dangerous waste'' that ''create a scheme for designating and classifying hazardous material'' that is not substantively the same as the regulation of ''regulated medical waste'' as a hazardous material in the HMR, PD–23 (RF), 66 FR at 37264; and

—''extensive [additional] information and documentation requirements [for the transportation of nuclear materials] * * * are likely to confound the transporters of hazardous materials, thereby increasing the potential for unreasonable hazards throughout the county,'' *Colorado Pub. Util. Comm'n* v. *Harmon,* above, 951 F.2d at 1583.

Eight States, ASTSWMO, Ecomaine, and the Natural Resources Council of Maine submitted comments opposing the Alliance's application. The Connecticut Department of Environmental Protection, Illinois Environmental Protection Agency, Maryland Department of the Environment, New Hampshire Department of Environmental Services, South Carolina Department of Health and Environmental Control, the Washington Department of Ecology, and ASTSWMO all quote the finding in PD–7(R) that wastes that are ''not hazardous materials are not subject to preemption by the HMTA.'' 59 FR at 28914.

These eight states assert that finding that the MDEP requirements are preempted would essentially prevent states from developing state-only regulated wastes or managing state-only universal waste in accordance with their universal waste requirements. Most of them specifically mention that this result would be directly contrary to EPA's March 4, 2005 final rule (70 FR 10789) revising requirements for the Uniform Hazardous Waste Manifest, ''which clearly provides for states to include state only wastes and additional state waste codes (to convey specific state information) providing it does not duplicate information contained in federal codes.''

Five of these states assert that ''the existence of state only hazardous waste has not caused substantial problems or confusion.'' They allege that the Alliance ''is targeting Maine CRT requirements'' because ''Maine has one of the first in the nation manufacturer takeback programs for electronic waste, specifically CRTs. * * * Other states are looking at developing similar programs'' which should ''not be thwarted by a DOT preemption determination.''

The New Hampshire Attorney General's Office submitted a separate comment that there is a ''presumption against preemption in areas of traditional state control, including the regulation of waste and environmental protection'' and, unless the ''dual compliance'' and ''obstacle'' criteria in 49 U.S.C. 5125 apply, ''a state requirement is not preempted merely because the federal scheme has left a substance unregulated in certain respects.''

ASTSWMO states that a finding that the MDEP requirements on intact and broken CRTs are preempted would (1) ''undermine long established legal authorities for States to regulate additional wastes as hazardous beyond those regulated by the U.S. Environmental Protection Agency (EPA) under federal hazardous waste regulations''; (2) ''contradict explicit authority granted to the states by EPA to include additional wastes in the category of 'universal waste' under State regulations''; and (3) ''hinder States' abilities to tailor their regulations to local problems and conditions.'' ASTSWMO asserts that, ''when EPA modifies the federal hazardous waste regulatory program to make it less stringent, States are not required to adopt the changes,'' as discussed in EPA's July 28, 2007 final rule (71 FR at 42944). The fact that ''States may regulate additional categories of wastes as State-only universal waste * * *

provid[es] further evidence that variation among the States' universal waste programs is to be expected,'' which ASTSWMO finds expressed in the preamble to EPA's ''Universal Waste Rule.'' 60 FR 25492 (May 11, 1995).

Ecomaine is ''a quasi-municipal organization owned by 21 municipalities in southern Maine, encompassing a waste-to-energy renewable power plant, single-sort recycling center and an ashfill/landfill.'' It states that ''Maine's eWaste Law'' requires ''that CRTs be recycled'' rather than being disposed at landfills and waste facilities and that MDEP's ''efficient and desirable tracking system * * * is crucial to the effectiveness of their program.'' Ecomaine says it ''shares the strategy that manufacturers take responsibility for their products,'' and states that the Alliance's application for a preemption determination ''seems counterproductive toward a sustainable future.''

The Electronics TakeBack Coalition is ''a national coalition of environmental and consumer groups, who promote green design and responsible recycling of electronics in the U.S.'' It states that the Alliance's application ''is simply a ploy to undermine recently enacted state e-waste recycling legislation that requires EIA's (former) members to participate in the electronics recycling program.'' It compares the MDEP requirements with ''the California e-waste law, which also places several restrictions on the handling and transportation of CRTs in California,'' and notes that the Alliance has not challenged the California law which ''does not require the industry to take any responsibility for recycling.'' It states that ''Maine does not regulate or classify these as hazardous materials, as claimed in the EIA petition,'' and is acting within its authority to designate ''state only hazardous wastes'' and ''universal wastes.''

The Natural Resources Council of Maine, the ''largest environmental advocacy group'' in Maine, states that a finding of preemption ''would eviscerate a highly successful law that is helping to protect Maine's citizens and wildlife from the toxic materials in electronic waste.'' It cites the ''accomplishments'' of Maine's ''electronic waste law'' and states that Maine's regulation of intact CRTs and CRT glass is fully authorized under EPA's CRT regulation and the guidance in EPA's universal waste program.

C. Decision

Ever since enactment of RCRA in 1976, the year following the HMTA, DOT and EPA have worked together to coordinate their respective requirements on the transportation of hazardous waste and to reconcile:

—the authority in 42 U.S.C. 6926 for a State to ''administer and enforce a hazardous waste * * * program'' that is ''equivalent to the Federal program under'' RCRA;

—the authority recognized by EPA and DOT for a State program to include in its hazardous waste management program additional wastes which are not regulated by EPA, under the provision in 42 U.S.C. 6929 that nothing in RCRA ''shall be construed to prohibit any State or political subdivision thereof from imposing any requirements * * * which are more stringent than'' EPA's hazardous waste management regulations;

—the requirement in 42 U.S.C. 6923(b) that, with respect to ''any hazardous waste identified or listed'' by EPA that is subject to Federal hazardous materials transportation law, ''the regulations promulgated by [EPA] shall be consistent with the requirements of such Act and the regulations thereunder''; and

—the original provision in Section 112 of the HMTA that, unless a waiver of preemption is granted, ''any requirement of a State or political subdivision thereof, which is inconsistent with any requirements set forth in this title, or in a regulation issued under this title, is preempted.''

In May 1980, when DOT adopted its initial regulations on the transportation of hazardous waste materials, it noted that ''six EPA–DOT joint public hearings were held in various parts of the United States'' and that PHMSA's predecessor agency (the Materials Transportation Bureau [MTB]) ''worked closely with EPA in the joint development of appropriate transportation requirements.'' 45 FR 34560, 34566, 34567 (May 22, 1980). ''MTB explained that the primary focus of its requirements was to ensure that hazardous wastes are properly identified to carriers and that they are delivered to predetermined designated facilities. Proper identification of wastes is essential in order to implement the transportation aspects of a 'cradle to grave' hazardous waste tracking system.'' 45 FR at 34567.

Accordingly, the scope of ''hazardous waste'' covered by the HMR is limited to ''any material that is subject to the hazardous waste manifest requirements of the EPA specified in 40 CFR Part 262.'' 49 CFR 171.8.[6] PHMSA's May 22, 1980 final rule also added a new Section 171.3(c) which specifically stated that a State or local requirement that applied to a ''hazardous waste *subject to this subchapter''* (emphasis added) was preempted if it ''applies differently or in addition to the requirements in [the HMR] concerning:

''(1) Packaging, marking, labeling, or placarding;[7]

''(2) Format or contents of discharge reports (except immediate reports for emergency response);[8] and

''(3) Format or contents of shipping papers, including hazardous waste manifests.'' *Id.*[9]

[6] As originally adopted in 1980, the definition of ''hazardous waste'' included any material that would be subject to EPA's hazardous waste manifest requirements ''absent an interim authorization to a state under 40 CFR Part 123, Subpart F.'' 45 FR at 34587. This additional language was deleted in PHMSA's February 18, 1986 final rule, 51 FR 5968, because it was ''no longer necessary due to the change in the applicability of the HMR for hazardous wastes adopted in the final rule under HM–145D (49 FR 10507, Mar. 20, 1984).'' 50 FR 288, 290 (Jan. 3, 1985).

[7] In its separate final rule adopting a hazardous waste manifest system (45 FR 12737, 12740 [Feb. 26, 1980]), EPA stated that

DOT's labeling, marking, and placarding requirements have been in use for several years [and are] widely understood by persons in the transportation industry and by State and local officials in charge of responding to discharges of hazardous materials. Therefore, in developing its regulatory system for transporters of hazardous waste, EPA decided to rely upon DOT's existing system to the fullest extent possible consistent with [RCRA's] statutory mandate to protect human health and the environment during the transportation of hazardous waste. This effort to coordinate the transportation regulations was facilitated by DOT's proposal to extend the applicability of its hazardous materials regulations to transporters of hazardous waste. Upon adoption of DOT's regulations, these two sets of regulations will be fully interlocked, and a transporter of hazardous waste will be required to comply with both DOT and EPA regulations.

EPA's requirements to package, label, mark, and placard shipments of hazardous waste are set forth at 40 CFR 262.30–262.33.

[8] EPA also adopted at 40 CFR 263.30, ''the DOT requirements for reporting of discharges,'' and provided at 49 CFR 263.31 that a ''transporter must clean up any hazardous waste discharge that occurs during transportation or take such action as may be required or approved by Federal, State, or local officials so that the hazardous waste discharge no longer presents a hazard to human health or the environment.'' 45 FR at 12744, 33152.

[9] Four years later, EPA and DOT issued coordinated final rules adopting a uniform hazardous waste manifest (*see* 49 FR 10490 (EPA); 49 FR at 10510 (DOT) [Mar. 20, 1984]). EPA explained that it and DOT ''modified the Uniform Manifest form to allow the entry of certain optional State information items in addition to the federally-regulated items,'' and specifically that the ''Uniform Hazardous Waste Manifest form has been designed to allow the listing of both federally-regulated wastes and wastes regulated solely by the States,'' so long as there is a clear distinction ''between federally-regulated wastes and other wastes, as required by DOT regulations (49 CFR 172.201(a)(1)).'' 49 FR at 10492, 10495. DOT similarly noted that the amendments adopted by it and EPA did not ''prohibit States from requiring additional information from the generator or the

This provision, specific to hazardous waste, was consistent with PHMSA's original regulations which set forth procedures for ''a State or a political subdivision of a State having a requirement pertaining to the transportation of hazardous materials or any person affected by the requirement [to] obtain an administrative ruling as to whether the requirement is inconsistent with the [Hazardous Materials Transportation] Act or regulations issued under the Act.'' Former 49 CFR 107.201(a), adopted at 41 FR 38167, 38171 (Sept. 9, 1976) (emphasis supplied). Accordingly, both the general and specific preemption provisions in PHMSA's regulations were clear that non-Federal requirements that do not ''pertain'' to the transportation of a hazardous material subject to the HMTA are not preempted by the HMTA.

As discussed in Part II, above, the HMTA was amended in 1990 to (1) specifically set forth the ''dual compliance'' and ''obstacle'' standards that PHMSA had applied in issuing administrative rulings on preemption prior to that date; (2) specify that non-Federal requirements in five ''covered subject'' areas must be ''substantively the same as'' requirements in the Federal hazardous material transportation law and the regulations issued under that law; and (3) statutorily authorize PHMSA's administrative process for making preemption determinations. Public Law 101–615 section 105(a)(4), 104 Stat. 3247 (Nov. 16, 1990). Thereafter, PHMSA revised its procedural regulations in subpart C of 49 CFR part 107 (56 FR 8616, 8622 [Feb. 28, 1991]), and deleted former § 171.3(c) as part of the President's Regulatory Reinvention Initiative to eliminate unnecessary provisions because, ''for preemption purposes, [PHMSA] looks as hazardous waste issues together with issues covering all other hazardous materials. RCRA's directive that EPA's hazardous waste requirements be consistent with the Federal hazmat law does not mandate that [PHMSA] establish a separate preemption provision for hazardous waste.'' 61 FR 21084, 21093 (May 9, 1996). *See also* 61 FR 51235, 51236 (Oct. 1, 1996), that ''utilization of the 'covered subjects' preemption authority in the Federal hazardous materials transportation law facilitates harmonization of non-Federal requirements with Federal law'' and ''goes far beyond the limited provisions of 49 CFR 171.3(c). * * * [T]he preemption provisions of the Federal hazardous materials transportation law address all issues pertaining to transportation of hazardous materials, including hazardous waste.''

These amendments to the HMTA and revisions to PHMSA's regulations have not changed the general principle, as expressed in the preamble to a final rule on ''Infectious Substances,'' that the ''HMR do not, however, preempt non-Federal requirements imposed on the transportation of materials that are not hazardous materials as defined in the HMR.'' 60 FR 48780, 48784 (Sept. 20, 1995). As PHMSA explained at that time, there can be exceptions to this general principle, such as the situation in PD–6(R), ''where a non-Federal law or regulation requires a method of hazard communication for non-hazardous materials sufficiently similar to that prescribed by the HMR for a hazardous material that the regulation is 'tantamount to the creation of an additional class of hazardous materials with its own marking requirements.' '' *Id.*

As noted by MDEP, another exception to this general principle is where the non-Federal requirement purports to broaden the category of hazardous materials to include materials that are not regulated under the HMR and, thereby, create ''a system of classifying hazardous materials which is totally at variance with the system of hazard class definitions'' in the HMR. IR–6, 48 FR at 763. *See also, e.g.,* IR–5, 47 FR at 51993 (additional materials included within the definitions of gases ''under pressure'' and ''combustible'' and ''flammable'' gases and mixtures); IR–32, 55 FR at 36742 (using a lower threshold of activity for regulating waste radioactive material as a ''radioactive waste''); PD–18(R), 65 FR at 81953 (''state and local hazard class and hazardous materials definitions differing from those in the HMR and *used to regulate in areas regulated by DOT* are preempted) (emphasis supplied); PD–23(RF), 66 FR at 37263 (the term ''hospital waste'' in a local ordinance encompasses both (1) items that are within the definition of 'regulated medical waste' in the HMR and (2) other items that may not contain any infectious substance and, therefore, are not regulated under the HMR'').

These exceptions do not apply here. As the Alliances itself stresses, MDEP regulates used CRTs and CRT glass solely as a ''State-only'' hazardous or universal waste. There is no evidence that these requirements

—pertain to the ''designation, description, and classification of hazardous material,'' the ''labeling, marking, and placarding of hazardous material,'' or the ''preparation, execution, and use of shipping documents related to hazardous material,'' as the term ''hazardous material'' is used in the Federal hazardous material transportation law and the regulations issued under that law;

—otherwise create any ''obstacle to accomplishing and carrying out'' the Federal hazardous material transportation law and the regulations issued under that law; or

—prevent compliance with any requirement of the Federal hazardous material transportation law and the regulations issued under that law.

Rather, Maine's regulation of intact CRTs as a State-only universal waste, and broken CRTs and CRT glass as a State-only hazardous waste, is done in a manner that does not create any regulatory confusion or jeopardize transportation safety. Maine's approach is consistent with DOT's guidance regarding how to describe State-only hazardous wastes, as set forth in PHMSA's 1996 letter addressing State-only hazardous waste regulated by Utah. Maine's requirements for the manifesting of broken CRTs and CRT glass follow the regulations developed by EPA (in coordination with DOT) for the manifesting of State-only hazardous waste.

VI. Ruling

Federal hazardous material transportation law does not preempt MDEP's regulations on classification of used CRTs as ''universal waste'' and broken CRTs and CRT glass as a State ''hazardous waste'' and the marking, labeling, shipping documentation, and transporter requirements, because these requirements do not apply or pertain to materials regulated under Federal hazardous materials transportation law and the HMR or otherwise constitute an obstacle to accomplishing and carrying out Federal hazardous materials transportation law and the regulations issued under that law.

VII. Petition for Reconsideration/ Judicial Review

In accordance with 49 CFR 107.211(a), any person aggrieved by this decision may file a petition for reconsideration within 20 days of publication of this decision in the **Federal Register.** A petition for judicial review of a final preemption

treatment, storage or disposal facility concerning a hazardous waste shipment,'' but that this information could be submitted ''directly to the appropriate agency of that State.'' 49 FR 10508. Thus, ''while these amendments do not prohibit the transporter from voluntarily carrying such information, they do preclude States from requiring the transporter from doing so.'' *Id. See* also 40 CFR 271.10.

determination must be filed in the United States Court of Appeals for the District of Columbia or in the Court of Appeals for the United States for the circuit in which the petitioner resides or has its principal place of business, within 60 days after the determination becomes final. 49 U.S.C. 5127(a).

This decision will become PHMSA's final decision 20 days after publication in the **Federal Register** if no petition for reconsideration is filed within that time. The filing of a petition for reconsideration is not a prerequisite to seeking judicial review of this decision under 49 U.S.C. 5127(a).

If a petition for reconsideration is filed within 20 days of publication in the **Federal Register,** the action by PHMSA's Chief Counsel on the petition for reconsideration will be PHMSA's final action. 49 CFR 107.211(d).

Issued in Washington, DC, on September 2, 2009.

Sherri L. Pappas,

Acting Chief Counsel.

[FR Doc. E9–21768 Filed 9–9–09; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Space Transportation Advisory Committee—Open Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Commercial Space Transportation Advisory Committee open meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2), notice is hereby given of a meeting of the Commercial Space Transportation Advisory Committee (COMSTAC). The meeting will take place on Thursday, October 29, 2009, starting at 8 a.m. at the Marriott Metro Center Hotel, 775 12th Street, NW., Washington, DC 20005. This will be the 50th meeting of the COMSTAC.

The proposed agenda for this meeting will feature information about 25 years of COMSTAC; and discussions will focus on

—the Committee's work on a White Paper entitled *DoD Impact on U.S. Commercial Launch Services Competitiveness*;

—the Committee's work on the National Space Policy Review;

—the Augustine Panel and the implications for the U.S. commercial space transportation industry; and

—orbital debris mitigation, industry impact, costs, and the role of the FAA.

Interested members of the public may submit relevant written statements for the COMSTAC members to consider under the advisory process. Statements may be concerning the issues and agenda items mentioned above and/or additional issues that may be relevant for the U.S. commercial space transportation industry. Interested parties wishing to submit written statements should contact Brenda Parker, DFO, (the Contact Person listed below) in writing (mail or e-mail) by October 2, 2009, so that the information can be made available to COMSTAC members for their review and consideration prior to the October 29th meeting. Written statements should be supplied in the following formats: one hard copy with original signature and/or one electronic copy via e-mail.

Subject to approval, a portion of the October 29th meeting will be closed to the public (starting at 3:45 pm).

An agenda will be posted on the FAA Web site at *http://ast.faa.gov*. For specific information concerning the times and locations of the COMSTAC working group meetings, contact the Contact Person listed below.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Brenda Parker (AST–100), Office of Commercial Space Transportation (AST), 800 Independence Avenue, SW., Room 331, Washington, DC 20591, telephone (202) 267–3674; E-mail *brenda.parker@faa.gov*. Complete information regarding COMSTAC is available on the FAA Web site at: *http://www.faa.gov/about/office_org/headquarters_offices/ast/advisory_committee/*.

Issued in Washington, DC, September 4, 2009.

George C. Nield,

Associate Administrator for Commercial Space Transportation.

[FR Doc. E9–21905 Filed 9–9–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Fourth Meeting—RTCA Special Committee 220/Automatic Flight Guidance and Control

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 220/Automatic Flight Guidance and Control meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 220/Automatic Flight Guidance and Control.

DATES: The meeting will be held October 14–16, 2009. October 14th from 9 a.m. to 5 p.m. and October 16th from 9 a.m. to 2 p.m.

ADDRESSES: The meeting will be held at Wichita Airport Hilton, 2098 Airport Road, Wichita, Kansas, 67209–1941 USA, *Tel:* 1–316–945–5272, *Fax:* 1–316–945–7620.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 220/Automatic Flight Guidance and Control meeting. The agenda will include:

- Welcome/Agenda Overview.
- Review and approve previous plenary minutes.
- Report out from July PMC meeting—Sherif Ali.
- Report from WG1—MOPS: Status, schedule, issues—Review MS Project schedule.
- Report from WG2—Part 23 Installation Guidance: Status, schedule, issues—Review MS Project schedule.
- Report from WG3—Parts 27/29 Installation Guidance: Status, schedule, issues—Review MS Project schedule.
- Common issues discussion including breadth & level of participation, scope with respect to TORs.
- Breakout into individual WGs.
- Report out from each WG: Status, schedule, issues.
- Establish Dates, Location, Agenda for Next Meeting, Other Business.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

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

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. E9–21853 Filed 9–9–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATP AC) will be held to review present air traffic control procedures and practices for standardization, revision, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held Tuesday, October 6, 2009, from 8 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Gaylord National Resort, and Convention Center, 201 Waterfront St. National Harbor MD, 20745.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Jehlen, ATP AC Executive Director, 800 Independence Avenue, SW., Washington, DC 20591. Telephone (202) 493–4527.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App.2), notice is hereby given of a meeting of the ATP AC to be held Tuesday, October 6, 2009, from 8 a.m. to 5 p.m.

The agenda for this meeting will cover a continuation of the ATPAC's review of present air traffic control procedures and practices for standardization, revision, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes;
2. Submission and Discussion of Areas of Concern;
3. Discussion of Potential Safety Items;
4. Report from Executive Director;
5. Items of Interest; and
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statement should notify Mr. Richard Jehlen no later than September 22, 2009. Any member of the public may present a written statement to the ATP AC at any time at the address given above.

Issued in Washington, DC, on September 4, 2009.

Richard Jehlen,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. E9–21809 Filed 9–9–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Privacy Act of 1974; System of Records Notice

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice to alter a Privacy Act system of records.

SUMMARY: NHTSA is republishing the Privacy Act system of records notice (SORN) for the Consumer Assistance to Recycle and Save program (CARS program) database system replacing the previously published SORN of July 27, 2009 in order to: (1) Expand the routine uses of records maintained in the system to include sharing complaint records with State Attorneys General and the National Association of Attorneys General (NAAG), for purposes of investigating and prosecuting criminal violations, including fraud associated with the CARS program, and (2) update the system location, storage and retrievability sections of the SORN to reflect the use of word-searchable electronic files (i.e., Excel spreadsheets) to store complaint information, including that to be shared with the State Attorneys General and NAAG. These changes are more thoroughly detailed below and in the accompanying updated Privacy Impact Assessment (PIA) that may be found on the DOT Privacy Web site at *http://www.dot.gov/privacy*.

DATES: Effective September 10, 2009. The CARS Program is a temporary program covering eligible automobile purchases/leases occurring between July 1, 2009 and November 1, 2009. The Consumer Assistance to Recycle and Save Act of 2009 (the CARS Act), which authorized the CARS Program, requires the Secretary of Transportation, acting through NHTSA, to take steps to identify, prevent and penalize fraud associated with the Program. Since the inception of the CARS Program, NHTSA has received a substantial number of complaints from consumers located nation-wide, including time-sensitive complaints of dealer misconduct associated with the conduct of the Program. In order for these consumer complaints to be investigated and resolved in a timely manner (i.e., while the CARS Program remains operational and before the complaints become moot), NHTSA has sought the assistance of State Attorneys General. For this reason, NHTSA must begin sharing consumer complaint information, including personally identifiable information (PII) of consumers, with State Attorneys General and NAAG prior to completion of a 30-day public notice and comment period under this SORN. NHTSA nonetheless seeks and will accept public comment on this SORN for a 30 day period. Because our ability to consider comments received may be limited, we encourage the earliest possible submission of comments. If feasible, we may publish a further alteration to this SORN in light of any comments received.

ADDRESSES: Send comments to Dee Smith, NHTSA Privacy Officer, NHTSA Office of the CIO, NPO–420, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590 or *dee.smith@dot.gov*.

FOR FURTHER INFORMATION CONTACT: For privacy issues please contact: Dee Smith, NHTSA Privacy Officer, NHTSA Office of the CIO, NPO–420, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590 or *dee.smith@dot.gov*.

SUPPLEMENTARY INFORMATION:

I. CARS Program

On June 24, 2009, the President signed into law the Consumer Assistance to Recycle and Save Act of 2009 (the CARS Act) (Pub. L. 111–32). The Act establishes, within DOT's National Highway Traffic Safety Administration (NHTSA), a temporary program under which an owner of a motor vehicle meeting statutorily specified criteria may trade in the vehicle and receive a monetary credit from the dealer toward the purchase or lease of a new motor vehicle meeting statutorily specified criteria (the CARS Program or Program).

The Program covers qualifying transactions that occur between July 1, 2009 and November 1, 2009. If all of the conditions of eligibility are met and the dealer provides NHTSA with sufficient documentation relating to the transaction, NHTSA will make an electronic payment to the dealer equal

to the amount of the credit extended by the dealer to the consumer, not exceeding the statutorily authorized amount. The dealer must agree to transfer the trade-in vehicle to a salvage auction or disposal facility that will crush or shred it so that it will never be returned to the road, although parts of the vehicle other than the engine block may be sold prior to disposal.

Under the Program, NHTSA must collect a variety of information from individuals and entities about qualifying transactions. Vehicle manufacturers must provide data about vehicles and authorized dealers. Dealers must provide information about their business operations and individual financial transactions. Salvage auctions and disposal facilities may be required to provide comparable data about their business operations and information confirming the sale or destruction of trade-in vehicles. This information is required to ensure compliance with the terms of the CARS Act—specifically, to verify that purchasing consumers, new and trade-in vehicles, dealers, salvage auctions and disposal facilities are eligible to participate in the Program; to identify, prevent and penalize fraud; and to confirm appropriate disposal of the trade-in vehicles. Participating car buyers also will be asked to complete a survey about the Program for use in reporting to Congress on the efficacy of the Program, as mandated by the CARS Act. Surveys will be voluntary and anonymous. Additionally, under the Act, NHTSA is required to coordinate with the U.S. Department of Justice (DOJ) to ensure that the National Motor Vehicle Title Information System (NMVTIS) (which is administrated by the American Association of Motor Vehicle Administrators (AAMVA)) is updated appropriately to reflect the disposal of vehicles traded in under the CARS Program.

II. CARS Database System

In order to support the CARS Program, NHTSA will utilize one or more secure databases (i.e., the CARS Database System) to collect, process and store information about eligible transactions and about car purchasers/lessees, dealers, salvage auctions and disposal facilities participating in the CARS Program. This information will include Personally Identifiable Information (PII), including financial transaction information of individual car purchasers/lessees, and may include PII about a limited number of salvage auctions and disposal facilities participating in the program, which in some States may be operated by individuals (sole proprietors).

III. The Privacy Act

The Privacy Act (5 U.S.C. 552a) governs the means by which the United States Government collects, maintains, and uses PII in a system of records. A ''system of records'' is a group of any records under the control of a Federal agency from which information about individuals is retrieved by name or other personal identifier.

The Privacy Act requires each agency to publish in the **Federal Register** a notice (SORN) identifying and describing each system of records the agency maintains, including the purposes for which the agency uses PII in the system, the routine uses for which the agency discloses such information outside the agency, and how individual record subjects can exercise their rights under the Privacy Act (*e.g.*, to determine if the system contains information about them).

IV. Privacy Impact Assessment

NHTSA is publishing an updated Privacy Impact Assessment (PIA) to coincide with the expansion of the SORN.

In accordance with 5 U.S.C. 552a(r), a report on the alteration of this existing system of records has been sent to Congress and to the Office of Management and Budget.

SYSTEM NUMBER:

DOT/NHTSA 464.

SYSTEM NAME:

CARS Database System.

SECURITY CLASSIFICATION:

Sensitive, unclassified.

SYSTEM LOCATION:

Servers: The Servers hosting the CARS Database System are housed in a contractor-owned facility at Oracle On Demand in Austin, Texas.

Portals: This system is accessed via portals located at:

- Registered, participating new car dealers via the Internet at *http://www.cars.gov*.
- NHTSA Headquarters, located at 1200 New Jersey Avenue, and in various of NHTSA's regional offices and at other off-site locations used in connection with CARS Program.
- The off-site facilities of NHTSA and DOT Contractors.

Authorized users at NHTSA Headquarters access their records in the CARS Database System via the DOT Intranet. Authorized users at the NHTSA portal locations and at the contractor portal locations access their records in the CARS Database System via the Internet at *http://www.cars.gov*.

Some system software is maintained by Oracle On Demand in Austin, Texas. The CARS Database System interfaces with participating new car dealers, and with other DOT systems used to pay the dealers, through that system software, as well as other software maintained by the Federal Aviation Administration's Enterprise Services Center (ESC) at the Mike Monroney Aeronautical Center, Oklahoma City, OK.

Any electronic or hard-copy files containing CARS-related records will be maintained at the pertinent NHTSA, DOT or Contractor portal locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system covers the following individuals:

- Individual buyers/lessees of new cars participating in the CARS program.
- Sole proprietors of salvage auctions and automobile disposal facilities participating in the CARS program.

CATEGORIES OF RECORDS IN THE SYSTEM:

- Records about individual car buyers/lessees participating in the CARS Program consist of transaction records containing the following PII data elements: name and address of the purchaser/lessee; the purchaser/lessee's State driver's license number or other State identification number; the State driver's license number or other State identification number of the co-purchaser/lessee (if any), as listed in the title; and the Vehicle Identification Number (VIN) of the trade-in vehicle and the VIN of the new vehicle. Depending on the State and content of the sales contract, PII also may be found on the following documents required to be scanned by dealers and entered into the system: Document of title of trade-in vehicle (or, in certain States, documentation of paperless title), proof of insurance for trade-in vehicle (cards or letter from insurer), trade-in registration, sales summary sheet, and salvage certificate.
- Records about any sole proprietors of salvage auctions and disposal facilities participating in the CARS Program consist of business operation records that may include the following PII elements: Name, home address, telephone number and email address, to the extent that such individuals operate their businesses out of their homes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 111–32, 123 Stat. 1859.

PURPOSE(S):

The purpose for collecting records in the CARS Database System is to implement the CARS Program and

ensure compliance with the terms of the CARS Act. Specifically:

• NHTSA personnel and contractors use the information that each car dealer enters into the CARS database to verify that purchasing/leasing consumers, new and trade-in vehicles, dealers, salvage auctions and disposal facilities are eligible to participate in the Program.

• NHTSA personnel and contractors use information entered into the system to determine if individual transactions satisfy CARS program requirements.

• NHTSA personnel and contractors use the system to send information about eligible transaction to a DOT financial management system to process vouchers and cause dealers to be paid by DOT/NHTSA for eligible transactions.

• Both to establish eligibility and for audit purposes, NHTSA compares dealer-entered information in the CARS Database System to purchaser/lessee and transactional information already within the system.

• NHTSA personnel and contractors and the DOT Inspector General may use information about individual transactions, purchasers/lessees, dealers, salvage auctions and disposal facilities participating in the CARS Program to prevent, identify and investigate program violations and fraud.

• NHTSA personnel and contractors will use survey data provided by purchasers/lessees to report to Congress on the efficacy of the Program.

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

The CARS Database System shares PII about individual purchasers/leasees and their new and trade-in vehicles, and about any sole proprietors of salvage auctions and automobile disposal facilities, as follows:

• NHTSA personnel and contractors will use VINs from the system to update DOJ's NMVTIS database, as required by the CARS Act.

• NHTSA personnel and contractors, as well as the DOT Inspector General, may provide to the U.S. Department of Justice, State Attorneys General and the National Association of Attorneys General (NAAG) information about certain transactions, including PII about individual purchasers/lessees and any sole proprietors of salvage auctions and disposal facilities participating in the CARS Program, for purposes of investigating complaints and investigating and prosecuting criminal violations, including fraud.

• NHTSA personnel and contractors will provide to States lists of VINs of trade-in vehicles for which they issued car titles, for purposes of cancelling the car titles.

• Salvage auctions and disposal facilities receive the VIN and voucher transaction code for each trade-in car sent to them for sale or destruction. They include the VIN and code on a certificate that they return to DOT/NHTSA.

Other possible routine uses of the information, applicable to all DOT systems, are published in the **Federal Register** at 65 FR 19476 (April 11, 2000), under ''Prefatory Statement of General Routine Uses'' (available at *http://www.dot.gov/privacy/privacyactnotices/)*.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

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

STORAGE:

Records are stored in databases, on magnetic tape, on magnetic disk and in secure electronic and hard-copy files at DOT, NHTSA and contractor portal locations, as required. The databases are on servers; the data is typically stored on a Storage Area Network (SAN) and backed-up on tape stored in Oklahoma City, Oklahoma, Kansas City, Kansas and Austin, Texas. Magnetic tape and disk records are maintained at the central maintenance site in Oklahoma City, at the disaster recovery site in Kansas City, and at the remote hosting site in Austin. Storage of electronic or hard-copy file folders is at the geographic location of the pertinent portal location.

RETRIEVABILITY:

Records related to individual purchasing/leasing consumers participating in the CARS program are retrieved by State identification number (ID). This will be either a State driver's license and/or another form of State ID (i.e., driver's permit or standard ID). Complaint records relating to consumers participating in the CARS program also may be retrieved from electronic files (i.e., Excel spreadsheets) by word searches.

Records related to any sole proprietors of automobile disposal facilities are retrieved through the use of a unique number given to the proprietors through the Environmental Protection Agency (EPA). The EPA number will be listed on the *http://www.cars.gov* Web site for disposal facilities that are authorized to receive CARS vehicles.

SAFEGUARDS:

Access to records in the CARS Database system will be limited to NHTSA personnel and contractors through password security, encryption, firewalls, and secured operating system, except for bank account information and a limited amount of eligible transaction information which will be encrypted and sent securely to DOT's financial management system for purposes of effecting payments to participating dealers for eligible transactions.

Registered dealers entering data into the system will be able to access only records relating to transactions initiated by the same dealer—and not records relating to other transactions entered into the system.

Any electronic or hard copies of CARS-related records containing PII at DOT, NHTSA and contractor portal locations will be kept in secure electronic files or in hard-copy file folders locked in secure file cabinets during non-duty hours.

RETENTION AND DISPOSAL:

Under the CARS Final Rule, records created under the CARS program will be kept for 5 years. Records that are needed longer, such as to resolve claims and audit exceptions and prosecute fraud, will be retained until such matters are resolved.

The records may be moved at a future date to one or more different locations in response to the operational needs of DOT, NHTSA, the CARS Program or DOT/NHTSA contractors.

SYSTEM MANAGER AND ADDRESS:

The CARS Database System Manager (NPO–400), Office of the Chief Information Officer, NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590.

NOTIFICATION PROCEDURE:

Individuals or business entities wishing to know if their records appear in this system should direct their requests to the System Manager identified above.

RECORD ACCESS PROCEDURE:

Individuals seeking access to information about them in this system should follow the same procedure as indicated under ''Notification Procedure.''

CONTESTING RECORDS PROCEDURE:

Individuals seeking to contest the content of information about them in this system should follow the same procedure as indicated under ''Notification Procedure.''

RECORD SOURCE CATEGORIES:

Transaction information pertaining to individual purchasers/lessees is obtained by car dealers, on behalf of NHTSA, directly from the individuals, from source documents the individuals provide (some of which are scanned into the database by the dealer), and/or directly from their new and trade-in cars. Dealers scan and/or enter the information into the CARS database and manually compare the information to the source documents or systems to verify its accuracy. NHTSA personnel and contractors then review the records to ensure accuracy prior to assessing the eligibility of individual transactions.

Business operations information about any sole proprietor salvage auctions and disposal facilities is obtained directly from the proprietors.

Consumer complaint information is obtained by DOT/NHTSA employees or contractors directly from consumers, including through NHTSA's CARS Hotline.

EXEMPTIONS CLAIMED FOR THIS SYSTEM:

None.

Dated: September 3, 2009.

Habib Azarsina,

Departmental Privacy Officer.

[FR Doc. E9–21802 Filed 9–9–09; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2009 0071]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel WOJTAN.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2009–0071 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments.

Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before October 13, 2009.

ADDRESSES: Comments should refer to docket number MARAD–2009–0071. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel WOJTAN is:

Intended Use: ''I intend to use the vessel to give sailing tours, and to give people the opportunity to experience and participate in sailing.''

Geographic Region: ''This will be done on Kachamak Bay out of Homer, Alaska.''

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).

Dated: August 31, 2009.

By Order of the Maritime Administrator.

Christine Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. E9–21815 Filed 9–9–09; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Senior Executive Service; Public Debt Performance Review Board (PRB)

AGENCY: Bureau of the Public Debt, Treasury.

ACTION: Notice of members of Public Debt Performance Review Board.

SUMMARY: This notice announces the appointment of the members of the Public Debt Performance Review Board (PRB) for the Bureau of the Public Debt (BPD). The PRB reviews the performance appraisals of career senior executives who are below the level of Assistant Commissioner/Executive Director and who are not assigned to the Office of the Commissioner in BPD. The PRB makes recommendations regarding proposed performance appraisals, ratings, bonuses, pay adjustments, and other appropriate personnel actions.

DATES: The membership on the Public Debt PRB as described in the Notice is effective on September 10, 2009

FOR FURTHER INFORMATION CONTACT: Angela Jones, Director, Human Resources Division, Office of Management Services, BPD, (304) 480–8302.

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 4314(c)(4), this Notice announces the appointment of the following primary and alternate members to the Public Debt PRB:

Primary Members:

Anita Shandor, Deputy Commissioner, Office of the Commissioner, BPD;

Kimberly A. McCoy, Assistant Commissioner, Office of Information Technology, BPD;

Cynthia Z. Springer, Executive Director, Administrative Resource Center, BPD.

Alternate Members:

Dara Seaman, Assistant Commissioner, Office of Financing, BPD.

Van Zeck,

Commissioner.

[FR Doc. E9–21858 Filed 9–9–09; 8:45 am]

BILLING CODE 4810–39–P

Federal Register

Thursday,
September 10, 2009

Part II

The President

Proclamation 8411—Labor Day, 2009

Federal Register
Vol. 74, No. 174
Thursday, September 10, 2009

Presidential Documents

Title 3—

The President

Proclamation 8411 of September 4, 2009

Labor Day, 2009

By the President of the United States of America

A Proclamation

Since our Nation's founding, working Americans have carried us through times of challenge and uncertainty and propelled America through eras of peace and prosperity. They have long formed the backbone of our Nation's economy, and they will continue to lead our Nation to new heights in the years to come.

Working Americans helped lay the foundation for our Nation's progress over the generations. Brick by brick, they built the infrastructure that powered the engine of our economy. With firm resolve and commitment, they constructed our cities and towns, and with unparalleled skill they manufactured the goods and provided the services needed by Americans and people around the world. They have prepared our children for the challenges ahead and cared for the sick and the elderly. Today, we commemorate the many contributions labor has made to our Nation.

Throughout its history, the labor movement has given voice to the aspirations and concerns of millions of men and women. By fighting for decent working conditions, as well as fair wages and benefits, organized labor has stood for the rights of everyday Americans. With determination and commitment, labor has advocated for all working families and all have benefited from the fruits of their struggles.

Today, we find ourselves in an era of great challenges. The economic crisis we face is vast and complex. Americans understand the consequences: dwindling savings for young families, a daunting choice between prescriptions and groceries for our seniors, and fading hopes for a college education for our young people. Just as they have so many times in our history, working Americans will help our Nation emerge from this crisis and lead us into a new era of prosperity and progress.

This Labor Day, as we honor our workers, and we renew our commitment to uphold the American Dream and the founding promise of our Nation: in America, we can make of our lives what we will, and all things are possible for all people.

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 September 7, 2009, as Labor Day. I call upon public officials and all the people of the United States to observe this day with appropriate programs, ceremonies, and activities that acknowledge the tremendous contributions of working Americans and their families.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of September, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-fourth.

[FR Doc. E9–21988
Filed 9–9–09; 11:15 am]
Billing code 3195–W9–P

Reader Aids

Federal Register

Vol. 74, No. 174

Thursday, September 10, 2009

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

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FEDERAL REGISTER PAGES AND DATE, SEPTEMBER

45093–45304 1
45305–45534 2
45535–45730 3
45731–45976 4
45977–46300 8
46301–46488 9
46489–46662 10

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
8404 45527
8405 45529
8406 45535
8407 45727
8408 45729
8409 45977
8410 46301
8411 46661

Administrative Orders:
Memorandums:
Memorandum of August 31, 2009 45533

7 CFR

210 45305
220 45305
319 46489
402 45537
407 45537
457 45537
905 46303
920 46306
945 45731
980 45734
993 46310
3430 45736

Proposed Rules:
457 46023
970 45565
983 45772
1485 46027

10 CFR

55 45544
76 45544
431 45979

Proposed Rules:
40 46512
609 46513

12 CFR

370 45093

13 CFR

120 45752
121 .....45752, 46312
124 45752
126 45752
134 45752

14 CFR

1 45307
23 45100
25 45546
33 45307
39 .....45311, 45550, 45754, 45979, 46313, 46317, 46319, 46322, 46324, 46327, 46329, 46331, 46334, 46336, 46339, 46342
71 .....45553, 45554, 45981, 45982, 45983, 45984, 46489

Proposed Rules:
23 45133
25 45777
39 .....45135, 45139, 45381, 45781, 45783, 45787, 46395
71 .....45142, 45574, 45575, 46513

15 CFR

736 45985
740 45985
744 45990
746 45985
902 45756
909 45555

Proposed Rules:
806 45383

16 CFR

1119 45101

Proposed Rules:
1119 45133
1215 45719
1216 45704
1500 .....45714, 45723

18 CFR

Proposed Rules:
284 45576

20 CFR

655 45560

Proposed Rules:
655 45906

21 CFR

Proposed Rules:
1301 46396

22 CFR

Proposed Rules:
62 45385

24 CFR

206 45311

26 CFR

1 .....45757, 45993, 46345, 46346
54 45994
301 46347
602 45757

Proposed Rules:
1 45789

29 CFR

1910 46350
1915 46350
1917 46350
1918 46350

1956 45107
Proposed Rules:
501 45906
2560 45791

30 CFR

944 45116

31 CFR

515 46000
538 46361

33 CFR

100 46364
110 46007
117 46010
138 46367
151 45555
165 ....45120, 45318, 45323, 46011, 46014, 46367, 46491
Proposed Rules:
165 46040

34 CFR

Proposed Rules:
Ch. VI 46399

39 CFR

20 45760
111 ....45325, 45763
3020 ....45327, 46016
Proposed Rules:
3060 46044

40 CFR

35 46019
52 ....45561, 45766
63 46493
180 ....45330, 46369, 46377
239 45769
258 45769
300 45335
Proposed Rules:
52 ....45387, 45578, 45795, 46044
60 46401
81 45387
239 45796
258 45796

44 CFR

64 45122
Proposed Rules:
67 ....46047, 46056, 46068, 46074

45 CFR

2510 46495
2516 46495
2519 46495
2520 46495
2522 46495
2540 46495
2550 46495
2551 46495
2552 46495
2553 46495

47 CFR

73 ....45126, 45770, 46020
74 ....45126, 46382
Proposed Rules:
73 ....45797, 45798

48 CFR

Proposed Rules:
8 45394
9 45579
12 ....45394, 45579
15 45394
42 45394
49 45394
52 45579

49 CFR

222 46384
234 45336
501 46021
Proposed Rules:
367 45583
571 45143
633 46515

50 CFR

20 45343
32 45674
226 45353
622 ....46509, 46510
648 45131
665 45756
679 ....45131, 45378, 45379, 45564, 46021
Proposed Rules:
17 ....45396, 46401, 46521, 46542, 46548, 46551
648 ....45597, 45798

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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H.R. 774/P.L. 111–50

To designate the facility of the United States Postal Service located at 46-02 21st Street in Long Island City, New York, as the "Geraldine Ferraro Post Office Building". (Aug. 19, 2009; 123 Stat. 1979)

H.R. 987/P.L. 111–51

To designate the facility of the United States Postal Service located at 601 8th Street in Freedom, Pennsylvania, as the "John Scott Challis, Jr. Post Office". (Aug. 19, 2009; 123 Stat. 1980)

H.R. 1271/P.L. 111–52

To designate the facility of the United States Postal Service located at 2351 West Atlantic Boulevard in Pompano Beach, Florida, as the "Elijah Pat Larkins Post Office Building". (Aug. 19, 2009; 123 Stat. 1981)

H.R. 1275/P.L. 111–53

Utah Recreational Land Exchange Act of 2009 (Aug. 19, 2009; 123 Stat. 1982)

H.R. 1397/P.L. 111–54

To designate the facility of the United States Postal Service located at 41 Purdy Avenue in Rye, New York, as the "Caroline O'Day Post Office Building". (Aug. 19, 2009; 123 Stat. 1989)

H.R. 2090/P.L. 111–55

To designate the facility of the United States Postal Service located at 431 State Street in Ogdensburg, New York, as the "Frederic Remington Post Office Building". (Aug. 19, 2009; 123 Stat. 1990)

H.R. 2162/P.L. 111–56

To designate the facility of the United States Postal Service located at 123 11th Avenue South in Nampa, Idaho, as the "Herbert A Littleton Postal Station". (Aug. 19, 2009; 123 Stat. 1991)

H.R. 2325/P.L. 111–57

To designate the facility of the United States Postal Service located at 1300 Matamoros Street in Laredo, Texas, as the "Laredo Veterans Post Office". (Aug. 19, 2009; 123 Stat. 1992)

H.R. 2422/P.L. 111–58

To designate the facility of the United States Postal Service located at 2300 Scenic Drive in Georgetown, Texas, as the "Kile G. West Post Office Building". (Aug. 19, 2009; 123 Stat. 1993)

H.R. 2470/P.L. 111–59

To designate the facility of the United States Postal Service located at 19190 Cochran Boulevard FRNT in Port Charlotte, Florida, as the "Lieutenant Commander Roy H. Boehm Post Office Building". (Aug. 19, 2009; 123 Stat. 1994)

H.R. 2938/P.L. 111–60

To extend the deadline for commencement of construction of a hydroelectric project. (Aug. 19, 2009; 123 Stat. 1995)

H.J. Res. 44/P.L. 111–61

Recognizing the service, sacrifice, honor, and professionalism of the Noncommissioned Officers of the United States Army. (Aug. 19, 2009; 123 Stat. 1996)

S.J. Res. 19/P.L. 111–62

Granting the consent and approval of Congress to amendments made by the State of Maryland, the Commonwealth of Virginia, and the District of Columbia to the Washington Metropolitan Area Transit Regulation Compact. (Aug. 19, 2009; 123 Stat. 1998)

Last List August 14, 2009

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